CHAPTER VI

MODEL OMBUDSMAN SYSTEM :
LOKPAL AND LOKAYUKTA
In the fourth chapter an analysis of the previous four Lokpal Bills of 1968, 1971, 1977 and 1985 have been made. The 1985 Bill, however comprehensive, has evoked a good number of criticism. It is now necessary to look into these criticisms, find out its lacunae and on that basis suggest a model Ombudsman plan which may prove workable in the Indian political system.

The criticisms to which the Ombudsman scheme of the Lokpal Bill of 1985 have been subject are discussed below.

First, at the central level, the institution as envisaged in the last 1985 Bill covers only allegations against public functionaries. The Higher Civil Service personnel are excluded from the Lokpal's jurisdiction. Also in India there exist multiple channels of redressing grievances of citizens which very often create confusion and heavy drain on exchequer. Further, the last plan was too centralised and no steps have been taken for decentralization of the institution.

Another major point to be noticed is that the Government is planning to introduce Directorate of Public Grievance headed by a Secretary to Government. Necessarily,
it will defeat the purpose of Ombudsmanic system and it will be an additional machinery to the existing internal mechanism.

As regards the State Ombudsman systems, there is no uniform pattern as to structural and functional aspect. The Grievance redress machinery in the states is labelled variously as Lokpal, Lokayukta, Lok Ayuktha etc. These were created by Acts of legislatures. Sometimes, whims and caprices of certain Government work to liquidate the institution by annulling the Act and allowing the Ordinance to lapse. Side by side there is no uniform staffing pattern and procedure of investigation concerning receipt and disposal of grievances and allegations. Further, Ombudsmen of Rajasthan and Gujarat belong to a different pool and concern with allegation cases only. Over and above the institutions have no independent technical staff and they have to depend heavily on State Vigilance machinery for investigation into allegation cases.

The above inadequacies that affect the public grievance system are further aggravated by the systemic deficiencies of internal machinery for dealing with grievances and allegations. As discussed earlier it suffered

1. Ombudsman for Orissa and Gujurat is Lokpal; for Andhra Pradesh Lok Ayuktha, for other states is Lokayukta.

from procedural lapses and flaws, delayed disposal of cases and biased judgement as those who are complained against very often sit for judgement. As such the model integrated Lokpal at the Centre and Lokayukta in States also need as suggested, systemic reform of internal mechanism for proper redress of grievances.

Further, before suggesting a model external system of redressing grievances for the Indian political system it is worthwhile to consider whether the case for Lokpal at the Centre and Lokayukta in States are suitable from three angles:

1. Centre State-relations
2. Parliamentary Supremacy
3. Rule of Law

Moreover, it is necessary to consider if the integrated system will survive purposefully amidst vastness of India, the quantum of complaints, financial involvement that will accrue and the jurisdictional problems which the Ombudsman system will give rise to.

Centre-State Relations

The present plan of Lokpal, as envisaged by the Lokpal Bill, 1985, does not pose any stress as anticipated by ARC recommendations and 1977 plan. As already explained, under the ARC scheme the jurisdiction of Lokpal, extended to secretaries to Government and Ministers of the states and the scheme was objected to by the States as amounting to transgression of State autonomy. Likewise the Chief Ministers and Members of Legislative Assemblies of States
were covered by the later 1977 plan which was also objected to on the ground of infraction of states' autonomy.

In a centralized political system like Sweden, Norway, Denmark, New Zealand, and Britain, the problem of balance of Union-State relations does not arise. But in the Indian federation, with prevalent categorical division of powers between the Union and the constituent units, the problem is seriously viewed. Two views are put forth here. One, by ARC, that the problem can be set right by an amendment to the constitution. The other view is that under the provisions of Commission of Inquiries, Act, 1952, the centre is already empowered to look into allegations made against corrupt Ministers and Chief Ministers. As such the problem can be left to be tackled by the states which can pass appropriate enabling laws.

