

LOK SABHA

THE LOKPAL BILL, 1977

(REPORT OF THE JOINT COMMITTEE)

[Presented on the 20th July, 1978]



**LOK SABHA SECRETARIAT
NEW DELHI**

Shri A. ...

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LOK SABHA SECRETARIAT

CORRIGENDA

to

the Report of the Joint Committee on
the Lokpal Bill, 1977

- Page (xvi), line 5, for "salutory" read "salutary"
- Page (xviii), line 9, for "mechinery" read "machinery"
- Page (xxii), line 8, for "above-mentiond" read "above-mentioned"
- Page (xxxi), line 21, for "again" read "against"
- Page (xxxiii), line 18, for "enatment" read "enactment"
- Page (xxxv), line 23, for "such" read "such"
- Page (xxxvi) (i) line 22, for "writting" read "writing"
- (ii) line 37, for "can" read "may"
- Page (xxxvii), line 28, for "jurisdiction" read "jurisdiction"
- Page (xxxviii), after line 10, add "X" in the centre
- Page 6, line 17, for "Concil" read "Council"
- Page 15, (i) line 1, before "if the Lokpal" add "(b)";
- (ii) line 1, for "to recorded" read "to be recorded"
- Page 16, line 2, for "person" read "persons"
- Page 29, S.No. 25, for "Pradsad" read "Prasad"
- Page 30, line 7, for "beore" read "before"
- Page 35, S.No. 15, for "Sougata" read "Saugata"
- Page 39, line 36, for "Mohanararangam" read "Mohanarangaam"
- Page 46, (i) line 7, for "Neraien" read "Narain"
- (ii) line 19, for "Sawaisingh" read "Shri Sawaisingh"
- (iii) line 20, for "Verma" read "Varma"
- (iv) line 24, for "Legislature" read "Legislative"
- Page 50, line 2 from bottom, for "concelled" read "cancelled"
- Page 51, line 23, for "would be" read "would not be"

Page 53, (i) line 24, for "adjournnd"
read "adjourned"
(ii) line 31, for "Syamnandan"
read "Shyamnandan"
(iii) line 37, for "Gamble"
read "Kamble"
Page 56, line 12, for "28" read "26"
Page 64, (i) line 26, for "REPRESENTATION"
read "REPRESENTATIVES"
(ii) line 32, for "attnded"
read "attended"
Page 67, last line, for "this" read "his"
Page 73, line 21, for "Clause 3(v)(b)"
read "Clause 3(1)(b)"
Page 74, line 7, for "States" read "State"

NEW DELHI :

July 31, 1978

Sravana 9, 1900 (Saka)

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JOINT COMMITTEE ON THE LOKPAL BILL, 1977

COMPOSITION OF THE COMMITTEE

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shrimati Mrinal Gore
7. Shri Kanwar Lal Gupta
8. Shri Ram Jethmalani
9. Shri M. Kalyanasundaram
10. Shri Hari Vishnu Kamath
11. Shri B. C. Kamble
12. Shri Krishan Kant
13. Shri M. V. Krishanappa
14. Shri Madhu Limaye
15. Shri Mangal Deo
16. Shri Nathu Ram Mirdha
- *17. Shri Ragavalu Mohanarangam
18. Dr. V. A. Seyid Muhammad
19. Shri Narendra P. Nathwani
20. Shri Balasaheb Vikhe Patil
21. Shri Gauri Shankar Rai
22. Shri Saugata Roy
23. Shri Sasankasekhar Sanyal
- @24. Shri Daulat Ram Saran
25. Shri B. Shankaranand
26. Shri Jagannath Sharma
27. Shri C. M. Stephen
28. Shri K. Suryanarayana
- †29. Shri Hukam Deo Narain Yadav
30. Shri Charan Singh

Rajya Sabha

31. Shrimati Margaret Alva
32. Shri A. R. Antulay

*Appointed *w.e.f.* 2-12-1977 *vice* Shri S. D. Somasundaram resigned.

@Appointed *w.e.f.* 2-12-1977 *vice* Shri Chand Ram resigned.

†Appointed *w.e.f.* 2-12-1977 *vice* Shri Arif Baig resigned.

33. Shri Sunder Singh Bhandari
34. Shri Bipinpal Das
35. Shri S. W. Dhabe
36. Shri Devendra Nath Dwivedi
37. Shri Vithal Gadgil
38. Shri Bhupesh Gupta
39. Shri G. Lakshmanan
40. Shri N. G. Ranga
41. Shri Rabi Ray
- *42. Shri N. K. P. Salve
43. Shri Sawaisingh Sisodia
- @44. Shri V. V. Swaminathan
45. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri M. Prasad, *Secretary.*
3. Shri R. C. Misra, *Additional Secretary.*
4. Shri G. P. Kalra, *Under Secretary,*

**Appointed w.e.f. 9-5-1978 vice Shri D. P. Singh retired.

●●Appointed w.e.f. 9-5-1978 vice Shri K. A. Krishnaswamy retired.

REPORT OF THE JOINT COMMITTEE

1. The Chairman of the Joint Committee to which the Bill* to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith was referred, having been authorised to submit the Report on their behalf, present their Report, with the Bill, as amended by the Committee, annexed thereto.

2. The Bill was introduced in Lok Sabha on the 28th July, 1977. A motion for suspension of the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Charan Singh, the then Minister of Home Affairs on the 1st August, 1977 and was adopted. Thereafter, the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Charan Singh, the then Minister of Home Affairs on the same day and was adopted (Appendix I).

3. Rajya Sabha concurred in the said motion on the 3rd August, 1977 (Appendix II).

4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part I on the 4th August, 1977.

5. The Committee held 25 sittings in all.

6. The first sitting of the Committee was held on the 7th September, 1977 to draw up their programme of work. The Committee decided to invite written memoranda from the Bar Councils, Bar Associations and others interested in the subject matter of the Bill. The Committee also decided to issue a Press Communique in this behalf fixing 23rd September, 1977 as the last date for receipt of memoranda. On the 8th September, 1977, the Director of News Services, All India Radio and the Director of of Doordarshan Kendra, New Delhi were also requested to broadcast the matter from all stations of All India Radio and telecast it from all Doordarshan Kendras on three successive days.

The Committee further decided that the opinion of the Chief Ministers of all the States and the Lokayuktas of States, where appointed so far, on the provisions of the Bill might also be obtained for their consideration.

The Committee also expressed a desire that if necessary, the Minister of Law, Justice and Company Affairs and the Attorney-General of India might be invited before the Committee to give their opinion on certain constitutional aspects of the Bill.

7. At their sitting held on the 8th September, 1977, the Committee considered their future programme of work and tentatively decided to

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 28th July, 1977.

complete clause-by-clause consideration of the Bill by the 25th October, 1977.

8. At their sitting held on the 27th September, 1977, the Committee decided that comments/suggestions on the provisions of the Bill might also be invited from all Members of Parliament. On the same day, a circular letter on the subject was issued to all Members of Parliament inviting their comments/suggestions on the provisions of the Bill. On the 28th September, 1977, the Director of News Services and the Director of Doordarshan Kendra, New Delhi were also requested to broadcast the matter from all Stations of All India Radio and telecast it from all Doordarshan Kendras on three successive days.

9. 30 Memoranda containing comments/suggestions on the provisions of the Bill were received by the Committee from various Associations, Organisations, individuals etc. (vide list at Appendix III).

10. The Committee held preliminary general discussion on the provisions of the Bill at their sittings held on the 27th, 28th September, 9th and 10th October, 1977.

The Committee at their sitting held on the 10th October, 1977, also decided that the Attorney-General of India might be invited to give his opinion on certain constitutional aspects of the Bill before the Committee on the 24th October, 1977.

The Committee further decided that, for the purpose of eliciting opinion from the Attorney-General of India, the Members might formulate their points on the provisions of the Bill on which they would like to seek clarification from him. The consolidated list of points received from the Members for opinion of the Attorney-General is at Appendix IV.

11. At their sittings held on the 24th and 25th October, 1977, the Committee heard the views of Shri S. V. Gupte, Attorney-General of India on the points raised by the Members *vis-a-vis* the constitutional aspects of the Lokpal Bill, 1977.

12. As some Members of the Committee wanted to have some more time to formulate their views on various clauses of the Bill in the light of the preliminary general discussion held so far and also the opinion given by the Attorney-General of India, the Committee, at their sitting held on the 11th November, 1977, decided to postpone taking up clause-by-clause consideration of the Bill and ask for extension of time for presentation of the Report.

13. At their sittings held on the 2nd, 3rd and 4th January, 1978, the Committee, in the absence of the then Minister of Home Affairs (Shri Charan Singh), who was busy in connection with the visit of the President of the United States of America, deliberated upon the procedure to be adopted for clause-by-clause consideration of the Bill. The Committee also authorised the Chairman to have consultations with certain Members of the Committee representing various Parties/Groups with a view to arrive at a consensus on the controversial provisions which would facilitate taking decisions on the various clauses of the Bill. The Chairman accordingly informally consulted representative group of members on

the 5th January, 1978 and reported the result of the discussion to the Committee.

14. At their sittings held on the 30th, 31st January, 29th March, 17th, 18th and 28th April, 1978, the Committee held further discussion on some of the controversial aspects of the Bill.

15. At their sittings held on the 8th, 9th, 10th, 30th June and 1st July, 1978, the Committee, before taking up clause-by-clause consideration of the Bill, formulated their views on the controversial aspects with a view to facilitate taking decisions on the various clauses of the Bill.

16. The report of the Committee was to be presented by the 14th November, 1977. The Committee were granted three extensions of time—the first extension on the 14th November, 1977 up to the 20th February, 1978; the second extension on the 20th February, 1978 up to the 15th May, 1978 and the third extension on the 12th May, 1978 up to the 21st July, 1978.

17. At their sitting held on the 3rd July, 1978, the Committee decided that (i) the evidence tendered before them might be laid on the Tables of both Houses; and (ii) two copies each of the memoranda containing comments/suggestions received by the Committee from various Associations, Organisations, individuals etc. might be placed in the Parliament Library, after the Report had been presented, for reference by the Members of Parliament.

18. The Committee considered the Bill clause-by-clause at their sittings held on the 1st and the 3rd July, 1978.

19. The Committee considered and adopted the Report at their sitting held on the 12th July, 1978.

20. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in the succeeding paragraphs.

21. *Clause 2.*—The Committee have made certain amendments in this clause as explained below:—

(i) Competent Authority

(a) The Committee note that under the proposed provisions, the Prime Minister has himself been made the 'competent authority' in his own case. The Committee feel that since the role of the 'competent authority' under the provisions of the proposed Bill is to examine and suggest action on the findings or report of the Lokpal on the complaint against a public man, it would not be in conformity with the principles of jurisprudence and natural justice and apparently would look odd also if the Prime Minister is made the 'competent authority' for the complaints against himself. Besides this, it may even be embarrassing to the Prime Minister if he is made to act as the judge of action in his own case. The Committee are, therefore, of the opinion that since the Council of Ministers including the Prime Minister is primarily responsible to the House of the People, the Speaker may be made as the 'competent authority' in the case of the Prime Minister.

(b) The Committee also note that the 'competent authority' in the case of a Member of Parliament has not been given in the proposed Bill

but has been left to be prescribed by the Government after the commencement of the Act. The Committee are of the opinion that in order to avoid any ambiguity at a later stage, it would be more desirable to prescribe the 'competent authority' in the case of a Member of Parliament in the Bill itself. The Committee feel that Members of Parliament should not be subjected to any extraneous authority for their actions as Members of Parliament. The Committee are, therefore, of the view that the Presiding Officer of the respective Houses of Parliament should be made the 'competent authority' in the case of a Member of Parliament and where the complaint is against the Speaker, the 'competent authority' in his case should be the Deputy Speaker of the House of the People. The Committee feel that the same considerations should apply in the case of Members of Legislative Assemblies for Union territories.

Part (a) of clause 2 has been amended and a new sub-clause (2) to this clause has been added accordingly.

(ii) *Complaint*—The Committee are of the opinion that the complaint alleging commission of misconduct against a public man should relate to the period in which such public man has held any of the offices mentioned in part (g) of this clause.

Part (b) of clause 2 has been amended and a new part (c) has been added accordingly.

(iii) *Chief Minister of a State*—The Committee feel that since the Chief Ministers were primarily answerable to their respective Legislatures and not to Parliament, and as per opinion of the Attorney-General of India, the State Legislatures are competent to legislate on the subject matter under item 45 in List III (Concurrent List) of the Seventh Schedule to the Constitution of India, the Central Government should not ordinarily step in the area which falls within the domain of the States. It would not, therefore, be desirable to bring the Chief Ministers within the purview of the proposed legislation. The Committee are further of the opinion that when an example is set by the Centre, it would automatically be followed by the States under the pressure of public opinion. Even if there are cases which are not taken care of by the States, the Central Government are already vested with powers to appoint Commissions of Inquiry under the Commissions of Inquiry Act, 1952 to deal with them.

Part (g)(iii) has, therefore, been omitted.

22. Clause 3.—(i) The Committee note that the definition of the term 'misconduct' proposed in this clause is too wide and is, therefore, likely to be amenable to different interpretations. The Committee feel that the term 'misconduct' in the case of a public man other than a legislator should be restricted to cover cases in which—

- (a) he is actuated in the discharge of his functions as such public man by corrupt motives; or
- (b) he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates directly or indirectly any valuable thing or pecuniary advantage; or
- (c) any act or omission by him constitutes corruption.

The Committee also feel that since the Members of Parliament do not exercise any executive powers, they should not be treated at par with other public men exercising such powers. Therefore, the concept of 'misconduct' for Members of Parliament and other public men should not be the same and that a legislator may be regarded as committing misconduct only if he abuses, or attempts to abuse or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage. The Committee are further of the opinion that the term 'relative' should be limited to very close relatives and should be defined in the Bill itself.

(ii) Sub-clause (3) of this clause has been omitted as a consequence of excluding the Chief Minister of a State from the purview of the Bill.

The clause has been amended accordingly.

23. *Clause 4.*—The Committee are of the opinion that in order to associate Parliament with the machinery for the appointment of the Lokpal, provision may be made to enable the Chairman of the Council of States and the Speaker of the House of the People to consult the leaders of various Parties and Groups in the respective Houses of Parliament in regard to the appointment of a Lokpal.

A proviso to sub-clause (1) of this clause has been added accordingly.

24. *Clause 8.*—The Committee are of the opinion that the mode of appointment of Special Lokpals should also be on the lines suggested for the appointment of Lokpal in sub-clause (1) of clause 4.

A new proviso to sub-clause (1) of this clause has been added accordingly.

25. *Clause 9.*—(i) The Committee feel that in order to ensure the independence of the proposed institution of Lokpal, the Lokpal should have the powers to appoint the officers and staff required to assist him in the discharge of his functions.

Sub-clause (1) of this clause has been amended accordingly.

(ii) The Committee are of the view that in order to ensure smooth, efficient and independent functioning of the Lokpal, the officers and staff appointed to assist him and the officers/employees/investigating agencies of the Central Government or a State Government whose services are secured by him for dealing with the complaints, while discharging their functions under the provisions of the proposed legislation, should be subject to the exclusive administrative control and direction of the Lokpal.

A new sub-clause (4) to this clause has been added accordingly.

26. *Clause 10.*—The Committee are of the view that if during the course of his enquiry into any allegation of misconduct against a public man, the Lokpal considers it necessary for the purpose of his enquiry to inquire into any act or conduct of any other person, he should be authorised to do so.

A new sub-clause (2) to this clause has been added accordingly.

27. *Clause 11.*—In view of the provisions made in the new sub-clause (2) of clause 10, the provisions contained in sub-clause (2) of this clause become redundant.

Sub-clause (2) of this clause has, therefore, been omitted.

28. *Clause 12.*—The Committee have made certain amendments in this clause as explained below:—

- (i) The Committee are of the opinion that only employees of Government, Local authorities, statutory corporations and Government companies should be debarred from making complaints under the proposed legislation.

An Explanation to sub-clause (1) of this clause has been added accordingly.

- (ii) The Committee are of the opinion that a complaint against a legislator should first be made to the competent authority concerned. On receipt of the complaint, the competent authority should examine it and if, after having regard to the nature of the allegations made in the complaint, the provisions of Article 105 of the Constitution or, as the case may be, the provisions of Section 16 of the Government of Union Territories Act, 1963 and all the circumstances of the case, finds it fit for investigation by the Lokpal, he may refer it to him or deal with it in such manner as he may deem fit:

A new sub-clause (2) to this clause has been added accordingly.

- (iii) The Committee feel that in case a complainant is not in a position to deposit the sum of one thousand rupees required to be deposited alongwith the complaint under original sub-clause (3), he should make an application for exemption to the Lokpal.

The sub-clause has been amended accordingly. [*vide* new sub-clause (3)].

- (iv) The other amendments made in this clause are of a consequential nature.

29. *Clause 14.*—The Committee are of the opinion that the enquiry in respect of a complaint against a legislator should not be given any publicity till the stage of communication or announcement of the findings and it should be conducted only *in camera* as any premature publicity will damage his public image.

A new proviso to sub-clause (2) of this clause has been added accordingly.

30. *Clause 17.*—(i) The Committee are of the opinion that it should be made obligatory on the part of the Lokpal, after he has communicated his findings and recommendations to the competent authority, to inform the complainant and the concerned publicman about his having done so in order to enable them to know as to where the matter stood. The Committee are also of the view that when the Lokpal makes a special report, he should intimate the complainant, public man and the competent authority concerned accordingly.

Part (b) of sub-clause (1) and sub-clause (3) of this clause have been amended accordingly.

(ii) The Committee are of the view that in order to avoid delay on the part of Government, there should be a time-limit of ninety days within which the special report or the annual report together with the explanatory memorandum thereon should be laid before each House of Parliament. In computing the said period of ninety days, the period when the Parliament is not in session should be excluded.

Sub-clause (5) of this clause has been amended accordingly.

(iii) The other amendments made in this clause are of a drafting and verbal nature.

31. *Clause 18.*—In view of the amendment made in clause 2 of the proposed Bill relating to 'competent authority' in the case of Prime Minister, the provisions contained in this clause become redundant.

The clause has, therefore, been omitted and original clauses 19 and 20 have been renumbered as clauses 18 and 19.

32. *New clause 20.*—The Committee are of the opinion that a complaint against a legislator or any proceedings connected therewith at any stage should neither be disclosed nor published by the complainant or any other person or authority concerned till the stage of announcement or communication of the findings on the allegations made in such a complaint. Any contravention thereof should be treated as a criminal offence and should be punishable with imprisonment for a maximum period of six months or with fine or with both.

A new clause has been added accordingly.

33. *Clause 22.*—(i) The Committee are of the opinion that the expression 'High Court' should be defined as meaning the High Court within the jurisdiction of which the person convicted ordinarily resides or carries on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed.

An Explanation to sub-clause (4) of the clause has been added accordingly.

(ii) In view of the definition suggested in the new Explanation to sub-clause (4) of this clause, the provisions contained in sub-clause (6) of this clause become redundant.

Sub-clause (6) of this clause has, therefore, been omitted.

34. *New clause 23.*—The Committee are of the view that in order to have a check on the filing of frivolous or false complaints, a provision for deterrent punishment should be incorporated in the Bill itself. The Committee feel that a provision for punishment of imprisonment for a maximum period of one year and a fine upto three thousand rupees would be a salutary one and would help to a great extent in checking such complaints.

The Committee are further of the opinion that the public man, on conviction of the person making false complaints, should be suitably compensated and the court should be empowered to award, out of the

amount of fine, such amount of compensation to him as it may consider appropriate.

A new clause has been added accordingly.

35. *Clause 24 [Original clause 23].*—(i) The Committee are of the opinion that the functions of the Lokpal, to start with, should be confined only to the investigation of complaints alleging misconduct against a public man and no additional functions need be conferred on him.

Sub-clause (1) of this clause has, therefore, been omitted.

(ii) The amendment made in sub-clause (3) of this clause is of a consequential nature.

36. *New clause 26.*—The Committee are of the view that provision for compensating or rewarding a complainant should be made in a case where the complaint has been substantiated either wholly or partly and the Lokpal considers, having regard to the expenses incurred by the complainant and other circumstances of the case, that the complainant deserves to be compensated or rewarded.

A new clause has, therefore, been added accordingly.

37. *Clause 27 [Original clause 25].*—The amendment made in sub-clause (2) of this clause is for excluding expressly proceedings under clause 22 relating to trial of certain offences.

38. *Clause 28 [Original clause 26].*—The Committee are of the view that the Lokpal should not delegate his powers relating to summary trial under clause 22 of the Bill.

The clause has been amended accordingly.

39. *New clause 31.*—Addition of this new clause is of a consequential nature.

40. *Clause 1.*—The amendment made in this clause is of a formal nature.

41. *Enacting Formula.*—The amendment made in the Enacting Formula is of a formal nature.

42. The Joint Committee recommend that the Bill, as amended, be passed.

GENERAL RECOMMENDATIONS

43. The Committee were informed that in the State Lokayukta Acts, wherever enacted, the Chief Ministers have not been brought within the jurisdiction of the Lokayuktas. The Committee feel that although the Chief Ministers of the States, keeping in view the democratic set-up in a federal structure of the country, have been proposed to be excluded from the proposed Central Legislation, as per amendment suggested in clause 2(g) of the Bill, Government might consider the feasibility of urging upon the State Governments, with a view to attaining high standards of public morality and cleanliness in public life and administration, to bring the Chief Ministers within the purview of their

respective Acts, wherever enacted so far. Where the State Governments have not, so far, enacted the said Lokayukta Acts, the Government might consider the desirability of impressing upon the State Governments concerned the importance and urgency of enacting similar legislation. It is the Committee's fervent hope that the example set at the Centre would be followed by the States.

44. During the course of discussion on some of the controversial provisions of the Bill, the Committee were confronted with a question whether the top-ranking Civil Servants, viz. Secretaries, Additional Secretaries, Joint Secretaries and the Directors, who are alleged to be hand in glove with the public men at higher political levels and who are instruments in the hands of higher echelons of political power and enjoy a special position by virtue of the powers they possess in the hierarchy of administration, could be brought within the purview of the Bill. The Committee are of the view that since the proposed Bill provided only for enquiries into allegations of misconduct against 'public men' and of corruption at 'higher political levels', to suggest such an amendment to the provisions of the proposed Bill would go beyond the scope of the Bill.

However, the Committee are of the opinion that Government, in the light of the experiences gained during the working of the present provisions of the proposed legislation after its enactment, might examine if it was necessary in the interests of the main object of the Bill to bring forward an amending Bill at a later stage to cover such civil servants.

SHYAMNANDAN MISHRA,

Chairman,

Joint Committee.

NEW DELHI;

July 15, 1978

Asadha 24, 1900 (S).

MINUTES OF DISSENT

I

I wish the introductory words of the Report of the Joint Committee, to which I am appending Note of Dissent, reflected the Committee's experience which was both instructive and exciting. Perhaps, the style that we have developed for prefacing the Reports of such Joint Committees made it difficult for the Chairman of our committee to do so, notwithstanding all his scintillating open-mindedness as well as his own sustaining contribution to the Committee's deliberations which were meaningful and constructive, and for which my colleagues belonging both to the ruling party and the opposition could legitimately claim credit.

Indeed the Lokpal Bill, 1977 as introduced in the Lok Sabha in July last year faced a heavy weather in the Joint Committee and it survived the stormy debates only because a number of important changes in its provisions were made. Thanks to the collective efforts of the Members of Joint Committee, the Bill has been given some sort of a fact-lift, and is now being returned to the House in a better form, shorn of some of its ugly features which bore the imprint of bureaucratic woodenheadedness stamped with the political authority of the Union Home Minister and the government. However, for all the changes the original Bill has undergone in the Joint Committee, the modified version cannot, I am afraid, still be regarded as satisfactory in point of principle or even from practical considerations.

Understandably, the original Bill, with its ill-conceived, ill-formulated clauses, gave rise to sharp controversies in the Country but these, fortunately, centered round some questions of principles, and practical approaches, and our colleagues in the Committee striving hard, as it were, had to make the best of a bad bargain. The Government was put on the defensive all along the line and left with no option but to try some rear guard actions. It had to yield much ground in the face of strong criticisms and equally irresistible constructive proposals for amendments.

In this connection I cannot but express my regret and surprise at the remark of the Prime Minister in the Lok Sabha on February 20, 1978, when he unauthorisedly sought to explain the delay in submitting the report of the Joint Committee to the House by saying: "I would like to say it is only the Select Committee Members who do not want the M.Ps. to be included." This was an improper intervention on the part of the Prime Minister which put the stand of members of the Joint Committee in the wrong light. Their stand represented that of many others not of themselves alone and involved certain questions of principles, not the promptings of selfishness. That was the reason for the delay. The aspersions were uncalled for.

With these preliminary observations let me now state the reasons which have compelled me to write this dissenting note, much as I would have liked to avoid it. I propose, however, to concentrate only on some main points of my dissent, not on, however, minor details. My very first

and serious objection to the present Bill is that it has reversed in some vital respects the earlier accepted understanding that prompted introduction of the Lokpal and Lokayukta Bill in 1968 which, however, lapsed with the dissolution of the fourth Lok Sabha but was reintroduced again in the fifth Lok Sabha in 1971 after the mid-term poll. It brings no credit to our Parliamentary institutions that for the second time the Bill had to lapse with the dissolution of the Lok Sabha. The responsibility of this, however, rests entirely with the previous government.

One would have expected that the Janata Government would stick to the broad consensus behind the earlier two identical Bills and improve their provisions. But the present government has instead chosen to defy not only the consensus but even recommendations of the interim report of the Administrative Reforms Committee submitted in October, 1966. The earlier two Bills sought to give effect to these recommendations, though not quite fully. The Bill of 1968 was, in fact, examined by a Joint Committee and later passed by the Lok Sabha but not by the other House where it was pending and could not survive due to the dissolution as has been said, of the fifth Lok Sabha. In the present Bill the scheme of the earlier Bills stands altered.

Along with the ministers the secretaries and other officials were also brought within the purview of the Bill and the jurisdiction of the Lokpal; incidentally the A.R.C. had recommended the inclusion of the officials even in the States. The Bill of 1977 has altogether excluded the officials but included at the same time within the purview of the measure the Members of Parliament, as if they are a main source of corruption, not the top bureaucracy. The A.R.C. and the earlier two Bills sought to provide a statutory machinery to inquire into complaints based on actions of all Union Public servants, including Ministers." To the A.R.C. "the main problem" was one of "corruption at higher levels" but the present Bill has significantly inserted the word "political" between the words "higher" and "levels" obviously with a view to exempting the high officials and other public servants. The top bureaucracy has every reason to be happy at this gesture shown to them by the Janata Government. It looks as though the bureaucratic top brass has now taken a revenge on the Members of Parliament for their having dared propose that the officialdom be made a major target of investigation by the Lokpal and Lokayuktas under the old, lapsed Bills. I record my strong protest against this appeasement of the bureaucracy.

This calls for investigation. We must unravel the mystery behind the exclusion of the public servants. Even the Joint Committee could not help expressing the opinion that the government might examine in the interest of the main object of the Bill the proposal "to bring forward an amending Bill at a later stage to cover such civil servants." I wish the Joint Committee had condemned here and now the exclusion of the civil servants from the purview of this Bill. I do not agree that the Joint Committee could not widen the scope of the Bill to include the officials.

When I insist on such inclusion of the bureaucrats, as originally envisaged before the advent of the Janata Government, I am by no means suggesting that the Members of Parliament who are guilty of corrupt practices or misconduct should not be sternly dealt with. In fact, it is

utterly disgraceful for any Member of Parliament to misuse his or her privilege and position for selfish ends, for securing pecuniary or other material benefits. Such behaviour would call for the most pitiless exposure as well as deterrent punishment. I submit the provision for recall of the unworthy legislators would be a salutary step.

In my view, however, Parliament itself should provide for an effective and appropriate machinery to deal with such wayward, self-seeking legislators. This is done in other countries by the House itself to which the guilty legislators happen to belong. We can certainly consider suitable amendments to the Constitution, if necessary, as well as to the rules for the conduct of the business and procedure of the House to deal with the problem instead of bringing into the picture the Lokpal, who will, after all, be an appointee of the government whatever may be the formalities and consultations in making such an appointment. The Lokpal is not expected to be a guardian angel to look after the morals of our legislators. Anyhow, I do not entertain any such illusion.

However, the task of ensuring probity among their members had better be left to Parliament and other legislative bodies. That would be more in consonance with the dignity of the representative, popular democratic institutions. In no other country in the world are Members of a sovereign Parliament subjected to such jurisdiction of a third party as is proposed in the present Bill. The new arrangement is sure to adversely affect in fact at least, if not in law, Article 105 of the Constitution.

Monopolists and other vested interests as well as officials and ministers will not fail to use, directly or indirectly, the Damocles' sword of the Lokpal to intimidate, silence or otherwise fetter the Members of Parliament in exposing corruption and fighting the corrupt. They may or may not always succeed in such wickedness but why should we at all willingly offer them an opportunity to do so?

The problem of India's Parliament is not that it has become a massive rendezvous of the corrupt legislators, rather the problem is that Parliament has not shown enough vigilance and fighting ardour in dealing with the corrupt ministers and high officials.

In any case, Members of Parliament are not immune from the existing laws of the land including the Prevention of Corruption Act. They can be easily hauled up before the Courts. But insofar as their conduct as legislators as such is concerned this should be left to the House to which they belong to be dealt with. This is a matter of principle pertaining to the ground rules of a parliamentary democracy. Any default on this score can scarcely be overcome by bringing in the Lokpal into the arena. A special court of inquisition is not needed for the purpose.

The inclusion of the legislators within the jurisdiction of Lokpal while excluding the officials is open to very serious objections on other grounds as well. It is a kind of defamation, may be, by implication, of the entire body of our M.Ps and other legislators who are collectively made to appear as a major source of corruption in public life. Not that some of them are not liable to be corrupt or guilty of misconduct but they are usually the persons who are either accomplices of the corrupt ministers, or have close ties with them. Private Members of Parliament, having

no such connections, can do precious little in distributing contracts, licences and other favours. They have no executive powers or authority whatsoever to misuse on their own, although it is possible to gain some fringe benefits and advantages by misusing the status of a legislator even without any shady access to the corridors of power.

Numerous reports of the Inquiry Commissions stand in a row to testify to the fact that it is at the level of collusion between the corrupt ministers and corrupt officials occasionally some private members of legislature acting as accomplices, where the main sources of corruption in high places exist. In fact, the corrupt ministers get their dirty jobs done by this or that high official and the length to which such collusion can go has been shockingly demonstrated during the nineteen months of the internal emergency. Yet, the present Bill has chosen to give a clean chit to the high officialdom by exempting it from the jurisdiction of the Lokpal.

Moreover, the contact men of monopolists, the main promoters of corruption in public life, often operate with the help of the secretaries, additional secretaries, joint secretaries, deputy secretaries, directors and the like to influence the government and gather their ill-gotten harvest at the cost of the nation and, of course, by molesting public standards. It is not as if all high officials are corrupt; many indeed amongst them are men of personal honesty and integrity, even though their ideas and way of looking at public affairs may be retrograde and reactionary. But the dishonest and corrupt ones amongst them have wrought havoc on our public administration and indeed on our public life. Let it not be overlooked that in every major public scandal involving the administration such black-sheep among officers have figured as villains of the piece. There are various reports of even the CBI to remind us this well-organised and well-oiled source of corruption.

The CBI has also been used, as the Shah Commission has revealed, for corrupt purposes.

To leave the public servants alone and then to claim that the present Lokpal Bill is intended to combat corruption is an affront to the commonsense of our people. We reject this approach under the *alibi* of fighting corruption "at higher political levels".

Have the fund collection for elections and other political purposes been ever carried on by the party in power without the intimate and criminal involvement of some high officials? Officials very much operate at the political levels, too, but for whose expertise our corrupt ministers would fail in their evil pursuits especially in fund raising from monopolists, contractors and other vested interests. This *sub rosa* business is a joint enterprise of ministers and officials. By all means go after the corrupt legislators; they deserve no mercy. But why should the focus under the present Lokpal Bill be so deliberately shifted from the officials to the Members of Parliament is difficult to comprehend unless one would take into account certain ulterior political motivations behind the posture of the 1977 Lokpal Bill.

It is to be deeply regretted that our amendments for the inclusion of the officials within the purview of the Bill have not found acceptance by the Joint Committee, though many of its members have shared our stand in this regard. It is, however, hoped that before this Bill becomes

the law of the land this howling gap in it will be removed by returning at least to the positions taken in the earlier two Bills. I earnestly hope that the Rajya Sabha, the House to which I have the honour to belong, will rise to the occasion and add necessary amendments to the Bill to this effect. This I am sure will mark a great day for the Rajya Sabha. I expect an understanding role, at least in moral and political terms, on the part of the Lok Sabha also.

Another serious departure of the present Bill from the standpoints of its predecessors is to be noted in the fact that it provides no machinery for the redressal of the grievances of the citizens on the basis of their complaints against injustices done to them by any action of the administration "taken by or with the approval of a minister or a secretary." The concept of *Ombudsman* which weighed with the A.R.C. in making its recommendations in the interim report earlier referred to has been completely rejected in the present Lokpal Bill. Yet, the redressal of such grievances and the removal of such injustices should be regarded as a very important task by the new institution which is proposed to be created by this Bill. Such an assignment would impart some democratic substance to the institution. There is a crying need for an effective machinery at the disposal of Parliament to promptly attend to popular grievances and redress them. Such an arrangement will greatly check bureaucratic callousness and excesses in relation to the people.

I do not see why the appointment of the Lokpal should not be left to Parliament to be determined in the manner in which the constitutional amendments are made, that is, by a clear majority of the total members and by a majority of not less than two-thirds of the Members present in voting in each House. That will make the process of consultation for arriving at a consensus real and effective.

I do not accept the contention that the question of such appointment should not be subject to discussion in Parliament. There is no democratic logic in this negative approach in the name of ensuring the so called sanctity to the office which is proposed to be created. The outlook is a hang-over from the days of the British and we need not go on preserving it. Frankly speaking, all high offices should be subject to the vigilance and review of the people's representatives, whether in Parliament or in the State Legislatures as the case may be. Why should it be presumed that the legislators would behave irresponsibly in filling a high office? Those who are not prepared to face the public scrutiny of their character, integrity and competence hardly qualify for occupying high offices.

The provision of salary of Rs. 5000/- per mensem to the Lokpal seems to be rather too high. He is not likely to have much work. Are we to create another fat salaried office-almost a sinecure for providing some gilt-edged berth to our VIPs, probably retired ones? A public spirited man is expected to become the Lokpal and he should be satisfied with a lesser amount as his salary. If talent and competence are to be so attracted in a country where almost one half of the population live below the poverty line, what then remains of the majesty of patriotism to make its impact felt on our national affairs? The appointment of a person as the Lokpal is in itself a great honour bestowed on him which should not be defiled by the usual VIP money-grabbing.

There is no reason why all categories of public servants should not be allowed to make complaints under the proposed legislation? In fact they should be inspired and encouraged to come forward with complaints against corruption and misconduct. They have to be drawn in a big way into the fight against corruption in high places. The millions of government employees are an important source of information about corruption. We need active and cooperative vigilance.

I wish the "competent authority" in the case of the Prime Minister and other ministers as well as legislators was a Joint Committee of the two Houses of Parliament entrusted with powers to make recommendations of penalties or similar other measures to the appropriate executive authority. Our experience is that the head of the Government, whether he be the Prime Minister or a Chief Minister, tends to minimise the allegations against his ministerial colleagues. I am not, therefore, prepared to put undue reliance on the Prime Minister in regard to the cases involving the Members of the Council of Ministers. This point needs, in my view, some reconsideration. Too much burden need not be placed on the presiding officers, the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha. The Members of the House may well be entrusted, in an appropriate manner, with an active role.

I would like to conclude by stressing again that what we need to confront most resolutely is corruption in high places, not merely "at higher political levels". It is often difficult to separate the corrupt minister from the collaborating bureaucrat! The struggle against such corruption can never succeed unless the money power the *gongotri* of all corruption—is mercilessly hounded out not only of the corridors of power but also from the affairs of political parties, the ruling party in particular. Even the recent crisis in the ruling party, in its spate of mutual recriminations, has again highlighted the real sources of corruption not to speak of the findings of the Shah Commission or for that matter that of various other inquiries held under the Commissions of Inquiry Act, 1952. We have had enough of bitter and costly experience to guide us in our struggle against corruption in high places. What we need is a firm political will to go into the battle and fight it to the finish with our flaming patriotism. Graft in high places spells disaster to the nation and its future. Top bureaucracy has become a festering cesspool of corruption, thriving hand-in-glove with the corrupt at higher political levels."

BHUPESH GUPTA.

NEW DELHI;

July 12, 1978.

Asadha 21, 1900 (Saka).

II

(PART I)

The definition of misconduct in the case of a Legislator is given in clause 3(2) of the Lokpal Bill, 1977 which reads as under:—

“A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such Legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage.”

Evidently, this definition is incomplete because it in a way allows a Legislator to abuse his position for securing for his relatives or associates any valuable thing or pecuniary advantage. To give a concrete example, suppose a person goes to a Legislator for getting his passport application verified and the son or any other relative or friend of the Legislator wants and is given a valuable thing for getting the work done and the Legislator not only knows it but allows the same. Even then according to the present definition it will not be treated as a misconduct on the part of that Legislator because it cannot be said that the Legislator got any valuable thing for himself.

If the present definition is allowed to remain then the whole purpose and spirit of the Act so far as a Legislator is concerned, will be frustrated.

It is therefore suggested that the words “or for any of his relatives or associates” be added after the word “himself” appearing in the third line of clause 3(2). Thereafter this sub-clause would read as under:—

“(2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused his position as such Legislator for securing for himself or for any of his relatives or associates directly or indirectly any valuable thing or pecuniary advantage.”

R. D. GATTANI

NEW DELHI;
July 15, 1978
Asadha 24, 1900 (S).

(PART II)

While the Bill was under consideration of the Joint Committee, an effort was made to amend Clause 21(1) and Clause 22(2) of the Bill so that the Lokpal might punish contempts committed by a person in his work. However, the Committee were informed that it could not be done as the Lokpal cannot be termed as a Court or that the proceedings before it cannot be called a judicial proceedings. Reliance in this connection was placed upon *Ram Krishan Dalmia Vs. Justice Tendolkar* reported in A.I.R. 1958 Supreme Court, page 538 and 24th Report of the Law Commission of India, pages 8 and 9. Both the authorities were dealing with provisions of the Commissions of Inquiry Act, 1952. Their Lordships of the Supreme Court have at one place observed:—

“The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*,

A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called....."

The Law Commission in their said report, after taking recourse to Article 19 of the Constitution have observed that the Commission cannot be called a Court

At this stage I may mention about the necessity of giving power to the Lokpal for punishing the contempts. The importance of the Lokpal and his functions cannot be underestimated. He will be inquiring into the alleged misconducts of the Members of Parliament and that of the Union Cabinet as well besides some other persons. It is just possible that in the course of discharging his functions he might be subjected to most uncharitable attacks in the Press and elsewhere and to meet such exigencies provisions have been made in Sub-clause (2) of clause 21 of the Bill.

But there can be actual interruption in his work by say sounding of conches or cymbals or by uttering nonsense in loud tone making him impossible to work. What is he to do in such circumstances? As the Bill at present provides a complaint about the incident may be got lodged through Public Prosecutor in appropriate court for offence under clause 21(1) of the Bill. But that itself will take some time and meanwhile if the interruption or the disturbance continues, the Lokpal may close his work and go home or sit idle enjoying the disturbance. This certainly cannot be the intention of any good law. A way must be found out whereby the Lokpal may discharge his function peacefully and without any interruption.

Clause 15 of the Bill lays down that the Lokpal shall have all the powers of a civil court in respect of the matters mentioned in part (b) of Sub-clause (1) of that clause. At the same time sub-clause (3) of clause 16 provides that the provisions of the Code of Criminal Procedure, 1973 relating to searches shall, so far as may be, apply to searches under this clause subject to the modification that sub-section(5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted. Then again, clause 22 of the Bill gives power to the Lokpal to try certain offences summarily. In spite of all these provisions the fact remains that the Lokpal, as the Bill stands today, cannot be technically termed as a court nor the proceedings before the Lokpal of inquiring into the alleged misconducts of M.Ps. etc. can be technically called as judicial proceedings. If, therefore, the Lokpal is to have power to punish for offences under section 228, IPC. i.e. for insult to him or interruption in

his work, a provision will have to be made that the proceedings before the Lokpal shall be deemed to be judicial proceedings. In cases of the present type one has to take recourse to legal fiction. At times in order to obviate technical difficulties, we have to take recourse to deeming provisions of law. Section 43A of the Companies Act may be cited as one such example.

The following amendments, therefore, are proposed in the Bill so as to achieve the above-mentioned object:—

(i) Sub-clause (1) of clause 21 be substituted as follows:

“The proceedings before the Lokpal for the purposes of Section 228, Indian Penal Code shall be deemed to be a judicial proceeding”

(ii) For the words and figures “in section 175, section 178, section 179 or section 180 of the Indian Penal Code” appearing in lines 1 and 2 of sub-clause 2 of clause 22 may be substituted by “in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code”.

If these amendments are allowed to, the Lokpal shall be in a position to punish intentional insults to him or interruptions in his work then and there. Otherwise, mockery of law might be repeated again and again just as it appeared before the Commission headed by Justice Shah a few days back.

R. D. GATTANI

NEW DELHI;

July, 18, 1978.

Asadha 27. 1900 (Saka).

III

The definition of ‘misconduct’ in clause 3(1) is, in my opinion, a piece of clumsy draftsmanship and in no sense an improvement on the one contained in the Bill as introduced. Parts (a) and (b) are fully covered by Part (c). The latter refers to ‘corruption’ which under clause 2(d) includes the entire offence of criminal misconduct in the discharge of official duty as described in Section 5 of the Prevention of Corruption Act, 1947. The section reads as under:—

“5. Criminal misconduct in discharge of official duty.

(1) A public servant is said to commit the offence of criminal misconduct:—

- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or
- (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
- (d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or
- (e) if he, or any person on his behalf is in possession of or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.”

2. It is difficult to imagine a case which is not covered by this definition but is intended to be caught by clauses 3(1)(a) and 3(1)(b). I have repeatedly asked this question and I have never succeeded in getting an answer. I myself cannot conceive any. It is elementary that all redundant surplusage in a statute must be avoided. I feel that the definition will create endless controversies including litigation.

3. The original definition in Part (d) contained the following:—

“(d) if he fails to act in any case otherwise than in accordance with the norms of integrity and conduct which ought to be followed by the class of public men to which he belongs;”

Despite its somewhat inartistic phraseology, the Part was absolutely essential and has been dropped for a wholly inadequate reason. It is said that it is vague and imprecise. In my opinion, this is wholly wrong. Provisions of this character have been found workable even in strict criminal proceedings. Section 45 of the Army Act 1950 makes any unbecoming conduct on the part of an officer as punishable offence. ‘Unbecoming conduct’ is defined as behaving in a manner unbecoming of his position and the character expected of him. The whole of army discipline has been based upon this very crucial cardinal provision.

4. Rules of professional conduct and etiquette for lawyers under the Advocates Act 1961 while making specific provisions have a general provision that a lawyer is expected to conform to the standards of conduct expected of a gentleman. Lawyers have been disbarred or otherwise punished for failing to conform to this wholesome though no less imprecise standard than the one in the clause in question. In my opinion, with a few verbal changes the clause ought to be restored. In the inductive manner of English Common Law, the Lokpal will be able to build precedent by precedent ~~and~~ an unwritten code of conduct for public persons whether mere legislators or legislators who have taken on ministerial responsibilities. I, therefore, recommend that instead of the present clause, the following should be substituted:—

“(c) ‘Corruption’ means and includes—

- (i) any act punishable under Chapter IX of the Indian Penal Code or the Prevention of Corruption Act, 1947;
- (ii) abetment of any of the acts mentioned in sub-clause (i) of clause 2(c);
- (iii) intentional concealment of acts mentioned in sub-clauses (i) and (ii) of clause 2(c) by any other public person; and
- (iv) any conduct which in the opinion of the Lokpal does not conform to the standards of fairness or integrity reasonably expected of the public person concerned in his character as a public person.