Parliamentary Supremacy over Administration:

Ombudsman in India, Lokpal and Lokayuktas, are necessarily instruments of Legislature. As an agency of Parliament it will, like other constitutional authorities, namely, Union Public Service Commission and Comptroller and Auditor General, assist the Parliament in exercising effective control over administration. So far, the institution remains as an allied wing of Parliament.
In a Parliamentary democracy it is the Prime Minister who is the real head of the Government. According to the essence of parliamentary system of Government, the Prime Minister and his colleagues in the Cabinet are both individually and collectively responsible to the Parliament. The Parliament is the proper forum to punish a Prime Minister for his acts of Commission and Omission. There should be no other authority except the President, the head of the State, to whom the Prime Minister should be legally responsible. Therefore, if the Prime Minister is brought within the purview of the Lokpal an adverse remarks of the latter on allegations against the Prime Minister would be very embarrassing to the Prime Minister who may resign although he enjoys the confidence of the Parliament. This will create a constitutional crisis.

It would be better, therefore, that in a Parliamentary system of government the Prime Minister is excluded from the purview of Lokpal and is left to remain accountable to the Parliament and through the Parliament to the people at large. If this is done the creation of an Ombudsman like the Lokpal will not be a challenge to the essence of a parliamentary system of government. For any erring Prime Minister, Parliament should remain the forum of accountability and ultimately the electorate which elects the Parliament.

Similarly, the Chief Minister of a State who is responsible to the Legislature elected by the people need
not be subjected to the purview of the Lokayukta as the Chief Minister is the head of an elected Government in the state. It is the legislature which is the proper forum either to support the Chief Minister's continuity in the office or to throw him out of office by disapproving of his policies and actions. By excluding the Chief Minister from the purview of Lokayukta the latter can function without violating the essence of Parliamentary government in the States.

Ministerial Responsibility and Civil Servants;

Further, connected with the problem of Parliamentary Supremacy other two issues can be analysed. First, whether Lokpal or Lokayuktas are empowered to inquire into allegations against Ministers. Second, whether Lokpal or Lokayukta can fix responsibility for wrong doings in administration upon Civil servants, who are protected by the "doctrine of ministerial responsibility". As regards the first question the ARC was in favour of empowering Lokpal or the Lokayuktas to inquire into allegations against Ministers. The ARC adduced the following reasons:

1. In the prevalent political ethos of the country cases of corruptions at the ministerial level must be dealt with.
2. The institution will inculcate a standard of efficiency, propriety and justice by dealing with cases effectively and expeditiously.
3. The end product of decision-making lies with the Minister or Secretary subject to his instructions.

4. Parliament is quite competent enough to deal with such cases of allegations by minister or officers under him. But the procedural paraphernalia is not within common man's reach, time consuming dilatory and effective in number of cases.

5. Appointment of Ombudsman - Lokpal and Lokayukta - is not derogatory and tarnishing the sacrosanct spirit of the constitution of India. And prevalent practices also exist to enquire into conduct of ministers by Inquiry Commissions under Inquiry Commissions Act 1952. Since more than three decades, if enquiry by Commissions of Inquiry does not violate the principle of Parliamentary supremacy, how Ombudsman can violate parliamentary supremacy.

In the above case action is taken under a statute of Parliament whereas Ombudsman acts as the agent of Parliament.

While inquiring into allegations against Ministers, the Ombudsman's jurisdiction cannot be so unfettered that it would violate the provisions of the Constitution. Just as courts are debarred from inquiring into the advice tendered by the Council of Ministers to the President at the Union level and to the Governor at the state level, so also the Ombudsman's jurisdiction cannot extend to an inquiry into the nature of such advice. It is important to note here that
the 1985 Bill was categorical in not authorizing the Lokpal to require information relating to proceedings of the Cabinet.

As regards civil servants under parliamentary government, ministers are responsible to the legislature for the acts of omission and commission of civil servants. This is so because all policy decisions are taken collectively by the Council of Ministers whereas in some cases the Minister takes the decision individually. The civil servants implement the decisions taken at the ministerial level and these decisions affect the citizens - the clientele of public administration. Moreover, civil servants pass orders under the provisions of delegation of power or subordinate legislation. As the administrative action is taken by both the Minister and the Secretary it is important to include both the functionaries into Lokpal or Lokayukta's purview to fix the responsibility for maladministration. Essentially, Ombudsman's role function does not vitiate the principle of ministerial responsibility. Though most of the actions are taken under the signatures of higher civil servants, their deletion from jurisdictional purview of Lokpal or Lokayuktas in States does not seem to be a sound principle. Making it imperative ARC's scheme, 1968, and 1971 Bills brought Higher Civil Service under Ombudsman's jurisdiction, unlike 1977 and 1985 plan.

On the whole, it can be argued that if adopted to Indian political system, Ombudsman will not violate
parliamentary norms. As an agent of Parliament or legislature, it is not incompatible with parliamentary principles and it does not neglect democratic traditions. Our constitution owed much to Britain, the mother of Parliament and Canada, federal state. In both parliamentary democracy, the institution operates successfully without infringing on norms of parliamentary system. As such no reason exists in India as a federal state or as a democratic system, in not adopting the Ombudsman institution for fear of withering away of parliamentary supremacy.

**Rule of Law**

The Ombudsman plan in India has also been assailed on legal grounds. The serious legal objection put forward by Mr. Justice P.B. Mukherji to the institution of Ombudsman in India is that it would violate rule of law. Essentially, as referred to by him, Lokpal and Lokayukta in India, are not only 'flamboyant' but also are dangerously pretentious; much too reminiscent of the 'benevolent despots'.

The arguments put forward by P.B. Mukherjee are:

1. Such an Ombudsman is not quite a Supreme Court or a High Court Judge. He only has pretentions of that

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Officer's conditions of service. Besides, on account of his proposed method of appointment, status and tenure he can not be responsible to Parliament or State Legislature. Inspite of this, he is supposed to be the watch-dog of erring ministers and officials.

(2) The setting up of the institution is not only impractical, but also goes against the "whole tenor and set up of the Indian Constitution". Again, it will make unwarranted readjustment of constitutional valves in relation to Parliament, State Legislatures and Judges of Supreme Court and High Courts.

(3) Consequently, this Ombudsman will be "the Super-Parliament", the "Super-legislature", the "Super-Minister" and "Super-Judge". And it will pave the way for bureaucratic tyranny, administrative chaos and confusion.

Apart from the aforesaid arguments Mr. Mukherjee opposed the creation of other parallel institutions competing with ordinary law courts. Apprehension was expressed by Mr. Mukharji, that the Ombudsman " is contrary to the basic spirit of the Indian Constitution.

4. See P.B. Mukharji, ibid, pp.411-13, Similar views were expressed by P.K. Tripathy in his evidence before the Joint Committee on the Lokpal and Lokayukta Bill,1968. See India Lok Sabha, Joint Committee on the Lokpal and Lokayukta Bill, 1968. Evidence (New Delhi, Lok Sabha Secretariat, March 1969), pp.94-108.
Unless one is prepared to throw the whole Indian Constitution, lock, stock and barrel, overboard an Ombudsman can not fit into the Indian Constitution. It will denigrate Indian Parliament and State Legislatures. Soon after the Ombudsman we will have to have an Ombudsman for the Ombudsman. The Ombudsman in India will be a new 'Star-chamber' with a different Indian instead of a Nordic name.

In repetitive terms he called this development as "Legal fancies and proliferation". Also he is sanguine of the fact that the Ombudsman will go the way as the numerous offices and myriad departments have gone. However, all of his argument can be squeezed to one point, that with 'prospective Ombudsman with vigilance commission, India has an unholly treaty to threaten the Rule of Law".