Explanation.—Acts or conduct amounting to corruption shall be such whether committed before or after the coming into force of this Act.”

5. Incidentally, I prefer the word ‘corruption’ to the word ‘misconduct.’ It is more incisive and meaningful. If this is adopted, clause 2(d) would be redundant and the word ‘corruption’ shall have to be substituted in place of the word ‘misconduct’ wherever it occurs.

6. I am against the use of the expression ‘public man’ in the Act. Its feminine gender ‘public woman’ has a connotation of an entirely different kind. The expression ‘public person’ is more appropriate.

7. Members of Parliament ought to be fully covered by the Act. Since a legislator does not perform any executive function, the defi-

nition of 'corruption' would necessarily have a restricted application to him. The present clause 3(2) while seeming to make a distinction between legislators and other public men really does not create any practical difference in the working of the Act. It is unnecessarily clumsy and redundant. It creates a misleading impression in the public mind that Members of legislature being collectively the law-making authority are unwilling to subject themselves to the wholesome restraints of the Act. I am of the opinion that no provision in the Act is likely to deter a legislator from doing his duty to his electorate or to the Parliament.

8. Except for these vital points, I concur in the Report of the Joint Committee.

NEW DELHI;

RAM JETHMALANI

July 15, 1978

Asadha 24, 1900 (S).

IV

The Joint Committee have recommended for making special provisions for legislators. For them, a separate definition of misconduct has been provided, a special procedure for dealing with the complaints against them has been suggested as also for holding of the inquiry against a legislator *in camera*. The Joint Committee have further provided for penalty for disclosure or publication of information in respect of complaints against legislators. No doubt the legislators should not be inhibited in the fearless and proper discharge of their duties. But to our mind, it would not be proper to limit the scope of an inquiry or to evolve a special procedure in respect of a complaint against a legislator. We are particularly strongly opposed to the special definition of misconduct with regard to the legislators. In our view the definition proposed by the Joint Committee will greatly, if not wholly, inhibit holding an inquiry even in respect of genuine complaints of misconduct against a legislator. It is provided in Clause 3(2) of the Bill, as recommended by the Joint Committee, that only in case where the legislator secures for himself directly or indirectly any valuable thing or pecuniary advantage by abuse of his position as legislator, a legislator commits misconduct. There is no reason why securing advantage for relatives or associates of a legislator or any act or omission by a legislator which constitutes corruption should not be held to be a misconduct on the part of a legislator. It is no good ignoring the fact that there are serious complaints against the conduct of various legislators. No impression even remotely should be given that the legislators wish to shirk any inquiry against them. The Bill provides for taking strong action in case of false complaints and that will deter mischievous and baseless complaints. We do not, in the circumstances, see any reason why the legislators should be given separate and favoured treatment and as such we are opposed to such recommendation of the Joint Committee as are applicable specially to the legislators. Further, if the legislators provide for special favoured treatment for themselves, it will cause greater harm to their image and will invite public criticism.

The Chief Ministers of the States have been taken out of the purview of the Bill on the ground that their inclusion would not be in accordance with democratic set-up in a federal structure of the country. But one should take note of the fact that in various State Legislations, no provision has been made for inquiry into any allegation of misconduct against the Chief Minister. What was felt was that to avoid the possibility of any State Government not enacting suitable legislation applicable to the Chief Minister also, the Central Legislation may provide for setting up of similar authority as the Lokpal whose appointment will be by a different procedure with a different competent authority and it should not be left to the good wishes of the States themselves. However, since the Joint Committee have expressed their hope that an example set up by the Centre would be followed by the State, we do not wish to take our difference with the recommendation for excluding the Chief Ministers from the purview of the Bill to the point of dissent.

SOMNATH CHATTERJEE
SASANKASEKHAR SANYAL

NEW DELHI;
July 17, 1978
Asadha 26, 1900 (*Saka*).

V

The Administrative Reforms Commission of which the Prime Minister was the first Chairman, and myself a Member submitted to the Government in October, 1966 its interim report on the subject of redress of citizens' grievances.

Para 37 thereof reads as follows:—

"We have carefully considered whether the institution of Lokpal will require any Constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central legislation so as to cover both the Central and State functionaries concerned. We agree that, for the Lokpal to be fully effective and for him to acquire power without conflict with the other functionaries under the Constitution, it would be necessary to give a Constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialise before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without the definition of his position under the Constitution. The Constitutional amendment and any consequential modification of the relevant statute can follow. In the meantime Government can ensure that the Lokpal or Lokayukta is appointed and take preparatory action to set up his office, to lay down his procedures, etc., and commence his work to such an extent as he can without the Constitutional provision. We are confident that the necessary support will be forthcoming from Parliament."

According to the draft report adopted by the Joint Committee, sub-Clause (2) of Clause 2 of the Lokpal Bill, 1977 as reported by the Com-

mittee, provides that the Speaker of the House of the People will be the competent authority in cases where the complaint is against the Prime Minister. I am of the view that the competent authority in the case of a complaint against the Prime Minister should be the President acting in his individual judgment. As stated above, according to para 37 of the ARC report, the Constitution may be amended, if necessary, for the proper and efficient functioning of the Lokpal. The President, as envisaged in the Constitution, is empowered to act only on the advice of the Council of Ministers, but I feel that in so far as complaints of misconduct against the Prime Minister are concerned, the President acting in his individual judgment, and not the Speaker of the Lok Sabha, should be competent authority within the meaning of sub-clause (2) of Clause 2 of the Lokpal Bill, as amended by the Joint Committee.

There are two reasons why it should be so. First, it would be awkward and embarrassing for the Speaker, whose role in relation to the House is more of a judicial character than any other, and who has to, therefore, function without getting involved in political or quasi-political controversies affecting the leader of Government, to be designated as the competent authority in the case of complaints against the Prime Minister. Secondly, what appears to me to be even more important, is that an amendment of the Constitution, in order to deal with complaints against the Prime Minister, will have a tremendous psychological impact on the minds of people, because such a move will convince them that Parliament means business, and is most anxious to ensure that complaints against even the Prime Minister who was, contrary to the recommendation of the ARC, excluded from the purview of the Lokpal in the Bill introduced in the Lok Sabha during Shrimati Indira Gandhi's regime, will be dealt with properly and effectively.

On a similar reasoning, I am inclined to the view that where the complaint is against the Speaker, the competent authority should be, not the Deputy Speaker, but the President of India acting in his individual judgment.

Sub-clause (5) of Clause 17 of the Lokpal Bill, as reported by the Joint Committee, provides that the President shall cause the special report of the Lokpal together with an explanatory memorandum to be laid before each House of Parliament not later than ninety days from the receipt of the report, but it is somewhat strange that the explanation to sub-clause (5) provides that in computing the period of ninety days, any period during which Parliament, or as the case may be, either House of Parliament is not in Session, shall be excluded. This provision may, in effect, mean that the laying before Parliament, of such a report of the Lokpal, presented say, in June of any particular year may be delayed till the next year's Budget Session, because it very often happens that the Monsoon Session and the subsequent Winter Session of Parliament do not together make a total of ninety days as required by this provision. I would, therefore, suggest that the period should be 100 days, or at the most 120 days, from the receipt of the report, including the period when Parliament is not in Session. It would be useful and relevant to recall, in this connection, the provision, in the Commissions of Inquiry Act, 1952, which requires the Government to lay before Parliament the report of a Commission of Inquiry within six months of its submission to Government, irrespective of whether the Parliament is in Session or not. In my opinion the Lokpal's special report is of greater importance than

that of a Commission of Inquiry, and Parliament would, therefore, be justified in providing for a much shorter period in this case than in the case of the report of a Commission of Inquiry.

It may be noted that according to Clause 2(1)(d) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947. As the Bill seeks to make provision for inquiries into allegations of misconduct against public men and for matters connected therewith, and inasmuch as "misconduct" has been comprehensively defined in Clause 3 of the Bill, it is a matter for consideration whether in Clause 2(1)(d), the word "means" should be substituted for the word "includes". It may be noted that in Clause 2(1)(f), the word "means" and not the word "includes" has been used in respect of "misconduct", and a similar change may perhaps be made with regard to "corruption" in Clause 2(1)(d) of the Bill.

HARI VISHNU KAMATH

NEW DELHI;

Dated the 17th July, 1978.

Asadha 26, 1900 (Saka)

VI

I have gone through the draft report of the Joint Committee and the proposed Bill, as amended by the Committee. This Bill and the Report were considered by the Committee at its sitting on 12-7-1978. I am of the opinion that there is no justification to include Members of Legislative Assembly for a Union territory, Members of the Executive Council, Mayor of Municipal Corporation etc. in the definition of "Public man" in this Bill, particularly when it was decided to exclude the category of Chief Minister of a State from the purview of this Bill. This exclusion is mainly on the basis of the fact that various State Legislatures have powers under the Constitution to frame similar Acts and to include the category of the Chief Minister. In fact, at present there are Lokayukta Acts passed by various State Legislatures, such as—

1. The Orissa Lokpal and Lokayuktas Act, 1970.
2. The Maharashtra Lokayukta and Up-Lokayukta Act 1971.
3. The Bihar Lokayukta Act, 1973.
4. The Rajasthan Lokayukta and Up-Lokayukta Act, 1973.
5. The Uttar Pradesh Lokayukta and Up-Lokayukta Act, 1975.

These acts cover the Ministers and other persons.

It is, therefore, necessary to exclude this category of Assembly Members and others for which Union territory Legislatures can pass enactments similar to Lokayukta Acts. I regret that the suggestion was not accepted. I, therefore, suggest that these categories be deleted from the definition of 'Public man' in this Bill.

In fact, it is essential to keep this Central Legislation restricted only to the Union Ministers and Secretaries and other officers and servants of the Central Government.

I may also add that as the Bill is designated as Lokpal Bill, the word "Public man" may also be substituted by the word "Lok Pratinidhi."

In the light of the facts stated above, it is not possible for me to agree with the report to the extent stated above about inclusion of categories in the definition of 'Public man' for which the other Legislative Bodies can pass legislations.

NEW DELHI;

S. W. DHABE

July 18, 1978

Asadha 27, 1900 (Saka)

VII

The provision to punish the complainant with the fine and imprisonment if his/her allegation turned to be false is not desirable and it would thoroughly discourage anybody to think of exposing corruption of public man. Forfeiture of deposit amount of Rs. 1,000 is enough to deter frivolous and false allegations because even a candidate for Parliament election is after all required to make a deposit of Rs. 500 only. So provision for compulsory imprisonment coupled with fine for false complaint might have been avoided.

V. V. SWAMINATHAN

Chidambaram,

Tamil Nadu,

July 16, 1978

Asadha 25, 1900 (Saka).

VIII

We have very carefully gone through the draft Report of the Joint Committee and the proposed Bill as amended by the Committee annexed to the Report. While we fully appreciate and accept many of the amendments, suggested by the Committee in the Bill we are constrained to say that there are considerable areas and a number of provisions with which we find it difficult to agree because they affect adversely some of the basic principles which are very essential for the successful working of democracy and democratic institutions in this country.

We regret to find that the Bill makes no attempt at all to create an institution comparable to the *Ombudsman* in Scandinavian countries or the Parliamentary Commissioner in United Kingdom and Australia. The genesis of the Bill can be traced to the discussion which took place in Lok Sabha in April, 1964. Subsequently the Administrative Reforms Commission, 1966 headed by the present Prime Minister Shri Morarji Desai also accepted and recommended the adoption of the concept of "grievance man". The Bills of 1968 and 1971 had very largely embodied these recommendations. The present Bill gives a go by to the concept of *Ombudsman* and converts the Lokpal into a forum to investigate allegations against public men. Corruption no doubt is a very serious problem. But malfeasance and misfeasance by Executive authority is no less serious and they affect and harass the common man. Our difficulty also

arises from the fact that even though there was large volume of opinion transcending party demarcations and differences which was contrary to what is expressed in the Report and contained in the Bill, that spectrum of opinion is not reflected in the amended Bill or has found a mention in the draft Report. The issues which we consider most serious are mentioned below:—

Retrospective Operation—Ex-post-facto penal legislation

Clause 2(1)(f) states: "misconduct means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in clause 3". Clause 11(3) states that the Lokpal shall not inquire into any allegation of misconduct after the expiry of five years from the date on which the misconduct is committed. Reading these provisions together it is clear that the Bill has retrospective effect covering roughly a period of five years, that is to say offences committed during a period of around five years previous to the commencement of the Act are brought within the ambit of the Bill. The Bill, therefore, purports to make acts or omissions, which were not illegal at the time they were committed, illegal and penal. This is abhorrent to the concept of the prohibition against *ex post facto* penal legislation accepted at least from the time of Coke's Institutes and enshrined in the jurisprudence and constitutions of all civilized nations and solemnly incorporated in Article 20(1) of our Constitution which states: "No person shall be convicted of any offence except for a violation of law in force at the time of the Commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." The Supreme Court as well as all the High Courts in this country have unequivocally disapproved by a catena of decisions *ex-post facto* penal legislations.

A large number of members during the deliberations of the Committee as well as through a number of amendment's forwarded to the Committee have strongly opposed the introduction of this retrospective penal provision. It is unfortunate that such a serious objection is not even taken note of in the Report or in the draft Bill. The argument that there is no new offence created by the proposed Bill or that no penalties are prescribed in the Bill is not convincing or has no merit or substance. It may be noted that the definition of corruption in clause 2(1)(d) is only an inclusive definition, that is to say, the expression corruption in the Bill includes anything made punishable under Chapter IX of the I.P.C. or under the Prevention of Corruption Act, 1947. The expression inclusive necessarily means that what is contemplated as corruption in the Bill is wider than the concept of corruption in any of the two enactments mentioned. Further, clause 3(2) states that "A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage." It is crystal clear that new offences are created by the above provisions which are far beyond the scope and ambit of The Indian Penal Code, The Prevention of Corruption Act or any other existing law. Under clause 17(2) and (3) certain actions are contemplated in pursuance of the Report of the Lokpal. These actions are necessarily to be in the nature of some kind of punish-

ment in one shape or the other in case the Lokpal gives findings adverse to the Legislator concerned. It is true that no imprisonment or imposition of fine is specifically mentioned in the Bill, but if in pursuance of the Report and recommendations of the Lokpal a Legislator is made subject to any kind of penalty whether it may be a mere censure by the competent authority will amount to in spirit and substance to a punishment for the Legislator. Any action on the part of the Competent Authority which may amount to even casting of a blemish on his reputation or a doubt about his integrity and probity will be a punishment. It is banal and ignoring of realities to say in the circumstances that there is no penalty prescribed or no new offence is created on the basis of mere technical and legalistic arguments. In these circumstances we have no option but to express our dissent from the Report in this regard and the relevant provisions of the Bill referred to above.

Inclusion of Legislators within the purview of the Bill

There was a considerable body of opinion among the members of the Committee irrespective of party affiliations that the Legislators should not be included within the ambit and scope of the Bill for a variety of cogent and sound reasons. We wish to point out some of them. In no democratic country, Legislators are subject to a similar law. What is generally contemplated is to provide redress against the misfeasance or non-feasance of executive authorities. The Report itself concedes that the Legislators have no executive power in any sense of the term. A Legislator, apart from the provisions of penal legislation relating to corruption to which every citizen is subjected to, is answerable for his actions to the law of Parliamentary Privileges under Article 103 of the Constitution, to the disciplinary bodies of his party and to the greatest of all tribunals, namely, the electorate of his constituency and public opinion. Further by reason of the provisions contained in the proposed Bill, he will be effectively deterred from discharging his duties as a Legislator because influential vested interests, lobbies and individuals against whom he raises issues in the Parliament can always harass him and even destroy his public image and career by taking easy recourse to the relevant provisions of the Bill. The very existence of this possibility will always hang as a Democles Sword over the head of every Legislator which reason alone is weighty enough to exclude the Legislators from the purview of the Bill. We are of the view that allegations against Legislators could be more properly dealt with by a Committee of Parliament on the basis of a Code of Conduct to be evolved by agreement between political parties. Any allegation of misconduct or violation of professional ethics by an Advocate or a Doctor is dealt with by the Bar Council or the Medical Council as the case may be. The American Senate has also recently proposed a Code of Ethics for its members. We see no reason why a similar code of conduct should not be evolved for Legislators and any allegation against them should be dealt with by the House to which he belongs rather than by an external authority like a Lokpal.

Lokpal

There was almost a consensus that sitting or retired Judges of the High Courts or the Supreme Court shall not be qualified to be appointed as the Lokpal. Without elaborating the matter it will suffice to say that most of the Members felt in unison with the recommendations of the Law Commission headed by the late and revered Shri M. C. Setalvad, former Attorney General of India, that sitting or retired Judges shall not

accept or be offered such appointments. The reason is that the executive can always dangle such juicy posts as carrots before such Judges which in principle and effect is likely to undermine judicial independence. We regret to say that this fundamental and salutary principle which was suggested and pressed strongly by a large number of Members does not find a place either in the Report or in clause 5 of the Bill.

A large number of Members suggested that instead of one Lokpal there should be three Lokpals. The idea was not merely to increase the number. It contained a very desirable and sound principle based on practical experience as well. On examination of the constitution of Benches, either in the High Courts or the Supreme Court, or of important Tribunals deciding substantial issues it is found that generally there will be more than one Judge or Member. There may be a Division Bench of two and full Bench of three and in more important matters the full court sits to adjudicate such issues. It is true that many important cases are decided by a single Judge in a number of Courts in India. However it is important to remember that in almost every case there is a right of appeal and a decision of a Single Judge is subject to an appeal to a larger Bench. The right of appeal is an assurance to the citizen that possible predilection or prejudice of one Judge can be corrected by an appeal to a higher court. It may also be pointed out in this connection that in recent years there is a growing tendency in Europe to constitute collegiate forums from lowest level and thus eliminate the possibility of prejudice or predilection of a single Judge.

Apart from the commonsense idea, "two heads are better than one", the suggested panel of three Lokpals bestows more dignity to the forum and creates a greater assurance of justice and fairplay in the mind of the person who is hauled up before the Lokpal under the provisions of the proposed law. It goes without saying that justice shall not only be done but must also appear to have been done.

In the above circumstances we find it hard to agree with the Report to the extent that it has not found it necessary to accept the above suggestions or even to mention this strong body of opinion.

In conclusion, we wish to add that the sole reason for submitting this note of dissent is our deep anxiety that fundamental principles and concepts and values of Parliamentary Democracy shall not be lost sight of by political expediency or sheer default.

New Delhi:

July 17, 1978

Asadha 26, 1900 (Saka).

C. M. STEPHEN

VITHAL GADGIL

V. A. SEYID MUHAMMAD

SAUGATA ROY

M. V. KRISHANNAPPA

NATHU RAM MIRDHA

A. R. ANTULAY

K. SURYANARAYANA

BIPINPAL DAS

DEVENDRA NATH DWIVEDI

MARGARET ALVA

S. W. DHABE

N. G. RANGA

SAWAISINGH SISODIA

BALASAHEB VIKHE PATIL

IX

While I am in full agreement with the broad objectives of the Lokpal Bill, 1977 providing for the appointment of a Lokpal to enquire into the allegations of misconduct against public men and for matters connected therewith, I am not equally convinced that the scheme embodied in the Bill is such that it will realize the objectives of the Bill. The structure of the statutory machinery that is provided in the Bill is of such nature that it may perhaps defeat the very purposes of the Bill. At any rate, the main objectives of the Bill may not be achieved and the statutory machinery, by its very nature, may probably be so worked out as to show some minor results.

2. To appreciate properly the above mentioned contention, it will be appropriate to have briefly a comparative picture of similar enactments in other countries of the world, with the broad provisions of this Bill. The history of this Parliamentary Institution called *Ombudsman* (which is equivalent of Lokpal) dates as far back as 1713; and during all these years this Institution has been developed in such a comprehensive manner, that almost all possible centres of injustice are fully plugged. Thus in the Swedish enactment even the judicial affairs as well as military affairs are brought within the jurisdiction of *Ombudsman* there. Similar law of Denmark covers entire civil Administration as well as military administration. Law of New Zealand covers all administrative decisions as well as acts of Departments of State. In U.S.S.R. such law covers even judicial aberrations. In Great Britain such law covers all acts of maladministration.

3. As contrasted to these enactments it will be clear that the present Bill is confined to the aspect of misconduct by the public man leaving all other centres of injustice, misconduct or corruption, of maladministration of civil, military or judicial affairs.

4. It is a common knowledge that the origin of the previous Lokpal and Lokayukt Bill, 1968 which lapsed because Fourth Lok Sabha was dissolved and the origin of the present Lokpal Bill, 1977 as well is to be found in the recommendations in the interim report of the Administrative Reforms Commission headed by Shri Morarji Desai (Now Hon'ble Prime Minister) which was submitted on 28th October, 1966. The main problem that confronted the Administrative Reforms Commission was about the redress of grievances of the citizens, particularly in cases where "there is virtually no statutory remedy open to a citizen against any final administrative order". The Commission had stated that "such order may be open to question either on the ground of misuse or abuse of power or on the ground of having a influence by ulterior motives or extraneous considerations or as a result of error of judgment, negligent, inefficiency or even perversity". The Commission had also stated in its interim report that "Parliamentary supervision by itself cannot fully ensure to the citizens that rectitude over the entire area covered by administrative discretion. The Administrative Reforms Commission had, therefore, recommended appointment of Lokpal for these purposes set out in the report. But the main objective of those recommendations is given a complete go by. This is 'volte facie' of the Government intention.

5. Not only that but under provisions of sub-clause (2) of Clause 10, it has been left to the Lokpal to consider or not to consider, to inquire into any act or conduct of any person other than public men. It means statutorily he is not bound to enquire into any act of misconduct of any Government servant or other categories of persons, at all. Because of this glaring omission and confining enquiry into the alleged misconduct of public men alone may result in not discovering the truth and achieving the main objective of the Bill.

6. I am of the firm opinion that unless provisions for redress against maladministration in civil, judicial and military affairs are not simultaneously made in this Bill, the main purpose of the Bill may not be achieved at all.