The apprehensions expressed by Justice Mukharjee that the functioning of the Ombudsman will violate Rule of Law do not appear valid. So far Ombudsman institutions have been successfully fitted into Commonwealth Parliamentary systems - New Zealand and Britain—championing the cause of Rule of Law tradition. Therefore, if introduced in India the ombudsman institution can operate within the framework of Rule of Law.

After discussing the suitability of the Ombudsman within the constitutional and political framework of India it is now necessary to consider certain other problems that might arise and raise doubts as to its viability in India.

Large Area and Vast Population and Quantum of Complaints.

Very often it is argued that Ombudsman institutions function well and effectively in countries with small size of population, as shown in the table No.6 : 1.

**TABLE NO.6:1**

**OMBUDSMAN AND COMPLAINTS RATIO ABROAD**

<table>
<thead>
<tr>
<th>Establishment</th>
<th>Population</th>
<th>Complaints</th>
<th>Compl. outstanding</th>
<th>Justified complainants</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENGLAND</td>
<td>1967</td>
<td>54.00</td>
<td>548</td>
<td>1.01</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>1962</td>
<td>2.50</td>
<td>1,135</td>
<td>44.5</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>1809</td>
<td>8.12</td>
<td>3,531</td>
<td>43.5</td>
</tr>
<tr>
<td>DENMARK</td>
<td>1955</td>
<td>4.96</td>
<td>1,275</td>
<td>25.7</td>
</tr>
<tr>
<td>CANADA Alberta</td>
<td>1967</td>
<td>1.63</td>
<td>815</td>
<td>49.3</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>1967</td>
<td>0.63</td>
<td>280</td>
<td>44.3</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>1970</td>
<td>0.77</td>
<td>297</td>
<td>38.6</td>
</tr>
<tr>
<td>Manitoba</td>
<td>1970</td>
<td>0.98</td>
<td>487</td>
<td>49.3</td>
</tr>
<tr>
<td>Quebec</td>
<td>1969</td>
<td>6.03</td>
<td>5,758</td>
<td>95.5</td>
</tr>
<tr>
<td>UNITED STATES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Iowa</td>
<td>1970</td>
<td>2.80</td>
<td>1,200</td>
<td>42.9</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1971</td>
<td>1.40</td>
<td>579</td>
<td>41.3</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1969</td>
<td>0.80</td>
<td>1,678</td>
<td>209.7</td>
</tr>
</tbody>
</table>

As such, the hypothesis goes, Ombudsman suits only countries with small population. Sweden, Denmark, Norway, New Zealand, Finland and Britain have only 8.12, 4.96, 3.7, 2.5 and 54 millions of population. India bears no comparison with these countries. India's population explosion has now touched the limit of 800 million. But the dependence of functioning on large number of people seems untenable, as it functions well in three of Indian states namely, Maharastra, Bihar, Uttar Pradesh respectively with 62.7, 69.8 and 110.9 millions of population.

Coupled with the size of the population, the quantum of public grievances comes to picture. To this question, Indian experience is limited as no Central Ombudsman has yet been instituted. However, to examine the viability of Lokpal, a guess work on the basis of experience abroad and on similar grievance handling machinery of India Commissioner for Public Grievance which existed in 1966-67 is called for. In developing countries the standard average figure of complaints

6. R.B. Jain also expressed the doubt whether the Ombudsman can work satisfactorily in a country like India with its immense size and population. See R.B. Jain, "The Ombudsman - A Super Administrator or a Grievance Man", Indian Journal of Public Administration., Vol.21, 1975, p.537.
TABLE NO.6:2

COMPARISON OF COMPLAINTS RECEIVED BY OMBUDSMAN IN DEVELOPED AND DEVELOPING COUNTRIES.