7. The next hurdle in the fuller implementation of the provisions of the Bill is likely to be the introduction of the concept of a Competent authority into the provisions of this Bill which is very novel. Such a concept is not found any where in similar enactments in any other countries of the world. This looks like wholly an Indian concept. Though we may be able to claim a sort of originality about such concept, this concept may prove to be inconsistent with the main objectives of the Bill. I am afraid that this new concept of Competent authority may land us in absurdity. It may also involve many constitutional problems. These constitutional problems will relate to the constitutional position of the Speaker of the House of People, the Chairman of the Council of States and the President of India *vis-a-vis* the provisions with regard to their functions made in the Bill.

8. This requires, some detailed explanation. The following are the provisions concerning Competent Authority:—

- (i) Under Clause 2, which provides for certain definitions in Sub-Clause (2) of that Clause, Competent Authority is not defined; but only a table is given. In the matter of allegations against the Prime Minister, the Competent Authority proposed is the Speaker of the House of People. In the matters of allegations about Members of Parliament the Competent Authority proposed is the Chairman of the Council of States, in case of Member of that Council and the Speaker of the House of People in case of the Member of that House and where the complaint is against the Speaker the Competent Authority proposed is the Deputy Speaker of the House of People. There appears to be no similar provision where the complaint is against the Chairman of the Council of States. With regard to the Members of Legislative Assemblies for Union Territories, the same mode has been adopted.
- (ii) Under Clause 14, Sub-Clause (1) it is provided that when the Lokpal proposes to conduct an enquiry he shall forthwith forward a copy of the complaint to the Competent Authority concerned. Thus the Competent Authority is empowered to receive such a copy of the complaint forwarded by the Lokpal.
- (iii) Under Clause 17, Sub-Clause (1) if the Lokpal is satisfied that no allegation made in the complaint has been substantiated either wholly or partly he shall close the case and intimate to the Competent Authority along with others accordingly.

- (iv) If, however, the Lokpal is satisfied that all or any of the allegations made in the complaint have been substantiated either wholly or partly he shall by report in writing communicate his findings and recommendations to the Competent Authority. Thus at this stage the Competent Authority, is empowered to receive the communication about the allegations being substantiated wholly or partly and the recommendations of the Lokpal; and
- (v) where the allegations have been substantiated and such allegation has been sent to the Competent authority, it is provided under Clause 17, Sub-Clause (2) that the Competent Authority shall examine the report forwarded to it under part (b) of Sub-Clause (1) and communicate to the Lokpal within three months of the date of the receipt of the record, the action taken or proposed to be taken on the basis of the report. The Competent Authority is here empowered to take certain action.

These are all the provisions made in the Bill about the status, functions and the jurisdiction of the Competent Authority.

9. Now it is obvious that when the Speaker as a Competent Authority will have to examine the report forwarded by Lokpal under part (b), Sub-Clause (1) of Clause 17 and take some action thereon or propose to take any action on the basis of that report, then such action may be either just or even unjust. This means such action of the Competent Authority will be liable to criticism in both Houses of Parliament and thereby the constitutional position of the Speaker, as Speaker will be completely undermined. His office as Speaker of the House of People and his office as Competent Authority may come into conflict when he is required to take some action. The office of the Speaker cannot be criticised at all. Whereas the office of the Competent Authority assumed by the Speaker cannot be allowed to be immune from criticism. Similar would be the case where a Chairman of the Council of States or a Speaker of the Legislative Assembly of any Union Territory are respectively the Competent Authorities.

10. If the Speaker is not to be the Competent Authority for the above mentioned reasons, who shall be the Competent Authority for the categories of the people mentioned in the table?

It is very hard to find a constitutionally appropriate answer. During the discussion in the Joint Committee many, including myself, had suggested the President of India as the Competent Authority for the Prime Minister. Some of them even suggested an amendment to the Constitution to carry out this purpose. However, later on this idea was abandoned. Such an amendment would have very seriously affected the constitutional position of the President of India empowering him with certain powers which Constitution of India does not allow him to possess and which in turn would also have seriously affected the very basis of the parliamentary system of Government. Thus that suggestion was not proper. The reasons for which the President of India cannot be a Competent Authority are also the reasons as to why the Speaker or Chairman of Council of States cannot be the Competent Authority under the scheme of Lokpal Bill. Thus considering all the *pros and cons*, I am of the firm opinion that the concept which is newly introduced for the first time in

our Indian Lokpal Bill is a concept riddled with so many practical difficulties, constitutional impropriety and may also land us in absurdity. I have, therefore, to suggest that the concept of the Competent Authority and the provisions relating to such Authority should be deleted completely and the Lokpal alone should be allowed to function, right from the commencement of receiving complaints till making a report, under Clause 17, Sub-Clauses (1) and (2) or a Special Report under same Clause, Sub-Clause (3) to the President of India. The question involved about the Competent Authority is so important from constitutional point of view that if this provision about the Competent Authority is retained, then it may be liable or being declared as *ultra vires* of the Constitution and therefore null and void, besides turning the two Houses of Parliament into such uncontrollable situation when accusation from each section may be heard against the Members, Ministers and even against the Speaker himself. Such situation will be intolerable and the laudable objective of the Bill may remain unrealized. It seems that in similar enactments in other countries of the world such a provision about the Competent Authority is not found because the other countries appear to have realized that there should be one single functionary namely the *Ombudsman*, which is equivalent to our Indian Lokpal. Under Clause 24 which is now added, it is proposed that President may by order in writing and subject to such conditions or limitations as may be specified in the order require the Lokpal to inquire into the allegations of misconduct specified in the order in respect of a public man, and *notwithstanding any thing contained in this Act, the Lokpal shall comply with such order*. This provision may cut across whatever independence the Lokpal has been given under the Bill; and also will affect the nature of this Parliamentary Institution proposed to be established in the name and office of Lokpal, thus probably resulting in the non-realisation of the objectives of the Bill.

11. Yet another important hurdle in the realisation of the laudable objectives of this Bill would be the vague and loose definition of "misconduct". The provision about misconduct by a public man is made under Clause 3 of the Bill. The definition runs as follows:

- "(1) A public man, other than a legislator, commits misconduct:
 - (a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or
 - (b) if he abuses, or attempts to abuse or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates any valuable thing or pecuniary advantage; or
 - (c) if any act or omission by him constitutes corruption.
- (2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such Legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage; and
- (3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in Sub-Section (1) or, as the case may be, sub-Section (2), by another public man also commits misconduct."

12. Now the judicial definition of the misconduct in various rulings of the Competent Courts is plain and simple. In simple language, it means that conduct which is against rules, conventions or propriety. Compared to this definition of misconduct the definition which is embodied in Clause 3 is so far reaching and so vague. According to the definition given in Clause 3, a public man commits misconduct if he is actuated in the discharge of his functions as such public man by corrupt motives. What is this act of being actuated? It is so vague. In part (b), Sub-Clause (1), Clause 3 even an attempt to abuse his position is treated as misconduct. What is this attempt to abuse? Again in part (c) of the same Sub-Clause (1), Clause 3, it is provided that any act or omission constitutes corruption. Now what is this omission? Thus it will be seen that the definition as embodied in Clause 3 provides something far more than what is misconduct. If the Government want to make provision for matters connected with corruption, it will be welcome, but in that event the title of the Bill and the enacting formula, as well as statements of objects and reasons will have to be suitably amended.

13. The last but not the least point relates to the provision about the Members of Parliament and Members of Legislatures of the Union Territory. (Incidentally I may mention here that if a Union Territory has a Legislature a Capital, a Cabinet and a High Court, it would be termed as a State, and should cease to be Union Territory. If the above mentioned attributes of a State are absent, then it can be termed as Union Territory). While I am prepared myself to submit to any proceedings of any act as a Member of the House of People against any allegation, it is very hard for me to concur with regard to the provisions bringing the Members of Parliament and State Legislatures of Union Territory within the purview of the jurisdiction of the Lokpal. No similar enactment of any country of the world except one contains a provision implicating the Members of the Parliament or the Members of Legislature under the jurisdiction of their *Ombudsman*. The British Law on the subject provides that any complaint of allegation must be routed only through the Members of Parliament. According to the British Law the Members of Parliament are the carriers of such complaints. Such is the worthy place given to the Members of the Parliament in British Law and it is for obvious reasons. The reason is, Members of Parliament do not possess any executive power and, therefore, they cannot exercise such power. Therefore the Indian example will be the only example where Members of Parliament who do not possess that executive power (therefore the question of whose abuse of power does not arise) are implicated in the provisions of this Bill. The provisions in this Bill implicating the Members of Parliament and Legislative Assemblies of Union Territories may prove to be a frightening sword on the neck of the Members and it may impair the freedom of such Members which is so carefully guaranteed under the Constitution.

14. I had suggested in the very first general discussion on the provisions of the Bill not to include the Members of Parliament and even now I continue to believe the same. It is for the Hon'ble Members to think deeply about it. It may possibly happen that the real and big centres of corruption may grow by leaps and bounds as this Bill may not be applicable to them; and it may possibly happen that a few Members

of Parliament who may be belonging to the lower strata of the society may fall victims.

15. The above mentioned suggestions are made with a view to effectively implementing the laudable objectives of the Bill. It is for the Hon'ble Members of both the Houses of Parliament to give such consideration as these suggestions deserve.

B. C. KAMBLE

NEW DELHI;

July, 18, 1973

Asādhā 27, 1900 (Saka)

As I differ with the majority of the Members of the Joint Committee on several important provisions of the Bill, I am constrained to submit the following note of dissent:

I. (a) **Scope of the Bill: Chief Ministers:** They should not have been omitted from the purview of the proposed Central Legislation. The argument that the State Legislature is competent to enact similar law for investigation by a Lokpal or Lokayukta allegations of corruption against a Chief Minister, therefore, the Centre should not encroach upon this area ignores the principle of concurrent jurisdiction as embodied in the Indian Constitution. Further, it appears mere wishful thinking that States would automatically follow the example of the Centre in extending the proposed legislation to a Prime Minister. Omission of Chief Ministers seems to be quite inappropriate particularly when the Centre has the power to appoint a Commission of Enquiry in respect of such allegations against a Chief Minister under the Commissions of Enquiry Act, 1952 but such machinery is inadequate as a Commission of Enquiry has not the benefit of an independent machinery of investigation at its disposal. In order to preserve the autonomy of a State in this area, however, it could have been provided that, in case, a corresponding State law provided for an enquiry against a Chief Minister, the Lokpal under the Central Act should not enquire into such matter. Of course, it remains to add that under the Central Legislation, any complaint of misconduct which amounts to a breach of privilege of the State Legislature would have to be dealt with under the provisions of article 194(3) of the Constitution.

(b) The provisions of the Bill should have been extended to the high ranking Civil Servants of the Union Government viz. Secretaries, Additional Secretaries, Joint Secretaries and Deputy Secretaries all of whom have and exercise wide powers in administration. The Committee have, however, rejected the proposal on the ground that: "As it is of the view that since the proposed Bill provided only for Enquiries into allegations of mis-conduct against 'Public men' and of corruption at 'higher political levels' to suggest such an amendment..... would go beyond the scope of the Bill" (See para 43 of the Report) I am unable to agree with this view. Statement of objects and Reasons sets out the origin and history of Lokpal Bills introduced in 1968 and 1971 and then proceeds to add

"The matter has been re-examined having regard to the recommendations of the A.R.C. the provisions of the 1971 Bill and other laws on the subject enacted in various States from time to time and the experience of the functioning of such institutions in the States where they have been set up. In the light of this re-examination, it is proposed to alter the scheme of the Lokpal as incorporated in the 1971 Bill in material respects for making the institution of Lokpal an effective instrument to combat the problem posed by corruption at higher political levels".

It would have, therefore, been seen that the present Bill is re-drafted on the basis of earlier Bills which applied to executive officers (including Secretaries) and Ministers. It is true that in determining the scope of deliberations and enquiry of a Joint Committee, the Committee cannot amend or revise the provisions of the Bill so as to obstruct or whittle down the principle of a Bill which is to be found from the long title, clauses of the Bill and the schedule, if any, to the Bill. In my view, extension of the Bill to Secretaries, far from whittling down the principle of combating problem of corruption at higher political levels would, on the contrary, strengthen this objective, since the relationship between a Minister and his Secretary is comparable to that of between partners or even between husband and wife. It is also very pertinent to note that original clause 11(2) present clause 10(2)—empowered a Lokpal to enquire into any act or conduct of any other person (which would include a Secretary also), if it was found necessary to inquire into any allegations of misconduct against a public man. Even more emphatic were the provisions of the original clause 23(1) of the Bill which provided conferment of additional functions on Lokpal and which, therefore, included an inquiry by a Lokpal into the allegations of misconduct against a Secretary. Sub-clause (1) of Clause 23 is now deleted. But this deletion is immaterial so far as the question of determining the principle of original Bill from clauses thereof is concerned. It is, therefore, submitted that the Joint Committee had the power to extend the Bill to Secretaries. In any event, it is competent for the Parliament to enact such an extension.

II. Mis-conduct: Members of Parliament, unlike Ministers, do not possess executive powers, though as elected representative they have to represent grievances and demands of people and sometime of individuals also in Parliament and even outside it before Ministers and Government servants. But they do not have any executive power and, therefore, stand on a different footing from Ministers. As such, there is a valid basis for treating them differently from Ministers and therefore, defining, *qua* them, "Misconduct" narrowly. But misconduct as now defined in clause 3(2) is unduly restrictive and should have been enlarged so as to cover securing any valuable thing or pecuniary advantage not only for himself but, as is provided in the case of other public man for his relatives and associates also. It should have also been made clear as is done in section 5(1)(b) of the Prevention of Corruption Act, 1947, that such thing or advantage should have been secured by a legislator without consideration or for a consideration which he knows to be inadequate. However, the definition of 'Relative' in explanation to sub-clause (3) of Clause 3 of the Bill is confined only to a few close relatives by blood and marriage only: it should have included other relatives also mentioned in the definition of the said term under section 6 of Companies Act, 1956.

III. Competent Authority: It is rather difficult to determine, in case of Prime Minister, the Competent Authority. However, the appointment of Speaker as Competent Authority is open to serious objections. It will affect the impartiality and dignity of the high office of the Speaker. It is clear from the provisions of the Bill (See Clause 17) that the action taken or proposed to be taken by the Speaker is subject to scrutiny by the Lokpal and further if Lokpal is not satisfied with such action, ~~he has the power to make a special report to the President and the Parliament can consider any such report or annual report made by the Lokpal. Thus,~~ the Speaker's decision regarding the action is subject to scrutiny and criticism both by the Lokpal and the Parliament. Such a position is bound to compromise Speaker's position. It seems to me, therefore, preferable to appoint the President as the competent authority in case of Prime Minister as the Council of Ministers on whose advice the President is bound to act in such matter is responsible to the Parliament.

There are a few other provisions but of less importance on which also I differ from the Committee but I do not wish to encumber this note with the same.

NARENDRA P. NATHWANI

NEW DELHI:

July 18, 1978

Asadha 27, 1900 (Saka).

THE LOKPAL BILL, 1977

(AS REPORTED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

PRELIMINARY

- | | | |
|----|--|------------------------------|
| 1. | (1) This Act may be called the Lokpal Act, 1978. | Short
title, ¹ |
| 5 | (2) It extends to the whole of India. | extent
and com- |
| | (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | mence-
ment. |
| | 2. (1) In this Act, unless the context otherwise requires,— | Defini-
tions. |
| 10 | (a) "competent authority", in relation to a complaint against a public man, means the competent authority in relation to such complaint determined in accordance with the provisions of sub-section (2) and the rules made thereunder; | |

(b) "complaint" means a complaint alleging that a public man has, while holding any of the offices referred to in clause (h), committed misconduct;

(c) "complaint against a legislator" means a complaint alleging misconduct by a person who, at the time of the alleged commission of such misconduct was a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;

(d) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947;

(e) "Lokpal" means a person appointed under section 4 as the Lokpal and, where a Special Lokpal is appointed under section 3 for exercising jurisdiction in relation to any complaints or any classes of complaints, includes, for the purpose of such complaints or classes of complaints, such Special Lokpal;

(f) "misconduct" means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "public man" means a person who holds or has held the office of—

(i) a member (including a Deputy Minister) of the Council of Ministers for the Union;

(ii) a member of either House of Parliament;

(iii) a member (including a Deputy Minister) of the Council of Ministers for a Union territory;

(iv) a member of the Legislative Assembly for any Union territory;

(v) a member of the Executive Council under the Delhi Administration Act, 1966;

(vi) the Mayor of a Municipal Corporation in any Union territory;

(i) "public servant" shall have the same meaning as in section 21 of the Indian Penal Code.

(2) The competent authority in relation to a complaint under this Act shall be determined in accordance with the provisions of the Table below with reference to the office held by the person against whom such complaint is made at the time of the commission of the misconduct alleged to have been committed by such person in the complaint:

Provided that where during the period any misconduct is alleged to have been committed by a person in a complaint, such person held successively different offices, the competent authority shall be deter-

mined with reference to the last of the offices held by him during that period.

THE TABLE

Sl. No.	Office	Competent authority
1.	Prime Minister	The Speaker of the House of the People.
2.	Any other Member (including a Deputy Minister) of the Council of Ministers for the Union.	The Prime Minister.
3.	Member of Parliament who is not a Member of the Council of Ministers for the Union.	The Chairman of the Council of States in the case of a Member of that Council and the Speaker of the House of the People in the case of a Member of that House and, where the complaint is against such Speaker, the Deputy Speaker of the House of the People.
4.	Member of the Legislative Assembly for any Union territory who is not a member of the Council of Ministers for the Union territory.	The Speaker of the Legislative Assembly and where the complaint is against such Speaker, the Deputy Speaker of the Legislative Assembly.
5.	Any other office.	Such authority as may be prescribed.

3. (1) A public man, other than a legislator, commits misconduct--

(a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or

(b) if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates, directly or indirectly, any valuable thing or pecuniary advantage; or

(c) if any act or omission by him constitutes corruption.

(2) A Legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage.

(3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in sub-section (1) or, as the case may be, sub-section (2), by another public man also commits misconduct.

Explanation.—For the purposes of this section,—

(a) “associate” in relation to a public man includes any person in whom such public man is interested;

(b) “legislator” means a person who is a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;

Misconduct by a public man.

(c) a person shall be deemed to be relative of another if, and only if,—

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated below:—

1. Father.

2. Mother (including step-mother).

3. Son (including step-son).

4. Son's wife.

5. Daughter (including step-daughter).

6. Son's son.

7. Son's daughter.

8. Daughter's husband.

9. Daughter's son.

10. Brother (including step-brother).

11. Sister (including step-sister).

MACHINERY FOR INQUIRIES

Appoint-
ment of
Lokpal.

4. (1) For the purpose of making inquiries in respect of complaints under this Act, the President shall, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, a person to be known as the Lokpal:

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People.

(2) Every person appointed as the Lokpal shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out in the Schedule.

Lokpal
to be
ineligible
to hold
other
offices.

5. The Lokpal shall not be a Member of Parliament or a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lokpal), or be connected with any political party, or carry on any business, or practise any profession, and accordingly, before he enters upon his office, a person appointed as the Lokpal shall,—

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

6. (1) A person appointed as the Lokpal shall hold office for a term of five years from the date on which he enters upon his office; Term of office and other conditions of service of Lokpal.

5 Provided that—

(a) the Lokpal may, by writing under his hand addressed to the President, resign his office;

(b) the Lokpal may be removed from his office in the manner provided in section 7.

10 (2) On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State.

(3) There shall be paid to the Lokpal in respect of time spent on actual service salary at the rate of five thousand rupees per mensem:

15 Provided that if the Lokpal is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Lokpal shall be reduced—

20 (a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and

25 (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

(4) The Lokpal shall be entitled without payment of rent to the use of an official residence.

30 (5) The allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be determined by the President having regard to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India:

35 Provided that the allowances and pension payable to, and other conditions of service of, the Lokpal shall not be varied to his disadvantage after his appointment.

7. (1) The Lokpal shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and Removal of Lokpal.
40 by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokpal

under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokpal as they apply in relation to the removal of a Judge.

51 of 1968

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Special
Lokpals.

8. (1) Notwithstanding anything contained in section 4, if the President is satisfied on a report from the Lokpal that it is necessary so to do for the expeditious disposal of complaints under this Act, he may, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, one or more persons to be a Special Lokpal or Special Lokpals for exercising jurisdiction in relation to such complaints or such classes of complaints under this Act as may be specified in the warrant: 10

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People. 15

(2) A Special Lokpal shall hold office for a term of five years or for such shorter term as may be specified in the warrant of his appointment and a Special Lokpal appointed for a term of less than five years shall be eligible for reappointment: 20

Provided that the total period for which a person may hold the office of Special Lokpal shall in no case exceed five years.

(3) Save as otherwise expressly provided in this Act, the provisions of this Act relating to the Lokpal, including the provisions relating to the oath or affirmation to be made by the Lokpal, the ineligibility of the Lokpal to hold other offices, the conditions of service of the Lokpal and removal of the Lokpal, the functions, powers and duties of the Lokpal, shall apply in relation to a Special Lokpal as they apply in relation to the Lokpal but nothing in this sub-section shall be construed to enable a Special Lokpal to exercise jurisdiction in relation to any complaint or class of complaints not specified in the warrant by which he was appointed. 25 30

Staff of
Lokpal.

9. (1) The Lokpal shall appoint a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions (including verification and inquiries in respect of complaints) under this Act. 35

(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure— 40

(i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or

(ii) the services of any other person or agency.

(3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as may be prescribed in consultation with the Lokpal. 45 50

(4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Lokpal.

5 (5) The officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall also assist the Special Lokpals (if any) in the discharge of their functions.

JURISDICTION AND PROCEDURE IN RESPECT OF INQUIRIES

10 10. (1) Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, or arising from, or connected with, any allegation of misconduct against a public man made in a complaint under this Act. Jurisdiction of Lokpal.

15 (2) The Lokpal may inquire into any act or conduct of any person other than a public man in so far as he considers it necessary so to do for the purpose of his inquiry into any allegation of misconduct against a public man:

Provided that the Lokpal shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

20 (3) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952, except on the recommendation or with the concurrence of the Lokpal.

80 of 1952.

25 11. (1) The Lokpal shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion. Matters not subject to jurisdiction of Lokpal.

30 (2) The Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, on his recommendation or with his prior concurrence.

80 of 1952.

35 (3) The Lokpal shall not inquire into any allegation of misconduct against a public man if the complaint in respect thereof is made after the expiry of five years from the date on which the misconduct is alleged to have been committed:

40 Provided that the Lokpal may entertain such a complaint, if the complainant satisfies him that he had sufficient cause for not making the complaint within the said period of five years.

12. (1) Any person other than a public servant may make a complaint under this Act to the Lokpal. Complaints.

Explanation.—For the purposes of this sub-section public servant means,—

45 (a) any person who is a member of a Defence service or of a civil service of the Union or a State or of an all-India service or holds any post connected with Defence or any civil post under the Union or a State;

(b) any person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company, as defined in section 617 of the Companies Act, 1956.

1 of 1956.

(2) Notwithstanding anything contained in sub-section (1), a complaint against a legislator shall be made to the competent authority (hereafter in this section referred to as the appropriate authority) concerned and that authority may, having regard to the nature of the allegations made in the complaint, the provisions of article 105 of the Constitution or, as the case may be, section 16 of the Government of Union Territories Act, 1963, and all the circumstances of the case, refer the complaint to the Lokpal, or deal with, or make orders for dealing with, the complaint in such manner as that authority may deem fit.

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20 of 1963.

(3) The complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particulars thereof and a certificate in the prescribed form in respect of the deposit under sub-section (4) or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit.

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(4) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of one thousand rupees to be available for disposal under section 25:

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Provided that the Lokpal or, as the case may be, the appropriate authority may for sufficient cause to be recorded in writing exempt a complainant from the requirement under this sub-section.

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(5) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Lokpal or, as the case may be, the appropriate authority by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal or, as the case may be, the appropriate authority is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section.

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(6) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal or the appropriate authority by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal or the appropriate authority without delay.

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Preliminary
scrutiny
of
com-
plaints
by
Lokpal.

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

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(a) that the complaint is not made within the period of five years specified in sub-section (3) of section 11 and that there is no sufficient cause for entertaining the complaint; or

(b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1) or (2) * * of section 11; or

45

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

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

5 the Lokpal shall dismiss the complaint after recording his reasons therefor and communicate the same to the complainant and to the competent authority concerned.

(2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the
10 circumstances of the case and in particular the Lokpal may, if he deems it necessary so to do, call for the comments of the public man concerned.

14. (1) If, after the consideration and verification under section 13 in respect of a complaint, the Lokpal proposes to conduct any inquiry, he—

Proce-
dure in
respect
of
inquiries.

(a) shall forthwith forward a copy of the complaint to the com-
petent authority concerned;

15 (b) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit;

(c) shall, at such time as he considers appropriate, forward a copy of the complaint to the public man concerned and afford him an opportunity to represent his case.

20 (2) Every such inquiry shall, unless the Lokpal, for reasons to be recorded in writing, determines otherwise, be conducted *in camera*:

Provided that an inquiry in respect of a complaint against a legis-
lator shall be conducted only *in camera*.

25 (3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.

15. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 13), the Lokpal—

Evidence.

30 (a) may require any public servant or any other person, who, in his opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;

5 of 1908. 35 (b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(i) summoning and enforcing the attendance of any person and examining him on oath;

40 (ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

45 (v) issuing commissions for the examination of witnesses or documents; and

(vi) such other matters as may be prescribed.

(2) A proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

45 of 1860.

(3) Subject to the provisions of sub-section (4),—

5

(a) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13) under this Act; and

10

(b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings.

15

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—

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

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(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or of the Cabinet of the Government of any State or Union territory or of the Executive Council under the Delhi Administration Act, 1966, or of any Committee of such Cabinet or Executive Council,

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19 of 1966.

and for the purpose of this sub-section, a certificate issued by a Secretary to the Government 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:

30

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, he shall declare the certificate to be of no effect.

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16. (1) If the Lokpal has reason to believe that any documents which, in his opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, he may authorise any officer subordinate to him, or any officer of an investigating agency referred to in sub-section (2) of section 9, to search for and to seize such documents.

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Search
and
seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in his custody, he may so retain the said document till the completion of such inquiry:

45

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

5 *Explanation.*—For the purposes of this sub-section, an inquiry in respect of a complaint—

(a) shall be deemed to have commenced on the date on which the Lokpal forwards a copy of the complaint to the competent authority concerned under clause (a) of sub-section (1) of section 10 14;

(b) shall be deemed to have been completed on the date on which the Lokpal closes the case under section 17.

2 of 1974.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section 15 subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted.

17. (1) If, after inquiry in respect of a complaint, the Lokpal is 20 satisfied,— Reporta.

(a) that no allegation made in the complaint has been substantiated either wholly or partly, he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly;

25 (b) that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly, he shall, by report in writing, communicate his findings and recommendations to the competent authority and intimate the complainant and the public man concerned about his having made the report.

30 (2) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokpal is satisfied with the action taken, or proposed to be 35 taken, on the basis of his report under clause (b) of sub-section (1), he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the President and intimate the complainant, the 40 public man and the competent authority concerned about his having made such report.

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.

(5) As soon as may be after, and in any case not later than ninety days 45 from, the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause the same together with an explanatory memorandum to be laid before each House of Parliament.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament, or, as the case may be, either House of Parliament, is not in session shall be excluded.

* * * * *

MISCELLANEOUS

Expenditure on Lokpal and Special Lokpals to be charged on the Consolidated Fund of India.

18. The salaries, allowances and pensions payable to, or in respect of, the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India.

Secrecy of information

19. (1) Any information obtained by the Lokpal, or by any officer, employee, agency or person referred to in section 9, in the course of, or for the purposes of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith 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 any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein—

(a) for the purposes of this Act or for the purposes of any action or proceedings to be taken on any report under section 17; or

(b) for the purposes of any proceedings, for an offence of giving or fabricating false evidence, under the Indian Penal Code; or

(c) for such other purposes as may be prescribed.

Penalty for disclosure or publication of information in respect of complaints against Legislators

20. (1) No complaint against a Legislator or any proceedings (whether by way of verification, inquiry or otherwise) in respect of such complaint or any information in respect of such complaint or proceedings (including any evidence furnished, collected or recorded in relation to such complaint or in the course of or for the purpose of such proceedings) shall be disclosed or published by any person—

(a) where such complaint has been referred to the Lokpal under sub-section (2) of section 12, at any time before the dismissal of such complaint under sub-section (1) of section 13, or if the Lokpal conducts an inquiry into such complaint under section 14 at any time before he closes the case under clause (a) of sub-section (1) of section 17 or, as the case may be, before he makes a report in respect of the case under clause (b) of that sub-section;

(b) in any other case, before the competent authority concerned discloses or announces in the prescribed manner the findings in respect of the allegations made in such complaint:

Provided that nothing in this sub-section shall apply—

(i) to any disclosure for the purposes of this Act; or

(ii) to any disclosure or publication with respect to proceedings for any offence under this Act or any other law; or

(iii) to any disclosure or publication for such other purposes as may be approved by the competent authority concerned.

5 (2) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of this section shall have effect notwithstanding anything in any other section of this Act or in any other enactment.

10 21. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Inten-
tional
insult
or in-
terrup-
tion to,
or bring-
ing into
dis-
repute,
Lokpal.

15 (2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

20 (3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the
2 of 1974. Public Prosecutor except with the previous sanction of the Lokpal.

25 22. (1) If, at any stage of a proceeding before the Lokpal, it appears to the Lokpal that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding,
30 the Lokpal may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try
35 such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both.

Power
of
Lokpal
to try
certain
offences
sum-
marily.

40 (2) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this
45 section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

2 of 1974.

45 of 1860.

(3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(4) Any person convicted on a trial held under this section may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against. 5 2 of 1974.

Explanation.—For the purposes of this sub-section “High Court” means the High Court within the jurisdiction of which the person convicted ordinarily resides or carries on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed. 10

(5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973. 15 2 of 1974.

* * * *

Action
in case
of false
com-
plaint.

23. (1) Every person who wilfully or maliciously makes any complaint which he knows or has reason to believe to be false under this Act shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to three thousand rupees. 20

(2) No Court, except a Court of Session, shall take cognizance of an offence under sub-section (1).

(3) No such Court shall take cognizance of such offence except on a complaint in writing made by the Public Prosecutor at the direction of the Lokpal and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it. 25

(4) The Court of Session, on conviction of the person making false complaint, may award, out of the amount of fine, to the public man against whom such false complaint has been made such amount of compensation as it thinks fit. 30

(5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973. 2 of 1974.

Con-
ferment
of ad-
ditional
func-
tions
on
Lokpal.

24. *** (1) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order in respect of a public man and, notwithstanding anything contained in this Act, the Lokpal shall comply with such order. 35

(2) *** When the Lokpal is to make any inquiry under sub-section (1), the Lokpal shall exercise the same powers and discharge the same functions as he would in the case of any inquiry made on a complaint under this Act and the provisions of this Act shall apply accordingly. 40

Dis-
posal of
deposit

25. The sum deposited by a complainant under section 12 shall,—

(a) in a case where the complaint is dismissed under clause (c) of sub-section (1) of section 13, stand forfeited to the Central Government; 45

(b) if the Lokpal, for reasons to be recorded in writing, so directs, be utilised for compensating the public man complained against; and

(c) in any other case, be refunded to the complainant.

5 26. If the Lokpal is satisfied—

(a) that all or any of the allegations made in a complaint have or has been substantiated either wholly or partly; and

10 (b) that having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case the complainant deserves to be compensated or rewarded,

Compensation or reward of both payable in certain cases to complainant.

15 the Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Central Government shall pay the amount or amounts so determined to the complainant.

27. (1) No suit, prosecution, or other legal proceeding, shall lie against the Lokpal, or against any officer, employee, agency or person referred to in section 9, in respect of anything which is in good faith done, or intended to be done, under this Act. Protec- tion.

20 (2) Save as otherwise provided in Section 22, no proceedings***or decision of the Lokpal shall be liable to be challenged, reviewed, quashed, or called in question, in any court.

25 28. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any powers conferred or duties imposed on him by or under this Act [except the powers under the proviso to sub-section (3) of section 11, and the proviso to sub-section (4) of section 12, the power to dismiss a complaint under sub-section (1) of section 13, * the powers to close cases and make reports under section 17 and the powers under section 22] may 30 also be exercised or discharged by such of the officers, employees or agencies referred to in sub-section (1) or sub-section (2) of section 9, as may be specified in the order. Power to delegate.

35 29. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the authorities required to be prescribed under sub-section (2) of section 2;

40 (b) the officers and employees who may be appointed under sub-section (1) of section 9;

(c) the terms and conditions of service of the officers, employees, agencies and person referred to in sub-section (3) of section 9;

(d) the form in which complaints may be made under section 12 and the fees, if any, which may be charged in respect thereof;

(e) the manner in which and the authorities or agencies with whom deposits shall be made under sub-section (4) of section 12 and the form in which certificates shall be furnished in respect of such deposits under sub-section (3) of section 12;

(f) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 15;

(g) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Saving.

30. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by, any Commission of Inquiry appointed under the Commissions of Enquiry Act, 1952, before the Commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

Conse-
quential
amend-
ment of
Act 60
of 1952.

31. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words, "The appropriate Government may", the words, brackets and figures "Subject to the provisions of sub-section (2) of section 10 of the Lokpal Act, 1978, the appropriate Government may" shall be substituted.

THE SCHEDULE

[See section 4(2)]

I, _____, having been appointed Lokpal,
swear in the name of God

do _____, that I will bear true faith and allegiance
solemnly affirm

to the Constitution of India as by law established, that I will duly and
faithfully and to the best of my ability, knowledge and judgment per-
form the duties of my office without fear or favour, affection or ill-will.

APPENDIX I

(Vide para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to the Joint Committee

"That the Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith, be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

1. Shri R. K. Amin
2. Shri Arif Beg
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Ram Jethmalani
8. Shri Hari Vishnu Kamath
9. Shri M. V. Krishnappa
10. Shri Krishan Kant
11. Shri M. Kalyanasundaram
12. Shri B. C. Kamble
13. Shri Madhu Limaye
14. Shri Shyamnandan Mishra
15. Shri Nathu Ram Mirdha
16. Dr. V. A. Seyid Muhammad
17. Shri Narendra P. Nathwani
18. Shri Balasaheb Vikhe Patil
19. Shri Chand Ram
20. Shri Saugata Roy
21. Shri Gauri Shankar Rai
22. Shri C. M. Stephen
23. Shri B. Shankaranand
24. Shri K. Suryanarayana
25. Shri Sasankasekhar Sanyal
26. Shri Jagannath Sharma
27. Shri Somnath Chatterjee
28. Shri S. D. Somasundaram
29. Shri Mangal Deo
30. Shri Charan Singh

and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to the House by the first day of the next session;

* that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(Vide para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith, and resolves that the following 15 members of the Rajya Sabha, namely:—

- (1) Shri Rabi Ray
- (2) Shri Sunder Singh Bhandari
- (3) Shri Mahadeo Prasad Varma
- (4) Shri Vithal Gadgil
- (5) Shri D. P. Singh
- (6) Shri Devendra Nath Dwivedi
- (7) Shrimati Margaret Alva
- (8) Shri A. R. Antulay
- (9) Shri Sawaisingh Sisodia
- (10) Shri N. G. Ranga
- (11) Shri S. W. Dhabe
- (12) Shri Bipinpal Das
- (13) Shri K. A. Krishnaswamy
- (14) Shri Bhupesh Gupta and
- (15) Shri G. Lakshmanan

be nominated to serve on the said Joint Committee."

APPENDIX III

(Vide para 9 of the Report)

List of Associations, Organisations, Individuals, etc., from whom memoranda were received by the Joint Committee

1. Bihar State Bar Council, Patna.
2. Chief Minister, Haryana, Chandigarh.
3. Chief Minister, Himachal Pradesh, Simla.
4. Shri P. B. Kudaisya, New Delhi.
5. Shri R. B. Bidari, Ex-MP.
6. Government of Jammu and Kashmir, Srinagar.
7. Shri Nageshwar Prasad Shahi, M.P.
8. Prof. Dr. Lokesh Chandra, M.P.
9. Shri G. S. Reddi, M.P.
10. Shri Bhariab Chandra Mahanti, M.P.
11. Shri G. Narasimha Reddy, M.P.
12. Government of Arunachal Pradesh Itanagar.
13. Shri Jagannath Rao, M.P.
14. Chief Minister, Goa, Daman and Diu, Panaji.
15. Shri D. D. Desai, M.P.
16. Shri Yamuna Prasad Shastri, M.P.
17. Shri J. N. Bharadwaj, M.P.
18. Lokayukta, Maharashtra, Bombay.
19. Chief Executive Councillor, Delhi.
20. Shri A. G. Noorani, Bombay.
21. Dr. Ramjee Singh, M.P.
22. Chief Minister, Tripura, Agartala.
23. Chief Minister, Meghalaya, Shillong.
24. Chief Minister, Tamil Nadu, Madras.
25. Lokayukta, Uttar Pradesh, Lucknow.
26. Shri Ram Gopal Reddy, M.P.
27. Shri B. K. Nair, M.P.
28. Chief Minister, West Bengal, Calcutta.
29. Chief Minister, Maharashtra, Bombay.
30. Director Citizen's Advice Bureau, New Delhi.

APPENDIX IV

(Vide para 10 of the Report)

List of points received from Members of the Joint Committee on Lokpal Bill for opinion by the Attorney-General of India

- (1) Whether the President, in case of complaint against a Prime Minister, can be legally appointed a Competent Authority to exercise his power as such authority in his individual capacity?
- (2) Whether some forms of 'misconduct' as defined in clause 3 will include acts of an M.P. or M.L.A. of a State Legislature which also amount to breach of privilege of Parliament or State Legislature; if so—
 - (a) What provisions, in case of an M.P. should be made in the Act to protect the rights and privileges of the Parliament under Article 105; and
 - (b) What safeguards, in case of a Chief Minister, should be provided not to infringe Article 194 of the Constitution.
- (3) Constitutional positions of—
 - (a) Chief Ministers; and
 - (b) Members of Parliament—
in the light of the provisions of Lokpal Bill.
- (4) Whether the inclusion of Chief Minister in the Lokpal Bill infringes on the Federal Structure of the Constitution?
- (5) Whether the inclusion of M.Ps. in the Lokpal Bill infringes on Parliamentary privileges?
- (6) Whether in case of Prime Minister, the 'Competent Authority' can be the 'Prime Minister' himself?
- (7) In view of the federal structure of our Constitution whether it will be appropriate and proper to include the Chief Minister of a State, when in some States there are State Lokayukta Acts which include Ministers for the purposes of those Acts, in the Lokpal Bill of 1977 or whether those Acts in the States be amended to include Chief Ministers?
- (8) In view of the federal structure, whether it will be proper and appropriate to include the Members of Legislative Assemblies in the Lokpal Bill, 1977 when such categories can be included in State Legislations?
- (9) In view of the various provisions of the Constitution and also in view of the Privileges Committee for the Members of Parliament whether it is necessary to include the Members of

either House of Parliament in this Bill when forum is already available against them which if necessary can be further strengthened?

- (10) Whether the consent of State Legislatures will be necessary in view of the article 252 of the Constitution of India for passing the Lokpal Bill about the inclusion of the Chief Minister and Members of Legislature within purview of this Bill?
- (11) (a) Do you think that the definition of the term 'misconduct' given in the Bill is too wide?
 (b) If so, what in your opinion should be the definition?
 (c) Do you think that the definition of the term 'misconduct' in any way affects the privileges of the Members of Parliament?
- (12) Whether it will be appropriate for action on the Report of Lokpal to be processed right from the lowest court to the highest in view of the high status of the Lokpal?
- (13) Whether action in any court can be initiated by the affected person to prevent Lokpal from going into the complaint against him?
- (14) If any action taken by Government does not satisfy any member of public, would the member of public be entitled to sue in a court, or the matter would end with Government action, or, would the present practice that only an affected person can go to court would apply in this case also?
- (15) Under clause 22 of the Bill, provision is specifically made for appeal in High Court. There is no mention of any judicial remedy available to a person affected by the Report of Lokpal. Can it be taken that the forum of court would be available to such a person—say even for the vacation of an adverse remark against him?

APPENDIX V
MINUTES OF THE SITTINGS OF THE JOINT COMMITTEE ON
THE LOKPAL BILL, 1977

I

First Sitting

The Committee sat on Wednesday, the 7th September, 1977 from 10.30 to 13.00 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Hari Vishnu Kamath
8. Shri Krishan Kant
9. Shri M. Kalyanasundaram
10. Shri B. C. Kamble
11. Shri Madhu Limaye
12. Dr. V. A. Seyid Muhammad
13. Shri Sougata Roy
14. Shri Gauri Shankar Rai
15. Shri C. M. Stephen
16. Shri B. Shankaranand
17. Shri K. Suryanarayana
18. Shri Sasankasekhar Sanyal
19. Shri Jagannath Sharma
20. Shri Somnath Chatterjee
21. Shri Mangal Deo
22. Shri Charan Singh

Rajya Sabha

23. Shri Rabi Ray
24. Shri Sunder Singh Bhandari
25. Shri Mahadeo Prasad Varma
26. Shri Vithal Gadgil

27. Shri D. P. Singh
28. Shri A. R. Antulay
29. Shri Sawaisingh Sisodia
30. Shri N. G. Ranga
31. Shri S. W. Dhabe
32. Shri Bipinpal Das
33. Shri Bhupesh Gupta
34. Shri K. A. Krishnaswamy
35. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Council.*

2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri R. C. Misra—*Additional Secretary.*
2. Shri R. C. Joshi—*Deputy Secretary.*
3. Shrimati J. Khanna—*Deputy Secretary.*
4. Shri G. P. Kalra—*Under Secretary.*

2. At the outset, the Chairman welcomed the members of the Committee and referred to the importance and urgency of the proposed legislative measure and the task before the Committee.

3. The Committee then considered their programme of work. After some discussion, the Committee felt that efforts should be made to finalise the report of the Committee by the end of October, 1977, so that it could be presented to the House on the first day of the next session of Lok Sabha in terms of the motion adopted by the House.

4. The Committee decided to invite memoranda from the Bar Councils, Bar Association and others interested in the subject matter of the Bill by Friday, the 23rd September, 1977 and to issue Press Communique/necessary communications, in this regard, to the persons concerned.

5. The Committee also decided that since the Chief Ministers are being brought within the ambit of the Bill, their opinion might also be obtained for the benefit of the Committee.

6. The Committee desired that, if necessary, the Minister of Law, Justice and Company Affairs and the Attorney General of India might be requested to give their opinion on certain constitutional aspects of the Bill. The Committee authorised the Chairman to fix date and time for their appearance before the Committee.

7. The Committee then adjourned to meet again on Thursday, the 8th September, 1977 at 10.30 hours to consider their programme of work and to hold general discussion on the provisions of the Bill.

II

Second Sitting

The Committee sat on Thursday, the 8th September, 1977 from 10.30 to 12.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Hari Vishnu Kamath
8. Shri Krishan Kant
9. Shri M. Kalyanasundaram
10. Shri B. C. Kamble
11. Shri Madhu Limaye
12. Shri Nathu Ram Mirdha
13. Dr. V. A. Seyid Muhammad
14. Shri Chand Ram
15. Shri Sougata Ray
16. Shri Gauri Shankar Rai
17. Shri B. Shankaranand
18. Shri K. Suryanarayana
19. Shri Sasankasekhar Sanyal
20. Shri Jagannath Sharma
21. Shri Somnath Chatterjee
22. Shri Mangal Deo

Rajya Sabha

23. Shri Rabi Ray
24. Shri Sunder Singh Bhandari
25. Shri Mahadeo Prasad Varma
26. Shri Vithal Gadgil
27. Shri D. P. Singh
28. Shri Devendra Nath Dwivedi
29. Shri Sawaisingh Sisodia
30. Shri N. G. Ranga
31. Shri S. W. Dhabe
32. Shri Bipinpal Das
33. Shri Bhupesh Gupta

SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—Joint Secretary and Legislative Counsel.