<table>
<thead>
<tr>
<th>Country</th>
<th>Population (000's 1980 or 1981)</th>
<th>Complaints Received 1980-81</th>
<th>Complaints per 100,000 in 1980-81</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed countries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Israel</td>
<td>3,780</td>
<td>7,326</td>
<td>193.8</td>
</tr>
<tr>
<td>Portugal</td>
<td>9,870</td>
<td>4,421</td>
<td>44.8</td>
</tr>
<tr>
<td>Sweden</td>
<td>8,290</td>
<td>3,484</td>
<td>42.0</td>
</tr>
<tr>
<td>Developing Countries</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiji</td>
<td>634</td>
<td>324</td>
<td>5.1</td>
</tr>
<tr>
<td>Mauritius</td>
<td>958</td>
<td>113</td>
<td>11.8</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>3,001</td>
<td>1,114</td>
<td>37.1</td>
</tr>
<tr>
<td>Trinidad &amp; Tobago</td>
<td>1,168</td>
<td>551</td>
<td>47.2</td>
</tr>
<tr>
<td>Tanzania</td>
<td>18,141</td>
<td>3,347</td>
<td>18.4</td>
</tr>
</tbody>
</table>


For 100,000 is 33.1. But in developed countries the average figure is 93.53 for 100,000 and in federating unit such as USA, Canada, West Germany, Australia and Switzerland it is 86.7 as shown in table No.6:2. And also the corresponding average figure for three Indian State Ombudsmen - Maharastra, Bihar and U.P. - is 2.6. During the year 1980-81, in

7. For analysis, cases of three developed countries Israel, Portugal & Sweden, five developing countries such as Fiji, Mauritius, Papua New Guinea, Trinidad Tabago & Tanzania and for federal states The US- two Units, Canada-two units, West Germany, Australia and Switzerland-one unit each are taken.

developing countries, grievances are likely to be on the increase due to social planning and state-building activities. But figures show that they are quite low in comparison to developed countries. Probably, factors such as political culture, political socialisation, communication and low public opinion are responsible for the meagre response to protect one’s right. So also in India, the average complaint figure in case of Bihar, Maharashtra for 1980-81 year is quite low i.e. 5577 for population of 243.375 million. To compute it into national figure for population of 800 million it amounts to 18,332 for a year. In this connection it might be important to remember that during fourteen months period (February 1966 to March 1967), the Commissioner for public Grievances in the Government of India received a total of 1420 complaints. And offices and various Ministries and Departments of the Government of India received a total of 68,440 complaints for the said period. But in later part of 1980s or each 1990s the number of grievances is likely to escalate and with it public consciousness is likely to grow. Critics, therefore, contend that the "Indian Ombudsman would either soon become immobilized beneath an avalanche of complaints from the country’s huge population and the vastness of governmental machinery or it would have to expand its staff so greatly that it would become merely another bureaucracy.

The Administrative Reforms Commission, while recommending the setting up of such an institution, examined this aspect of vastness of population and magnitude of complaints. It expressed that these features need not hinder the Government from establishing the Lokpal in India. The Lokpal then will consider the cases after due consideration of the genuinness of the complaints and it will suggest the other remedies if available for redress. It will recommend to see internal mechanism with stipulation of time limit. For a small grievance of non-supply of street-light, naturally, one should not have recourse to Ombudsman but to the appropriate administrative authority. Primarily, to refrain from being overwhelmed by the volume of complaints, it will investigate or inquire into cases in which injustice or maladministration exists. A functional division between Ombudsman and other grievance handling functionaries is warranted to deal with citizens' grievances. Further, collegial Ombudsman, instead of one, may be adopted for the purpose. Therefore, to make the institution viable and adaptable to Indian system, some institutional and procedural modifications are needed.

Financial Implication

No doubt the institution of Lokpal at the centre and Lokayuktas in the states will incur high cost for its
establishment. As to this it is to be marked that heavy amounts have been spent on Inquiry Commissions and other Ombudsman like machinery such as Vigilance Commission, Commissioner for Scheduled Castes and Scheduled Tribes, Commissioner for Linguistic Minorities and Minorities Commission. Besides confusion and overlapping of powers, they put heavy drain on public exchequer. Further, instead of horizontal expansion, vertical expansion of grievance handling machinery is suggested in instituting integrated system of Lokpal and Lokayukta with abolition of other multi-channels of redressing grievances. Apart from promoting national integration in a secular way, the institution of Lokpal and Lokayukta with its decentralizing provisions will put less strain on the public exchequer. This will enable the institution to be suitable for India as far as finance is concerned. On successful operation it will provide hidden savings to the financial condition of the country over a period of time.