2. Shrimati V. S. Rama Devi—Additional Legislative Counsel.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri R. C. Misra—Additional Secretary.

2. Shri G. P. Kalra—Under Secretary.

2. The committee resumed consideration of their future programme of work. The Committee decided to hold their sittings as follows:—

- | | |
|---------------------------------------|--------------|
| (i) General discussion on the | 27-9-1977 & |
| provisions of the Bill | 28-9-1977 |
| (ii) Clause-by-clause considera-.. .. | 9-10-1977 |
| tion of the Bill | 10-10-1977 |
| | 24-10-1977 & |
| | 25-10-1977 |

3. The Committee also decided that members should send their notices of amendments to the Bill, if any, by the 3rd October, 1977.

4. The Chairman informed the Committee that the following papers had already been circulated to the members of the Committee:—

- (i) The Lokpal Bill, 1977.
- (ii) Extracts from Lok Sabha Debates dated the 1st August, 1977.
- (iii) Extracts from Rajya Sabha Debates dated the 3rd August, 1977.
- (iv) Material received from the Ministry of Home Affairs (Department of Personnel & Administrative Reforms).

5. The Chairman also informed the Committee that the following papers are being circulated to the Members of the Joint Committee:—

- (i) Amendments to the Bill already received by the Committee which stood referred to it under Rule 301;
- (ii) List of 'Ombudsman' prepared by the Parliament Library and Documentation Service; and
- (iii) Memoranda on the Bill, as and when, received.

6. The Chairman further informed the Committee that 5 copies each of the Report of the Joint Committee on the Lokpal and Lokayuktas Bill, 1968 and Evidence tendered before that Committee had been kept in Parliament Library for reference by the Members.

7. The Chairman stated that amendments purporting to omit a clause of a Bill were not admissible. However, such amendments, if any, would be circulated to the Members and considered by the Committee.

The Committee, if they so chose, might recommend its omission in their report.

8. The Committee then adjourned.

III

Third Sitting

The Committee sat on Tuesday, the 27th September, 1977 from 10.30 to 13.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri R. D. Gattani
5. Shri Kanwar Lal Gupta
6. Shri M. Kalyanasundaram
7. Shri B. C. Kamble
8. Shri Nathu Ram Mirdha
9. Dr. V. A. Seyid Muhammad
10. Shri Narendra P. Nathwani
11. Shri Sougata Roy
12. Shri Gauri Shankar Rai
13. Shri C. M. Stephen
14. Shri B. Shankaranand
15. Shri K. Suryanarayana
16. Shri Sasankasekhar Sanyal
17. Shri Jagannath Sharma
18. Shri Somnath Chatterjee
19. Shri Mangal Deo
20. Shri Charan Singh

Rajya Sabha

21. Shri Rabi Ray
22. Shri Sunder Singh Bhandari
23. Shri Mahadeo Prasad Varma
24. Shri Vithal Gadgil
25. Shri D. P. Singh
26. Shri Devendra Nath Dwivedi
27. Shrimati Margaret Alva
28. Shri A. R. Antulay
29. Shri Sawaisingh Sisodia
30. Shri N. G. Ranga

31. Shri S. W. Dhabe
32. Shri Bipinpal Das
33. Shri Bhupesh Gupta
34. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
 2. Shri R. C. Misra—*Additional Secretary*
 3. Shri G. P. Kalra—*Under Secretary.*
 2. The Committee decided that comments/suggestions on the provisions of the Lokpal Bill, 1977 may be invited from all Members of Parliament.
 3. The Committee then held general discussion on the provisions of the Bill.
- The discussion was not concluded.
4. A verbatim record of the proceedings was kept.
 5. The Committee then adjourned to meet at 09.00 hours instead of 10.30 hours on Wednesday, the 28th September, 1977 to hold further general discussion on the provisions of the Bill.

IV

Fourth Sitting

The Committee sat on Wednesday the 28th September, 1977 from 09.00 to 13.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri R. D. Gattani
5. Shri Kanwar Lal Gupta
6. Shri Krishan Kant
7. Shri M. Kalyanasundaram
8. Shri B. C. Kamble

9. Shri Madhu Limaye
10. Shri Nathu Ram Mirdha
11. Dr. V. A. Seyid Muhammad
12. Shri Narendra P. Nathwani
13. Shri Sougata Roy
14. Shri Gauri Shankar Rai
15. Shri C. M. Stephen
16. Shri B. Shankaranand
17. Shri K. Suryanarayana
18. Shri Sasankasekhar Sanyal
19. Shri Jagannath Sharma
20. Shri Somnath Chatterjee
21. Shri Mangal Deo
22. Shri Charan Singh

Rajya Sabha

23. Shri Rabi Ray
24. Shri Sunder Singh Bhandari
25. Shri Mahadeo Pradsad Varma
26. Shri Vithal Gadgil
27. Shri D. P. Singh
28. Shri Devendra Nath Dwivedi
29. Shrimati Margaret Alva
30. Shri A. R. Antulay
31. Shri Sawaisingh Sisodia
32. Shri N. G. Ranga
33. Shri S. W. Dhabe
34. Shri Bipinpal Das
35. Shri Bhupesh Gupta
36. Shri K. A. Krishnaswamy
37. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee resumed further general discussion on the provisions of the Bill.

The discussion was not concluded.

3. A verbatim recorded of the proceedings was kept.

4. The Committee decided to hold further General Discussion on the provisions of the Bill on Sunday, the 9th October, 1977 at 10.30 hours also before taking up clause-by-clause consideration of the Bill on that day.

5. The Committee then adjourned.

V

Fifth Sitting

The Committee sat on Sunday, the 9th October, 1977 from 09.00 to 13.45 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Krishan Kant
8. Shri B. C. Kamble
9. Shri Nathu Ram Mirdha
10. Dr. V. A. Seyid Muhammad
11. Shri Narendra P. Nathwani
12. Shri Gauri Shankar Rai
13. Shri C. M. Stephen
14. Shri K. Suryanarayana
15. Shri Sasankasekhar Sanyal
16. Shri Jagannath Sharma
17. Shri Somnath Chatterjee
18. Shri Charan Singh

Rajya Sabha

19. Shri Rabi Ray
20. Shri Sunder Singh Bhandari
21. Shri Vithal Gadgil
22. Shri D. P. Singh
23. Shrimati Margaret Alva
24. Shri A. R. Antulay

25. Shri N. G. Ranga
26. Shri S. W. Dhabe
27. Shri Bipinpal Das
28. Shri Bhupesh Gupta
29. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sabih—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*
2. The Committee resumed further general discussion on the provisions of the Bill.
- The discussion was not concluded.
3. A verbatim record of proceedings was kept.
4. The Committee decided to continue to hold general discussion on the provisions of the Bill at their sitting to be held on the 10th October, 1977.
5. The Committee then adjourned.

VI ..

Sixth Sitting

The Committee sat on Monday the 10th October, 1977 from 10.30 to 13.15 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Dilip Chakravarty
3. Shrimati Mrinal Gore
4. Shri R. D. Gattani
5. Shri Kanwar Lal Gupta
6. Shri Ram Jethmalani
7. Shri Krishan Kant
8. Shri B. C. Kamble

9. Shri Nathu Ram Mirdha
10. Dr. V. A. Seyid Muhammad
11. Shri Narendra P. Nathwani
12. Shri Sougata Roy
13. Shri Gauri Shankar Rai
14. Shri B. Shankaranand
15. Shri K. Suryanarayana
16. Shri Sasankasekhar Sanyal
17. Shri Jagannath Sharma

Rajya Sabha

18. Shri Rabi Ray
19. Shri Sunder Singh Bhandari
20. Shri Vithal Gadgil
21. Shri D. P. Singh
22. Shrimati Margaret Alva
23. Shri A. R. Antulay
24. Shri Sawaisingh Sisodia
25. Shri N. G. Ranga
26. Shri S. W. Dhabe
27. Shri Bipinpal Das
28. Shri Bhupesh Gupta
29. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*

2. The Committee resumed further general discussion on the provisions of the Bill.

The discussion was concluded.

3. A verbatim record of proceedings was kept.

4. The Committee decided that Attorney-General may now be invited to appear before the Committee at their next sitting to be held on Monday, the 24th October, 1977, at 10.30 hours to give his opinion on certain Constitutional aspects of the Bill. The Committee also decided that the Members might formulate their points on the provisions of the

Bill for the opinion of the Attorney-General of India and send them to Lok Sabha Secretariat by the 15th October, 1977.

5. The Committee then adjourned to meet on Monday, the 24th October, 1977.

VII

Seventh Sitting

The Committee sat on Monday, the 24th October, 1977 from 14.30 to 17.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Ram Jethmalani
8. Shri M. V. Krishanappa
9. Shri Krishan Kant
10. Shri M. Kalyanasundaram
11. Shri B. C. Kamble
12. Shri Nathu Ram Mirdha
13. Dr. V. A. Seyid Muhammad
14. Shri Narendra P. Nathwani
15. Shri Balasaheb Vikhe Patil
16. Shri Sougata Roy
17. Shri Gauri Shankar Rai
18. Shri C. M. Stephen
19. Shri B. Shankaranand
20. Shri K. Suryanarayana
21. Shri Sasankasekhar Sanyal
22. Shri Jagannath Sharma
23. Shri Mangal Deo
24. Shri Charan Singh

Rajya Sabha

25. Shri Sunder Singh Bhandari
26. Shri Mahadeo Prasad Varma
27. Shri Vithal Gadgil
28. Shri D. P. Singh

29. Shri Devendra Nath Dwivedi
30. Shrimati Margaret Alva
31. Shri A. R. Antulay
32. Shri Sawaisingh Sisodia
33. Shri N. G. Ranga
34. Shri S. W. Dhabe
35. Shri Bipinpal Das
36. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*
2. The Committee heard the views of Shri S. V. Gupte, Attorney-General of India on certain Constitutional aspects *vis-a-vis* the points raised by the Members of the Committee on the provisions of the Lokpal Bill, 1977.
3. A verbatim record of the proceedings was kept.
4. The Committee decided to seek further clarifications from the Attorney-General of India on certain other points on the provisions of the Lokpal Bill, 1977 at their next sitting to be held on Tuesday, the 25th October, 1977 at 10.30 hours. The Attorney-General was requested to appear again before the Joint Committee accordingly.
5. The Committee then adjourned.

VIII

Eighth Sitting

The Committee sat on Tuesday the 25th October, 1977 from 10.30 to 13.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore

5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri M. V. Krishanappa
8. Shri Krishan Kant
9. Shri M. Kalyanasundaram
10. Shri B. C. Kamble
11. Shri Nathu Ram Mirdha
12. Dr. V. A. Seyid Muhammad
13. Shri Narendra P. Nathwani
14. Shri Bala Saheb Vikhe Patil
15. Shri Sougata Roy
16. Shri Gauri Shankar Rai
17. Shri C. M. Stephen
18. Shri B. Shankaranand
19. Shri K. Suryanarayana
20. Shri Sasankasekhar Sanyal
21. Shri Jagannath Sharma
22. Shri Somnath Chatterjee
23. Shri Mangal Deo
24. Shri Charan Singh

Rajya Sabha

25. Shri Sunder Singh Bhandari
26. Shri Mahadeo Prasad Varma
27. Shri Vithal Gadgil
28. Shri D. P. Singh
29. Shri Devendra Nath Dwivedi
30. Shrimati Margaret Alva
31. Shri Sawaisingh Sisodia
32. Shri N. G. Ranga
33. Shri S. W. Dhabe
34. Shri Bipinpal Das
35. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee further heard the views of Shri S. V. Gupte, Attorney-General of India on certain other points raised by the Members *vis-a-vis* the Constitutional aspects of the Lokpal Bill, 1977.

3. A verbatim record of the proceedings was kept.

4. The Committee thanked the Attorney-General of India and placed on record their appreciation for the valuable assistance rendered and advice tendered by him to the Joint Committee on the points raised by the Members.

5. As some Members of the Committee wanted to have some more time to formulate their views on various clauses of the Bill in the light of the discussion held with the Attorney-General of India, the Committee decided to postpone taking up clause-by-clause consideration of the Bill for the present. The sitting of the Committee to be held in the afternoon at 14.30 hours was, therefore, cancelled.

6. The Committee then adjourned.

IX

Ninth Sitting

The Committee sat on Friday, the 11th November, 1977 from 10:00 to 10.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Ram Jethmalani
7. Shri Krishan Kant
8. Shri M. Kalyanasundaram
9. Shri B. C. Kamble
10. Shri Nathu Ram Mirdha
11. Shri Narendra P. Nathwani
12. Shri Sasankasekhar Sanyal
13. Shri Jagannath Sharma

Rajya Sabha

14. Shri Sunder Singh Bhandari
15. Shri Mahadeo Prasad Varma
16. Shri Vithal Gadgil
17. Shri D. P. Singh
18. Shrimati Margaret Alva
19. Shri A. R. Antulay

20. Shri Sawaisingh Sisodia
21. Shri N. G. Ranga
22. Shri S. W. Dhabe
23. Shri Bipinpal Das
24. Shri G. Lakshmanan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. As some members of the Committee wanted to have some more time to formulate their views on various clauses of the Bill in the light of the discussion held so far and also with the Attorney-General of India, the Committee felt that it would not be possible for them to present their report by the stipulated date i.e. 14th November, 1977. The Committee, therefore, decided to ask for an extension of time for presentation of their report upto the first day of the Budget Session (1978).

The Committee authorised the Chairman and, in his absence Shri Sasankasekhar Sanyal to move necessary motion in this behalf in the House on the 14th November, 1977.

3. The Committee also decided to hold their next round of sittings for taking up clause-by-clause consideration of the Bill from 2nd to 4th January, 1978 and if necessary, on the 5th January, 1978 also.

4. The Committee then adjourned.

Tenth Sitting

The Committee sat on Monday, the 2nd January, 1978 from 10.30 to 10.45 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shrimati Mrinal Gore

7. Shri Kanwar Lal Gupta
8. Shri M. Kalyanasundaram
9. Shri B. C. Kamble
10. Shri Krishan Kant
11. Shri M. V. Krishanappa
12. Shri Mangal Deo
13. Shri Nathu Ram Mirdha
14. Shri Ragavalu Mohanarangam
15. Dr. V. A. Seyid Muhammad
16. Shri Narendra P. Nathwani
17. Shri Gauri Shankar Rai
18. Shri Saugata Roy
19. Shri Sasankasekhar Sanyal
20. Shri Dault Ram Saran
21. Shri B. Shankaranand
22. Shri Jagannath Sharma
23. Shri C. M. Stephen
24. Shri K. Suryanarayana

Rajya Sabha

25. Shrimati Margaret Alva
26. Shri Sunder Singh Bhandari
27. Shri S. W. Dhabe
28. Shri Vithal Gadgil
29. Shri Bhupesh Gupta
30. Shri K. A. Krishnaswamy
31. Shri G. Lakshmanan
32. Shri N. G. Ranga
33. Shri Rabi Ray
34. Shri D. P. Singh
35. Shri Sawaisingh Sisodia
36. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)**

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. At the outset, the Chairman and Members of the Committee welcomed the new Members Sarvashri R. Mohanarangam, Daulat Ram Saran and Hukam Deo Narain Yadav, who had been appointed as members of the Committee *vice* Sarvashri S. D. Somasundaram, Chand Ram and Arif Baig.

3. The Committee were informed that the Minister of Home Affairs (Shri Charan Singh) was busy in connection with the visit of the President of the United States of America (Mr. Jimmy Carter) and as such it would not be possible for him to attend the sitting of the Committee.

4. The Committee felt that in the absence of the Minister of Home Affairs and as some Members of the Committee had also engagements in connection with the visit of the President of the United States of America, it would not be possible for them to take up clause-by-clause consideration of the Bill today and that the sitting be adjourned.

5. The Committee then adjourned to meet at 10.30 hours on Tuesday, the 3rd January, 1978.

XI

Eleventh Sitting

The Committee sat on Tuesday, the 3rd January, 1978 from 10.30 to 11.00 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*.

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shrimati Mrinal Gore
7. Shri Kanwar Lal Gupta
8. Shri M. Kalyanasundaram
9. Shri Krishan Kant
10. Shri M. V. Krishanappa
11. Shri Mangal Deo
12. Shri Nathu Ram Mirdha
13. Shri Ragavalu Mohanararangam
14. Dr. V. A. Seyid Muhammad
15. Shri Narendra P. Nathwani
16. Shri Gauri Shankar Rai
17. Shri Daulat Ram Saran
18. Shri Jagannath Sharma
19. Shri C. M. Stephen
20. Shri Hukam Deo Narain Yadav

Rajya Sabha

21. Shri Sunder Singh Bhandari
22. Shri Bipinpal Das
23. Shri S. W. Dhabe
24. Shri Vithal Gadgil
25. Shri Bhupesh Gupta
26. Shri K. A. Krishnaswamy
27. Shri G. Lakshmanan
28. Shri N. G. Ranga
29. Shri Rabi Ray
30. Shri D. P. Singh
31. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee deliberated upon the procedure to be adopted for clause-by-clause consideration of the Bill with a view to ensure that the consideration of the Bill was expedited and completed as early as possible so that the Report could be presented to the House on the first day of the Budget Session (1978).

3. The Committee felt that with a view to expedite and conclude consideration of the Bill an attempt should be made to arrive at consensus on the controversial provisions of the Lokpal Bill, 1977 viz., inclusion of the Members of Parliament, Chief Ministers of States, Ministers of the Union Territories and Members of the Legislative Assemblies of such Territories etc. in clause 2 of the Bill and definition of 'misconduct' provided in clause 3 of the Bill.

4. The Committee also felt that in the absence of the Minister of Home Affairs (Shri Charan Singh), who was still busy with the visit of the President of the United States of America, it would not be possible for them to take decisions on the said issues and, therefore, decided to postpone clause-by-clause consideration of the Bill.

The sitting of the Committee scheduled to be held at 15.00 hours to-day, the 3rd January, 1978 was accordingly cancelled.

5. The Committee then adjourned to meet at 10.30 hours on Wednesday, the 4th January, 1978.

XII**Twelfth Sitting**

The Committee sat on Wednesday, the 4th January, 1978 from 10.30 to 12.00 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS**Lok Sabha**

2. Shri Dilip Chakravarty
3. Shri R. D. Gattani
4. Shri Kanwar Lal Gupta
5. Shri Ram Jethmalani
6. Shri M. Kalyanasundaram
7. Shri Krishan Kant
8. Shri M. V. Krishanappa
9. Shri Madhu Limaye
10. Shri Mangal Deo
11. Shri Nathu Ram Mirdha
12. Dr. V. A. Seyid Muhammad
13. Shri Narendra P. Nathwani
14. Shri Gauri Shankar Rai
15. Shri Daulat Ram Saran
16. Shri B. Shankaranand
17. Shri Jagannath Sharma
18. Shri K. Suryanarayana
19. Shri Hukam Deo Narain Yadav
20. Shri Charan Singh

Rajya Sabha

21. Shrimati Margaret Alva
22. Shri Sunder Singh Bhandari
23. Shri Bipinpal Das
24. Shri S. W. Dhabe
25. Shri Devendra Nath Dwivedi
26. Shri Vithal Gadgil
27. Shri Bhupesh Gupta
28. Shri G. Lakshmanan
29. Shri N. G. Ranga
30. Shri Rabi Ray
31. Shri Sawaisingh Sisodia
32. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)**

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee continued further deliberation upon the Procedure to be followed for clause-by-clause consideration of the Lokpal Bill, 1977. As there was no agreement forthcoming on the controversial provisions of the Bill, the Committee authorised the Chairman to have consultations with the members of the Committee with a view to arrive at a consensus thereon which would facilitate taking decisions at the time of clause-by-clause consideration of the Bill.

Accordingly clause-by-clause consideration of the Bill was postponed and the sitting scheduled to be held at 15.00 hours today the 4th January, 1978 was cancelled.

3. The Committee decided to hold their next round of sittings on Monday and Tuesday, the 30th and 31st January, 1978 to take up clause-by-clause consideration of the Bill.

4. The Committee then adjourned.

XIII

Thirteenth Sitting

The Committee sat on Monday, the 30th January, 1978 from 10.30 to 11.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Dilip Chakravarty
3. Shri R. D. Gattani
4. Shrimati Mrinal Gore
5. Shri Kanwar Lal Gupta
6. Shri Hari Vishnu Kamath
7. Shri B. C. Kamble
8. Shri Krishan Kant
9. Shri M. V. Krishanappa
10. Shri Madhu Limaye
11. Shri Mangal Deo
12. Shri Nathu Ram Mirdha
13. Shri Ragavalu Mohanarangam
14. Dr. V. A. Seyid Muhammad
15. Shri Narendra P. Nathwani
16. Shri Saugata Roy

17. Shri Sasankasekhar Sanyal
18. Shri Daulat Ram Saran
19. Shri Jagannath Sharma
20. Shri K. Suryanarayana
21. Shri Hukam Deo Narain Yadav
22. Shri Charan Singh

Rajya Sabha

23. Shrimati Margaret Alva
24. Shri Sunder Singh Bhandari
25. Shri Bipinpal Das
26. Shri Vithal Gadgil
27. Shri Bhupesh Gupta
28. Shri G. Lakshmanan
29. Shri N. G. Ranga
30. Shri Rabi Ray
31. Shri Sawaisingh Sisodia
32. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. At the outset, the Chairman informed the Committee that as per decision of the Committee taken at their last sitting he had held discussion with a representative group of Members of the Committee with a view to arriving at a consensus on the controversial provisions of the Bill. But unfortunately, even there no agreement was forthcoming. In view of this, he stated, it was now for the whole Committee to sort out the differences and arrive at a consensus.

3. At 11.00 hours, the Committee observed two minutes' silence in memory of those who gave their lives in the struggle for India's freedom.

4. The Committee then held further discussion on the said controversial issues. The Committee were of the opinion that there was no point in taking up clause-by-clause consideration of the Bill unless there was consensus on the controversial issues. The Committee felt that further consideration of the Bill be postponed and further extension of time for presentation of the report may be asked for. In the meantime attempts may continue to be made by all members including the Minister of Home Affairs to arrive at a consensus.

5. The Committee decided to meet at 10.30 hours on Tuesday, the 31st January, 1978 to take a decision on their future course of action. Accordingly, the sitting scheduled to be held today at 15.00 hours was cancelled.

6. The Committee then adjourned to meet again at 10.30 hours on the 31st January, 1978.

XIV

Fourteenth Sitting

The Committee sat on Tuesday, the 31st January, 1978 10.30 to 11.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shri M. Kalyanasundaram
7. Shri Hari Vishnu Kamath
8. Shri B. C. Kamble
9. Shri Mangal Deo
10. Shri Nathu Ram Mirdha
11. Shri Ragavalu Mohanarangam
12. Dr. V. A. Seyid Muhammad
13. Shri Narendra P. Nathwani
14. Shri Saugata Roy
15. Shri Sasankasekhar Sanyal
16. Shri Daulat Ram Saran
17. Shri Jagannath Sharma
18. Shri Hukam Deo Narain Yadav

Rajya Sabha

19. Shrimati Margaret Alva
20. Shri Sunder Singh Bhandari
21. Shri Bipinpal Das
22. Shri Vithal Gadgil
23. Shri Bhupesh Gupta
24. Shri G. Lakshmanan
25. Shri Rabi Ray
26. Shri D. P. Singh
27. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee after some deliberations decided to ask for an extension of time for presentation of their report. Considering the quantum of unfinished work, the Committee felt that it may not be possible to present their report during the Budget Session and so it may have to be presented in the monsoon session. However, the Chairman was authorised to fix the exact date for the presentation of the report in consultation with the Minister of Home Affairs.

The Committee authorised the Chairman and, in his absence, Shri H. V. Kamath to move necessary motion in this behalf in the House on the 20th February, 1978.

3. The Committee also authorised the Chairman to fix the date and time of the next sitting to be held during the Budget Session in consultation with the Minister of Home Affairs.

4. The sitting scheduled to be held to-day at 15.00 hours was accordingly cancelled.

5. The Committee then adjourned.

XV

Fifteenth Sitting

The Committee sat on Wednesday, the 29th March, 1978 from 15.00 to 15.30 hours.

PRESENT

Shri N. G. Ranga—*In the Chair*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri R. D. Gattani
5. Shrimati Mrinal Gore
6. Shri Kanwar Lal Gupta
7. Shri Hari Vishnu Kamath

8. Shri Mangal Deo
9. Shri Gauri Shankar Rai
10. Shri Sasankasekhar Sanyal
11. Shri Daulat Ram Saran
12. Shri Jagannath Sharma
13. Shri C. M. Stephen
14. Shri Hukam Deo Naraiyan Yadav
15. Shri Charan Singh
16. Shri Narendra P. Nathwani

Rajya Sabha

17. Shrimati Margaret Alva
18. Shri A. R. Antulay
19. Shri Bipinpal Das
20. Shri S. W. Dhabe
21. Shri Devendra Nath Dwivedi
22. Shri G. Lakshmanan
23. Shri Rabi Ray
24. Shri D. P. Singh
25. Sawaisingh Sisodia
26. Shri Mahadeo Prasad Verma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S Peri-Sastri—*Joint Secretary and Legislature Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao, Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. The Committee were informed that the Chairman was held up due to some urgent preoccupations at Patna and would not be able to attend the sitting of the Committee.

3. In the absence of the Chairman, Shri N. G. Ranga was elected as the Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

4. After some discussion, the Committee decided to adjourn without transacting any business.

5. The Committee authorised the Chairman to fix the date and time for holding the next sitting.

6. The Committee then adjourned.

XVI

Sixteenth Sitting

The Committee sat on Monday, the 17th April, 1978 from 15.00 to 16.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Somnath Chatterjee
3. Shri R. D. Gattani
4. Shrimati Mrinal Gore
5. Shri Ram Jethmalani
6. Shri B. C. Kamble
7. Shri Mangal Deo
8. Shri Narendra P. Nathwani
9. Shri Gauri Shankar Rai
10. Shri Jagannath Sharma
11. Shri Hukam Deo Narain Yadav
12. Shri Charan Singh

Rajya Sabha

13. Shrimati Margaret Alva
14. Shri A. R. Antulay
15. Shri Bipinpal Das
16. Shri Devendra Nath Dwivedi
17. Shri Vithal Gadgil
18. Shri Bhupesh Gupta
19. Shri G. Lakshmanan
20. Shri N. G. Ranga
21. Shri Rabi Ray
22. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. At the outset, some members of the Committee pointed out that the observations made by the Prime Minister in Lok Sabha on the 20th February, 1978 during the course of debate on the motion seeking extension of the time for presentation of the report of the Joint Committee amounted to an aspersion on the Committee and its members and desired that the Committee's views in this regard may be conveyed to the Prime Minister by the Chairman.

The Home Minister stated that Committee should not take this view and the remarks of the Prime Minister were not meant to hurt the feelings of the members.

The Chairman observed that he had already talked to the Prime Minister in this connection and the Prime Minister had explained that he did not mean any reflection or aspersion on the Committee or its members. It seemed that he only wanted to explain that Government was keen for the expeditious enactment of the proposed legislation.

The matter, thereafter, was not pursued further.

3. The Home Minister (Shri Charan Singh), who attended the sitting, requested the indulgence of the Committee to permit him to have the Committee as he has to proceed to Lucknow by 15.30 hours plane on some urgent work in public interest and thereafter he left.

4. The Committee then held general discussion on some of the controversial aspects of the Bill.

5. The Committee adjourned to meet at 15.00 hours on Tuesday, the 18th April, 1978.

XVII

Seventeenth Sitting

The Committee sat on Tuesday, the 18th April, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shrimati Mrinal Gore
3. Shri Ram Jethmalani
4. Shri Krishan Kant
5. Shri Mangal Deo
6. Shri Nathu Ram Mirdha
7. Shri Narendra P. Nathwani
8. Shri K. Suryanarayana

Rajya Sabha

9. Shrimati Margaret Alva
10. Shri Bipinpal Das
11. Shri Devendra Nath Dwivedi
12. Shri Vithal Gadgil
13. Shri Bhupesh Gupta

14. Shri G. Lakshmanan
15. Shri N. G. Ranga
16. Shri Rabi Ray
17. Shri Sawaisingh Sisodia
18. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)**

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary*
2. Shri R. C. Misra—*Additional Secretary*
3. Shri G. P. Kalra—*Under Secretary.*

2. In the absence of the Minister of Home Affairs (Shri Charan Singh) who could not attend the sitting because of his being occupied on some urgent work of public importance in Uttar Pradesh, the Committee could not take up clause-by-clause consideration of the Bill.

3. The Committee, however, continued to hold general discussion on some of the controversial aspects of the Bill.

4. The Committee authorised the Chairman to fix the date and time for the next sittings.

5. The Committee then adjourned.

XVIII

Eighteenth Sitting

The Committee sat on Friday, the 28th April, 1978 from 15.00 to 15.45 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri Dilip Chakravarty
3. Shri R. D. Gattani
4. Shri M. Kalyanasundaram
5. Shri Hari Vishnu Kamath
6. Shri B. C. Kamble
7. Dr. V. A. Seyid Muhammad
8. Shri Balasaheb Vikhe Patil

9. Shri Daulat Ram Saran
10. Shri K. Suryanarayana
11. Shri Hukam Deo Narain Yadav

Rajya Sabha

12. Shrimati Margaret Alva
13. Shri S. W. Dhabe
14. Shri Vithal Gadgil
15. Shri Bhupesh Gupta
16. Shri G. Lakshmanan
17. Shri N. G. Ranga
18. Shri Sawaisingh Sisodia

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. At the outset, the Committee were informed that the Minister of Home Affairs (Shri Charan Singh) was ill and admitted into All India Institute of Medical Sciences and as such it would not be possible for him to attend this sitting as well as the next sittings, if proposed to be held in the near future.

3. The Committee felt that in the absence of the Minister of Home Affairs it would neither be possible nor desirable to take up clause-by-clause consideration of the Bill and, therefore, decided to postpone it for the present.

4. The Committee also felt that in view of the above, it would not now be possible for them to finalise the report and present it by the 12th May, 1978 as stipulated by the House. The Committee, therefore, decided to ask for further extension of time for presentation of the report by the last day of the first week of the next Session. The Committee also approved the memorandum to be circulated to members of Lok Sabha on behalf of Chairman—giving reasons for extension of time for presentation of the report—as per annexure.

5. The Committee authorised the Chairman and in his absence, Shri M. Kalyanasundaram to move necessary motion in the House on the 12th May 1978.

6. The sitting fixed for Saturday, the 29th April, 1978 was cancelled.

7. The Committee then adjourned.

ANNEXURE

Lok Sabha

JOINT COMMITTEE ON THE LOKPAL BILL, 1977

--Memorandum giving reasons for extension of time for presentation of the Report--

The Joint Committee on the Lokpal Bill, 1977 was constituted on a motion adopted by Lok Sabha on the 1st August, 1977 and concurred in by Rajya Sabha on the 3rd August, 1977. The Committee were asked to report to the House by the 14th November, 1977.

2. The Committee have been granted two extensions of time for presentation of the report—the first extension was granted on the 14th November, 1977 upto the 20th February, 1978 and the second extension was granted on the 20th February, 1978 upto the last day of the current Budget Session.

3. The Committee have held 18 sittings so far; of these the Committee have held 4 sittings after the last extension granted on the 20th February, 1978.

4. The Committee were keen to adhere to the time-schedule indicated by the House on the 20th February, 1978, but regret that on account of the members being pre-occupied with the Budget Session and certain other circumstances known to the House, it could not make much progress in the finalisation of the report. In view of this, the Committee, at their sitting held on the 28th April, 1978, felt that it would be possible for them to present their report by the 12th May, 1978.

5. The Committee have, therefore, decided to ask for further extension of time for presentation of the report by the last day of the first week of the next Session.

NEW DELHI:

SHYAMNANDAN MISHRA,

*Chairman,**Joint Committee on the Lokpal Bill*

XIX**Nineteenth Sitting**

The Committee sat on Thursday the 8th June, 1978 from 11.00 to 13.00 hours and again from 15.00 to 17.10 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin

3. Shri R. D. Gattani

4. Shri Ram Jethmalani

5. Shri Hari Vishnu Kamath

6. Shri B. C. Kamble
7. Shri Krishan Kant
8. Shri M. V. Krishanappa
9. Shri Mangal Deo
10. Shri Nathu Ram Mirdha
11. Shri Narendra P. Nathwani
12. Shri Gauri Shankar Rai
13. Shri Saugata Roy
14. Shri Daulat Ram Saran
15. Shri Jagannath Sharma
16. Shri K. Suryanarayana

Rajya Sabha

17. Shrimati Margaret Alva
18. Shri A. R. Antulay
19. Shri Sunder Singh Bhandari
20. Shri Bipinpal Das
21. Shri S. W. Dhabe
22. Shri Bhupesh Gupta
23. Shri G. Lakshmanan
24. Shri N. G. Ranga
25. Shri N. K. P. Salve
26. Shri Sawaisingh Sisodia
27. Shri V. V. Swaminathan
28. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF
PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri M. Prasad—*Secretary*
2. Shri R. C. Misra—*Additional Secretary*
3. Shri G. P. Kalra—*Under Secretary.*
2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.
3. At the outset, the Chairman welcomed the new Members Sarvashri N. K. P. Salve and V. V. Swaminathan.

4. The Committee then held general discussion both in the forenoon and afternoon session on some of the controversial provisions of the Bill viz. (i) inclusion of Members of Parliament within the definition of "public man" and (ii) the definitions of the terms "corruption" and "misconduct" vis-a-vis the notices of amendments on the Bill given by the Government.

5. The Committee were generally of the view that the Members of Parliament should not, in the first instance, be subjected to any extraneous authority for their actions as Members of Parliament. The complaints, if any, against them might be routed through the Presiding Officers of the respective Houses of Parliament. The Presiding Officer, on receipt of the complaint, might examine it and, if, after having regard to the nature of the complaint made, the provisions of Article 105 of the Constitution and all the circumstances of the case, found it fit for investigation by the Lokpal, he might do so. No publicity should be given to any complaint made till it had been conclusively proved. Any premature publicity might be treated a criminal offence.

6. The Committee were also generally of the opinion that the concept of "corruption" and "misconduct" for Members of Parliament and other public men should not be the same. The definition of the terms "corruption" and "misconduct" should be made more streamlined and limited to the abuse of his position as a Member of Parliament for undue pecuniary gains and should be precisely defined in the Bill itself.

7. The Committee then adjourned to meet again at 11.00 hours on Friday, the 9th June, 1978.

XX

Twentieth Sitting

The Committee sat on Friday, the 9th June, 1978 from 11.00 to 13.35 hours and again from 16.00 to 18.25 hours.

PRESENT

Shri Syamnandan Mishra—*Chairman*

MEMBER

Lok Sabha

2. Shri R. K. Amin
3. Shri R. D. Gattani
4. Shri Hari Vishnu Kamath
5. Shri B. C. Gamble
6. Shri Krishan Kant
7. Shri M. V. Krishanappa
8. Shri Mangal Deo
9. Shri Nathu Ram Mirdha
10. Shri Narendra P. Nathwani
11. Shri Gauri Shankar Rai
12. Shri Jagannath Sharma
13. Shri K. Suryanarayana

Rajya Sabha

14. Shri A. R. Antulay
15. Shri Sunder Singh Bhandari
16. Shri Bipinpal Das
17. Shri S. W. Dhabe
18. Shri Bhupesh Gupta
19. Shri G. Lakshmanan
20. Shri N. G. Ranga
21. Shri N. K. P. Salve
22. Shri Sawaisingh Sisodia
23. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee held further general discussion both in the forenoon and afternoon Sessions on some of the controversial provisions of the *viz.* (i) inclusion of Chief Ministers within the definition of "public man" and (ii) the "competent authority" in the case of Prime Minister *vis-a-vis* the notices of amendments given by the Government.

4. The Committee were generally of the view that as the Chief Ministers were answerable to their respective legislatures and the State Legislatures, as per opinion of the Attorney-General of India, were competent to legislate on the subject under item 45 in List III (Concurrent List) of the Constitution of India, it would not be desirable to bring them within the purview of the proposed legislation.

However, if the Committee so felt, a general recommendation might be made in the report to the effect that the Government might urge upon the State Governments to bring the Chief Ministers within the purview of the Lokayukt Acts, where enacted, and to enact similar legislation where the State Governments have not done so. In fact it was Committee's belief that the example set at the Centre would be followed in the States.

During the course of discussion on the said controversial issues, the Committee also considered whether the top-ranking civil servants viz. Secretaries, Additional Secretaries, Joint Secretaries and the Directors attached to the various Ministries/Departments of the Government of India should be brought within the jurisdiction of the proposed Lokpal.

The Committee were generally of the view that since the proposed Bill provided only for enquiries into allegations of misconduct against "public men" and of corruption at "higher political level", it would not be within the competence of the Committee to suggest such an amendment to the provisions of the Bill which would go beyond the scope of the Bill.

However, if the Committee so felt, a general recommendation in this behalf might be made in the Report that Government, in the light of experiences gained during the working of the present provisions, might examine if it was necessary in the interest of the main object of the Bill to bring forward an amending Bill to cover public servants.

6. Discussion on the controversial provision relating to "competent authority" in the case of Prime Minister was not concluded.

7. The Committee then adjourned to meet again at 11.00 hours on Saturday, the 10th June, 1978.

XXI

Twentyfirst Sitting

The Committee sat on Saturday, the 10th June, 1978 from 11.00 to 13.15 hours and again from 15.00 to 17.45 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri R. D. Gattani
4. Shri Ram Jethmalani
5. Shri Hari Vishnu Kamath
6. Shri B. C. Kamble
7. Shri Krishan Kant
8. Shri M. V. Krishanappa
9. Shri Mangal Deo
10. Shri Nathu Ram Mirdha
11. Shri Narendra P. Nathwani
12. Shri Daulat Ram Saran
13. Shri Jagannath Sharma
14. Shri K. Suryanarayana
15. Shri Hukam Deo Narain Yadav

Rajya Sabha

16. Shri A. R. Antulay
17. Shri Sunder Singh Bhandari
18. Shri Bipinpal Das
19. Shri S. W. Dhabe
20. Shri Bhupesh Gupta
21. Shri G. Lakshmanan
22. Shri N. G. Ranga
23. Shri Rabi Ray
24. Shri Sawaisingh Sisodia
25. Shri V. V. Swaminathan
28. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNCIL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

(DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee held further general discussion both in forenoon and afternoon sessions on some of the controversial provisions of the Bill *vis-a-vis* the amendments given by the Government.

4. The Committee resumed further general discussion on the question of the "competent authority" in the case of Prime Minister left inconclusive on 9-6-1978.

The Committee were generally of the view that as the role of competent authority under the provisions of the proposed Bill was to examine and suggest action on the findings or Report of the Lokpal on the complaint; it would not be in conformity with the principles of jurisprudence and natural justice and apparently would look odd if the Prime Minister was made the "competent authority" for the complaints against himself. It might even be embarrassing to the Prime Minister if he were to act as judge of action in his own case.

After considering the various alternatives, the Committee were generally of the view that since the Council of Ministers including the Prime Minister was primarily responsible to Lok Sabha, the Speaker might be made as the "competent authority" in the case of the Prime Minister.

5. The Committee then held further general discussion on some other controversial provisions of the Bill viz. (i) on the question of enquiries being made on the allegations of misconduct against public men for the duration of five years preceding the commencement of the proposed Act and (ii) punishment for false and frivolous complaints.

The Committee were generally of the opinion that the existing provisions relating to enquiries being conducted on the complaints of misconduct for the preceding five years from the commencement of the Act were a salutary one on balance of considerations of various factors.

The Committee were generally of the view that in order to check filing of frivolous or vexatious complaints, a provision for punishment of imprisonment for maximum period of one year, apart from forfeiture of a sum of one thousand rupees required to be deposited with the complaint, might be provided in the Bill.

6. The Committee were also generally of the opinion that in a case where the complaint was successful in proving the complaint filed by him; the costs incurred by him might be reimbursed to him. The Committee also felt that it should be examined from the legal point of view whether Lokpal could recommend a reward to the complainants where the complaints came out true.

7. The Committee further decided to hold discussion on the provision regarding "Appointment of Lokpal" at their next sitting.

8. The Committee then decided to hold their next series of sittings on Friday, the 30th June, Saturday, the 1st July and if necessary, on Sunday, the 2nd July, 1978 to have further discussion on the few remaining issues and take up clause-by-clause consideration of the Bill.

9. The Committee then adjourned.

XXII

Twentysecond Sitting

The Committee sat on Friday, the 30th June, 1978 from 10.30 to 13.30 hours and again from 15.30 to 17.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shrimati Mrinal Gore
7. Shri Ram Jethmalani
8. Shri B. C. Kamble

9. Shri Krishan Kant
10. Shri M. V. Krishanappa
11. Shri Mangal Deo
12. Shri Nathu Ram Mirdha
13. Dr. V. A. Seyid Muhammad
14. Shri Narendra P. Nathwani
15. Shri Gauri Shankar Rai
16. Shri Saugata Roy
17. Shri Sasankasekhar Sanyal
18. Shri Daulat Ram Saran
19. Shri B. Shankaranand
20. Shri Jagannath Sharma
21. Shri C. M. Stephen
22. Shri Hukam Deo Narain Yadav

Rajya Sabha

23. Shrimati Margaret Alva
24. Shri A. R. Antulay
25. Shri Sunder Singh Bhandari
26. Shri Bipinpal Das
27. Shri Devendra Nath Dwivedi
28. Shri Vithal Gadgil
29. Shri Bhupesh Gupta
30. Shri G. Lakshmanan
31. Shri N. G. Ranga
32. Shri Rabi Ray
33. Shri N. K. P. Salve
34. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

Legislative Counsel

1. Shri R. V. S. Peri Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(*Department of Personnel & Administrative Reforms*)

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset the Chairman read out the relevant extracts from the Minutes of the 19th, 20th and 21st sittings of the Joint Committee held on the 8th, 9th and 10th June, 1978 respectively, outlining the general view of the Committee on the following controversial points:—

- (1) Inclusion of Members of Parliament under the purview of the Bill.
- (2) The competent authority in the case of Members of Parliament.
- (3) Definition of the terms "corruption" and "misconduct".
- (4) Exclusion of Chief Ministers from the purview of the Bill.
- (5) Inclusion of Civil Servants (Secretaries etc.) under the purview of the Bill.
- (6) Competent authority in the case of Prime Minister.
- (7) Enquiries on the allegations of misconduct against public men for the duration of five years preceding the commencement of the proposed Act.
- (8) Deterrent punishment for frivolous complaints.

4. The Committee thereafter held general discussion both in the forenoon and afternoon sessions on some of the controversial provisions of the Bill viz. (i) Appointment of Lokpal; and (ii) Number of Lokpals to be appointed.

5. The Committee were generally of the view that no qualification should be laid down for appointment of Lokpal. As regards machinery for appointment of Lokpal the Committee felt that different shades of opinion in the Houses should be consulted in the appointment of Lokpal. The provision might, therefore, be made that the Chairman of the Council of States and the Speaker of the House of the People might consult the Leaders of Parties and Groups in the respective Houses before expressing their views to the President.

6. Discussion on the controversial provision relating to number of Lokpals to be appointed was not concluded.

7. The Committee then adjourned to meet again at 10.30 hours on Saturday, the 1st July, 1978.

XXIII

Twentythird Sitting

The Committee sat on Saturday, the 1st July, 1978 from 10.30 to 13.40 hours and again from 15.30 to 17.30 hours.

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee

5. Shri R. D. Gattani
6. Shrimati Mrinal Gore
7. Shri B. C. Kamble
8. Shri Krishan Kant
9. Shri M. V. Krishanappa
10. Shri Nathu Ram Mirdha
11. Dr. V. A. Seyid Muhammad
12. Shri Narendra P. Nathwani
13. Shri Balasaheb Vikhe Patil
14. Shri Gauri Shankar Rai
15. Shri Saugata Roy
16. Shri Sasankasekhar Sanyal
17. Shri Daulat Ram Saran
18. Shri B. Shankaranand
19. Shri Jagannath Sharma
20. Shri C. M. Stephen
21. Shri K. Suryanarayana
22. Shri Hukam Deo Narain Yadav

Rajya Sabha

23. Shrimati Margaret Alva
24. Shri A. R. Antulay
25. Shri Sunder Singh Bhandari
26. Shri Bipinpal Das
27. Shri Vithal Gadgil
28. Shri Bhupesh Gupta
29. Shri G. Lakshmanan
30. Shri N. G. Ranga
31. Shri Rabi Ray
32. Shri N. K. P. Salve
33. Shri Sawaisingh Sisodia
34. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS)

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed further discussion on the remaining controversial provision of the Bill relating to the number of Lokpals to be appointed, left inconclusive on the 30th June, 1978.

The Committee were generally of view that there should be only one Lokpal. If there were more than one Lokpal, the competent authority would be confronted at times with more than one opinion and sometimes with majority and minority opinions which would make his task difficult to examine and process the matter with a view to taking action thereon.

4. The Committee, before taking up clause-by-clause consideration of the Bill, discussed the procedure to be adopted for consideration of the notices of amendments to the various clauses of the Bill received from the Members and decided that:—

(i) the amendments tabled by Sarvarshri Jagannath Sharma, R. K. Amin and R.D. Gattani, which were based on the general agreement arrived at by the Committee on the controversial provisions of the Bill at their sittings held on the 8th, 9th, 10th and 30th June and 1st July, 1978 respectively, and carried the general backing of the Government, might be considered first; and

(ii) thereafter, if the members felt it necessary, they might move their amendments as and when respective clauses and amendments thereon were taken up.

5. The Committee then took up clause-by-clause consideration of the Bill.

6. *Clause 2.*—The following amendments were accepted:—

(i) Page 1, line 8,
for "2" substitute "2. (1)".

(ii) Page 1, for lines 9 to 14, substitute—

"(i) 'competent authority' in relation to a complaint against a public man, means the competent authority in relation to such complaint determined in accordance with the provisions of sub-section (2) and the rules made thereunder,"

(iii) Page 1,

for lines 15 and 16,

substitute "(b) 'Complaint' means a complaint alleging that a public man has, while holding any of the offices referred to in clause (g) committed misconduct,".

(iv) Page 1, after line 16, insert—

“(bb) ‘complaint against a legislator’ means a complaint alleging misconduct by a person who, at the time of the alleged commission of such misconduct was a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;”

(v) Page 2, line 10,

for “who is or has been”

substitute “who holds or has held the office of—”

(vi) Page 2, omit line 14.

Further consideration of the clause was held over.

7. The Committee rose at 13.40 hours and reassembled at 15.30 hours.

Further clause-by-clause consideration of the Bill was resumed.

8. Clause 3.—The following amendments were accepted:—

(i) Pages 2 and 3, for lines 25 to 45 and lines 1 to 4 respectively, substitute—

Misconduct
by a public
man.

3. (1) A public man, other than a legislator, commits misconduct—

(a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or

(b) if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself or for any of his relatives or associates any valuable thing or pecuniary advantage, or

(c) if any act or omission by him constitutes corruption.

(2) A legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself directly or indirectly any valuable thing or pecuniary advantage.

(3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in sub-section (1) or, as the case may be, sub-section (2), by another public man also commits misconduct.

Explanation.—For the purposes of this section,—

(a) “Associate” in relation to a public man includes any person in whom such public man is interested;

(b) “legislator” means a person who is a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union

territory without being a member of the Council of Ministers for such Union territory;

(c) A person shall be deemed to be relative of another if, and only if,—

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated below:—

1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Son's son.
7. Son's daughter.
8. Daughter's husband.
9. Daughter's son.
10. Brother (including step-brother).
11. Sister (including step-sister).

(ii) Page 3, *omit* lines 5 to 15.

The clause, as amended, was adopted.

9. The Committee decided that instead of meeting on Sunday, the 2nd July, 1978 as decided earlier, they might sit on Monday, the 3rd July, 1978 from 10.30 to 13.00 hours and again from 15.00 to 17.00 hours and continue clause-by-clause consideration of the Bill.

10. The Committee then adjourned.

XXIV

Twentyfourth Sitting

The Committee sat on Monday, the 3rd July, 1978 from 10.30 to 13.30 hours and again from 15.00 to 17.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

Lok Sabha

2. Shri R. K. Amin
3. Shri Somnath Chatterjee
4. Shri R. D. Gattani
5. Shri Kanwar Lal Gupta
6. Shri Ram Jethmalani
7. Shri B. C. Kamble
8. Shri Krishan Kant

9. Shri Mangal Deo
10. Shri Nathu Ram Mirdha
11. Dr. V. A. Seyid Muhammad
12. Shri Narendra P. Nathwani
13. Shri Balasaheb Vikhe Patil
14. Shri Daulat Ram Saran
15. Shri Jagannath Sharma
16. Shri K. Suryanarayana
17. Shri Hukam Deo Narain Yadav

Rajya Sabha

18. Shri A. R. Antulay
19. Shri Sunder Singh Bhandari
20. Shri S. W. Dhabe
21. Shri Vithal Gadgil
22. Shri Bhupesh Gupta
23. Shri G. Lakshmanan
24. Shri N. G. Ranga
25. Shri Sawaisingh Sisodia
26. Shri Mahadeo Prasad Varma

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

REPRESENTATION OF THE MINISTRY OF HOME AFFAIRS
(*Department of Personnel and Administrative Reforms*)

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Joint Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed further clause-by-clause consideration of the Bill.

4. Clause 2.—[vide para 6 of the minutes dated the 1st July, 1978].—The following amendments were accepted:

Page 2, after line 24, insert—

“(2) The competent authority in relation to a complaint under this Act shall be determined in accordance with the provisions of the Table below with reference to the office held by the person

against whom such complaint is made at the time of the commission of the misconduct alleged to have been committed by such person in the complaint.

Provided that where during the period any misconduct is alleged to have been committed by a person in a complaint, such person held successively different offices, the competent authority shall be determined with reference to the last of the offices held by him during that period.

THE TABLE

Sl. No.	Office	Competent authority
1.	Prime Minister	The Speaker of the House of the People.
2.	Any other Member (including a Deputy Minister) of the Council of Ministers for the Union.	The Prime Minister.
3.	Member of Parliament who is not a Member of the Council of Ministers for the Union.	The Chairman of the Council of States in the case of a Member of that Council and the Speaker of the House of the People in the case of a Member of that House and, where the complaint is against such Speaker, the Deputy Speaker of the House of the People.
4.	Any other Office	Such authority as may be prescribed".

The Clause, as further amended, was adopted.

5. *Clause 4*.—The following amendment was accepted:—

Page 3, after line 21, insert—

"Provided that before expressing his view, the Chairman of the Council of States or the Speaker of the House of the people may consult the leaders of various Parties and Groups in the Council of States or as the case may be in the House of the People."

The clause, as amended, was adopted.

6. *Clauses 5 and 6*.—These clauses were adopted without any amendment.

7. *Clauses 7 and 8*.—These clauses were adopted without any amendment.

8. *Clause 9*.—The following amendments were accepted:—

(i) Page 5, line 25.

for "The Lokpal shall have"

substitute "The Lokpal shall appoint"

(ii) Page 5, after line 41, insert—

"(3A) in the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and

the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Lok pal."

The clause, as amended, was adopted.

9. *Clause 10.*—The following amendment was accepted:—

Page 6, after line 5, insert—

"(1A) The Lokpal may inquire into any act of conduct of any person other than a public man in so far as he considers it necessary so to do for the purpose of his inquiry into any allegation of misconduct against a public man".

The clause, as amended, was adopted.

10. *Clause 11.*—The following amendment was accepted:—

Page, 6,

omit lines 16 to 19.

The clause, as amended, was adopted.

11. *Clause 12.*—The following amendments were accepted:—

(i) Page 6, after line 31, insert—

"Explanation.—For the purpose of sub-section, public servant means,—

(a) any person who is a member of a Defence service or of a civil service of the Union or a State or of an all-India service or holds any post connected with Defence or any civil post under the Union or a State;

(b) any person in the service or pay of a local authority, a corporation established by or under a Central Provincial or State Act or a Government company, as defined in section 617 of the Companies Act, 1956".

1 of 1966.

(ii) Page 6, after line 31, insert—

"(1A) Notwithstanding anything contained in sub-section (1), a complaint against a legislator shall be made to the competent authority (hereafter in this section referred to as 'the appropriate authority') concerned and that authority may, having regard to the nature of the allegations made in the complaint, the provisions of article 105 of the Constitution or, as the case may be, section 16 of the Union Territories Act, 1963 and all the circumstances of the case, refer the complaint to the Lokpal, or deal with, or make orders for dealing with, the complaint in such manner as that authority may deem fit."

20 of 1966.

(iii) Page 6, line 36.

after "sub-section (3)"

insert "or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit".

- (iv) Page 6, line 40,
for "the Lokpal"
substitute "the Lokpal or, as the case may be, the appropriate authority".
- (v) Page 6, line 44,
for "Lokpal"
substitute "Lokpal or, as the case may be, the appropriate authority".
- (vi) Page 6, line 46,
for "Lokpal",
substitute "Lokpal or, as the case may be, the appropriate authority".
- (vii) Page 7, line 4,
for "Lokpal".
substitute "Lokpal or the appropriate authority".
- (viii) Page 7, line 6,
for "Lokpal".
substitute "Lokpal or the appropriate authority".

The clause, as amended, was adopted.

12. *Clause 13.*—The clause was adopted without any amendment.

13. *Clause 14.*—The following amendment was accepted:—

Page 7, after line 36, insert—

"Provided that an inquiry in respect of a complaint against a legislator shall be conducted only in camera."

The clause, as amended, was adopted.

14. *Clauses 15 and 16.*—These clauses were adopted without any amendment.

15. The Committee rose at 13.30 hours and reassembled at 15.00 hours. Further clause-by-clause consideration of the Bill was resumed.

16. *Clause 17.*—The following amendments were accepted:—

- (i) Page 9, line 35,
for "can be"
substitute "has been"
- (ii) Page 9, lines 39 and 40,
for "can be"
substitute "have or has been"
- (iii) Page 9, line 42, add at the end—

"and inform the complainant and the concerned public man about this having made the report".

(iv) Page 10, for lines 1 to 13,

substitute "(3) If the Lokpal is satisfied with the action taken, or proposed to be taken, on the basis of his report under clause (b) of sub-section (1), he shall close the case under information to the complainant, the public man and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the President.

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.

(5) As soon as may be after, and in any case not later than ninety days from, the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause the same together with an explanatory memorandum to be laid before each House of Parliament.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament, or, as the case may be, either House of Parliament is not in session shall be excluded."

The clause, as amended, was adopted.

17. Clause 18.—In view of the amendment relating to "competent authority" in the case of Prime Minister made in clause 2 of the Bill, the provisions contained in this clause were redundant.

The clause was, therefore, not adopted.

18. Clauses 19 and 20.—These clauses were adopted without any amendment.

19. New Clause 20A.—The following new clause was adopted:—

Page 10, after line 39, insert—

"Penalty for disclosure of or publication of information in respect of complaints against legislators.

20A. (1) No complaint against a Legislator or any proceedings (whether by way of verification, inquiry or otherwise) in respect of such complaint or any information in respect of such complaint or proceedings (including any evidence furnished, collected or recorded in relation to such complaint or in the course of or for the purpose of such proceedings) shall be disclosed or published by any person—

(a) where such complaint has been referred to the Lokpal under clause (1A) of section 12, at any time before the dismissal of such complaint under clause (1) of section 13, or if the Lokpal conducts an inquiry into such complaint under section 14 at any time before he closes the case under clause (a) of sub-section (1) of section 17 or, as the case may be, before he makes a report in respect of the case under clause (b) of that sub-section;

(b) in any other case, before the competent authority concerned discloses or announces in the prescribed manner the findings in respect of the allegations made in such complaint:

Provided that nothing in this sub-section shall apply—

(a) to any disclosure for the purposes of this Act; or

- (b) to any disclosure or publication with respect to proceedings for any offence under this Act or any other law; or
- (c) to any disclosure or publication for such other purposes as may be approved by the competent authority concerned.

(2) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to six months, or with fine or with both.

(3) The provisions of this section shall have effect notwithstanding anything in any other section of this Act or in any other enactment."

20. *Clause 21.*—The clause was adopted without any amendment.

21. *Clause 22.*—The following amendment was accepted:—

Page 11, after line 47, insert—

"*Explanation*—For the purposes of this Section 'High Court' means the High Court within the jurisdiction of which the person convicted ordinarily resides or carries on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed."

The clause, as amended, was adopted.

22. *New Clause 22A.*—The following new clause was adopted:—

Page 12, after line 5, insert—

22A. (1) Every person who wilfully or maliciously makes any complaint which he knows or has reason to believe to be false under this Act shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to rupees three thousand.

Action
in case
false com-
plaint.

(2) No court, except a court of Session, shall take cognizance of an offence under sub-section (1).

(3) No such Court shall take cognizance of such offence except on a complaint in writing made by the Public Prosecutor at the direction of the Lokpal and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it.

(4) The Court of Session, on conviction of the person making false complaint, may award, out of the amount of fine, to the public man against whom such false complaint has been made such amount of compensation as it thinks fit.

(5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973."

2 of 1974.

23. *Clause 23.*—The following amendments were accepted:—

(i) Page 12, omit lines 6 to 9.

(ii) Page 12, lines 15 and 16,

omit "Where any additional functions are conferred on the Lokpal under sub-section (1), or"

The clause, as amended, was adopted.

24. *Clause 24.*—This clause was adopted without any amendment.

25. *New clause 24A.*—The following new clause was adopted:—

Page 12, after line 27, insert—

“Compensation or reward or both payable in certain cases to complainant.

24A. If the Lokpal is satisfied—

(a) that all or any of the allegations made in a complaint have or has been substantiated either wholly or partly; and

(b) that having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case the complainant deserves to be compensated or rewarded.

the Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Central Government shall pay the amount or amounts so determined to the complainant.”

26. *Clause 25.*—The following amendment was accepted:—

Page 12, lines 32-33,

for “No proceedings of the Lokpal shall be held bad for want of form and no proceedings”

substitute “No proceedings (other than the proceedings under section 22)”.

The clause, as amended, was adopted.

27. *Clause 26.*—The following amendment was accepted:—

Page 12, lines 40-41,

for “and the powers to close cases and make reports under section 17]”

substitute “the powers to close cases and make reports under section 17 and the powers under section 22].”

The clause, as amended, was adopted.

28. *Clauses 27 and 28.*—These clauses were adopted without any amendment.

29. *New Clause 29.*—The following new clause was adopted:—

Page 13, after line 40, insert—

“Consequential amendment of Act 60 of 1952.

29. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words “The appropriate Government may”, the words, brackets and figures “Subject to the provisions of sub-section (2) of section 10 of the Lokpal Act, 1978, the appropriate Government may” shall be substituted.”

30. *The Schedule.*—The Schedule was adopted without any amendment.

31. Clause 1.—The following amendment was accepted:—

Page 1, line 4,
for "1977"
substitute "1978"

The clause, as amended, was adopted.

32. *Enacting Formula*.—The following amendment was accepted:—

Page 1, line 1,
for "Twenty-eighth"
substitute "Twenty-ninth"

The Enacting Formula, as amended, was adopted.

33. *Long Title*.—The Long Title was adopted without any amendment.

34. The Committee authorised the Legislative Counsel to correct patent errors and also to carry out amendments of verbal and consequential nature in the Bill.

35. The Committee decided that—

- (i) the evidence tendered by the Attorney-General of India before the Committee on the 24th and 25th October, 1977 be laid on the Tables of both Houses of Parliament; and
- (ii) two copies of the memoranda containing comments/suggestions received from various Associations, Organisations, individuals etc. be placed in the Parliament Library, after the report had been presented, for reference by the Members of Parliament.

36. The Committee also decided to hold their next sitting at 15.30 hours on Wednesday, the 12th July, 1978 to consider and adopt their draft report.

37. The Chairman then drew the attention of the Members to the provisions contained in Direction 87 of the Directions by the Speaker regarding Minutes of Dissent.

38. The Chairman announced that the report of the Committee would be presented to Lok Sabha and laid on the Table of Rajya Sabha on Thursday the 20th July, 1978. The Minutes of Dissent, if any, might be sent after the report had been considered and adopted, to Lok Sabha Secretariat, so as to reach them by 13.00 hours on Tuesday, the 18th July, 1978.

39. The Committee then adjourned.

— — — — —

XXV**TWENTYFIFTH SITTING**

The Committee sat on Wednesday, the 12th July, 1978 from 15.30 to 17.00 hours.

PRESENT

Shri Shymnandan Mishra—Chairman

MEMBERS*Lok Sabha*

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri R. D. Gattani
5. Shrimati Mrinal Gore
6. Shri Kanwar Lal Gupta
7. Shri Ram Jethmalani
8. Shri B. C. Kamble
9. Shri Krishan Kant
10. Shri M. V. Krishanappa
11. Shri Mangal Deo
12. Shri Nathu Ram Mirdha
13. Dr. V. A. Seyid Muhammad
14. Shri Narendra P. Nathwani
15. Shri Gauri Shankar Rai
16. Shri Saugata Roy
17. Shri Daulat Ram Saran
18. Shri Jagannath Sharma
19. Shri C. M. Stephen
20. Shri K. Suryanarayana
21. Shri Hukam Deo Narain Yadav.

Rajya Sabha

22. Shrimati Margaret Alva
23. Shri A. R. Antulay
24. Shri Sunder Singh Bhandari
25. Shri Bipinpal Das
26. Shri S. W. Dhabe
27. Shri Devendra Nath Dwivedi
28. Shri Vithal Gadgil
29. Shri Bhupesh Gupta
30. Shri G. Lakshmanan
31. Shri N. G. Ranga
32. Shri V. V. Swaminathan
33. Shri Mahadeo Prasad Varma

Secretariat

Shri Y. Sahai—*Chief Legislative Committee Officer.*

Legislative Counsel

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Joint Secretary and Legislative Counsel.*

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS
(DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS)**

1. Shri M. Prasad—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

2. Shri S. D. Patil, Minister of State for Home Affairs, who is not a member of the Committee, attended the sitting with the permission of the Chairman under the proviso to Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Committee considered and accepted the following amendments of a drafting and consequential nature—suggested by the Legislative Counsel—which were required to be made in the Lokpal Bill, 1977, as amended, as a consequence of the amendments to certain provisions of the Bill already accepted by the Joint Committee:—

(i) *Clause 3(v) (b).—*

Page 3, line 32,

after "relatives or associates"
insert "directly or indirectly"

(ii) *Clause 8(1).—*

Page 6, after line 14,

add "Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People."

(iii) *Clause 22(b).—*

Page 14, omit lines 16—18.

(iv) *Clause 27(2).—*

Page 15, for lines 20--22, substitute.—

"(2) Save as otherwise provided in section 22, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed, or called in question, in any Court."

Clauses 3, 8, 22 and 27 as further amended, were adopted.

4. The Committee then considered and adopted the Bill, as amended.

5. The Committee also decided that the draft Report, as a consequence of further amendments of a drafting and consequential nature having been accepted, may be amended accordingly.

6. The Committee then considered and adopted the draft Report.

7. After the Report had been adopted by the Committee, the Chairman stated that during the course of the sitting he had received a letter dated the 12th July, 1978 from Shri S. D. Patil, Minister of States for Home Affairs regarding the views of the Government on certain provisions of the Bill, as amended by the Committee. The Chairman stated that the views of the Government were briefly as under:

- (a) The Chief Ministers, having regard to the provisions of the code of conduct for Ministers evolved many years ago and the recent judicial pronouncements made in the context of the Commissions of Inquiry Act, should be kept within the purview of the Bill.
- (b) The Speaker should not be the 'competent authority' in the case of the Prime Minister.
- (c) It is not appropriate to have, in the same legislation, separate definitions of the term 'misconduct' with varying scope notwithstanding that one category is vested with executive powers while another category is not.
- (d) Provision for 'secrecy of the proceedings before the Lokpal' should be common in respect of the inquiries against all categories of public men and the Lokpal should have discretion, whether to hold an inquiry in *camera* or in public.

Thereafter, some procedural objections were raised by members on placing of Government's views before the Committee at this stage for consideration. The Chairman, after hearing various points raised by the Members, observed that while the Committee at this stage, after the adoption of the Report could not take note of the Government views, he as part of his duty as Chairman, felt it necessary to place Government's views before the Committee for information. He also observed that Government had already ample opportunity in the Committee to put forth their views in the matter; and they would have similar opportunities in the House when the Bill, as amended by the Committee, came before the House for discussion.

8. The Chairman announced that the Minutes of Dissent, if any, may be sent to the Lok Sabha Secretariat by 13.00 hours on Tuesday, the 18th July, 1978.

9. The Committee authorised the Chairman and, in his absence, Shri Gauri Shankar Rai, to present the Report and lay the record of evidence on the Table of the House on Thursday, the 20th July 1978.

10. The Committee also authorised Shri Sunder Singh Bhandari and, in his absence, Shri G. Lakshmanan to lay the Report and the record of evidence on the Table of Rajya Sabha on the 20th July, 1978.

11. The Committee placed on record their appreciation for the assistance rendered by the Minister of State for Home Affairs (Shri S. D. Patil) during the course of their deliberations.

The Committee also placed on record their appreciation for the assistance rendered by the former Minister of Home Affairs (Shri Charan Singh) during the course of their deliberations.

12. The Committee also placed on record their appreciation for the co-operation and assistance rendered by the Legislative Counsels and the officers of the Ministry of Home Affairs.

13. The Committee also placed on record their appreciation and thanks to the officers and staff of the Lok Sabha Secretariat for the diligent help and valuable assistance rendered by them to the Committee in all matters.

14. The Chairman, while associating himself in thanking the above-mentioned officers, also thanked the Members of the Committee for extending their full co-operation to him in conducting the proceedings of the Committee in most congenial atmosphere.

15. The Members of the Committee also placed on record their high appreciation and thanks to the Chairman (Shri Shyamnandan Mishra) for very ably and impartially conducting the proceedings of the Committee and guiding their deliberations at various stages of the Bill.

16. The Committee then adjourned.