Jurisdictional Problems

Significant hazards of implementing the Lokpal plan lie in overlapping of jurisdiction of both Vigilance

11. For example, as pointed out earlier total expenditure on Inquiry Commissions during Janta Regime was Rs.109.63 lakhs. Times of India, Nov. 24, 1978, p. 5.
Commission and the Lokpal; because both are vested with the power to inquire into allegations. M.P. Jain and G.B. Sharma both advocated the retention of Vigilance Commission equipped with adequate powers, making it independent from executive. According to them the Lokpal's jurisdiction will be confined to public grievances. But it would be more systematic to have a collegial model in which Vigilance Commission with its technical staff will merge. As such the allegation cases will be dealt by Lokpal Allegation. Obviously the problem is neutralized and it seems a better arrangement than to retain Vigilance Commission.

Another facet of the problem is concerned with interruption of Lokpal's jurisdiction by intervention of courts in India. To extricate from this problem 1985 plan candidly provided that no proceedings or decisions of Lokpal though it is quasi-judicial shall be liable to be challenged, quashed or called in question in any Court.


13. See clause 28(2), The Lokpal Bill, 1985. However, Lokpal's power to try cases summarily and to provide sanctions for disclosure of information & false complaints is not absolute. The persons convicted under the provisions 20 of the Lokpal Bill 1985 can appeal to High Courts. And the person convicted under provision 21 and 22 of the Bill can appeal to Supreme Court against such conviction within thirty days. Also see R.L. Narsimham, "The Indian Ombudsman Proposal: A critique", Law & the Commonwealth (Occasional Papers), Fourth Commonwealth Law Conference, New Delhi, 1971, pp. 33-35.
So jurisdictional problem, as apprehended by R. L. Narsimhan, relating to disruption of Lokpal's work by frequent court review of its jurisdiction became fall flat.

In consequence, an important question arises. Supreme Court is highest Court of the land, and it can grant special leave to appeal from any judgement, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in the territory of India. Under Section 28 of 1985 Lokpal Bill all courts are debarred from looking into the findings and recommendations of Ombudsman. Because here the decisions of Lokpal or Lokayukta are not adjudicatory but recommendatory in nature and as such not fit for appeal. But so far as punitive power of Lokpal or Lokayukta is concerned, as explained earlier the grant of appeal is allowed. As such there exists no overlapping jurisdiction between court system and Ombudsman system in India. The functioning of the Ombudsman does not constitute any challenge to the status and power of Supreme Court as the highest court of the land.

Recommendatory Character of Ombudsman

Another area as to its suitability to India relates to the advisory character of its office. Only

it can recommend action to be taken by the Government. In case of non-action on the part of Government the Lokpal can do nothing except being a silent observer. Thus it is feared that the institution will be only an addition to the existing advisory machineries such as Union Public Service Commission. In its report for the year 1986-87 to Lok Sabha U.P.S.C. points out that during the period 1985-86 and 1986-87, on 45 cases of advice Government took no action. While the corresponding figures for the last 35 years is 57; the figures for the period 1986-87 is 30\textsuperscript{15}. However, the institution of Lokpal is yet to be constituted at the centre. As such its role function is hypothetical in nature. On its working and after review of its work if the Parliament so finds it can confer more powers upon the Lokpal. Further, the efficient functioning of the Lokpal might evoke increasing cooperation of the government in taking appropriate action on the recommendations of the Lokpal.

Model Ombudsman System

Thus, in considering the case of Lokpal and Lokayukta for centre and states respectively, it is clear that it will be compatible with the Indian Political System. The hazards or impediments on the way of its creation as noted above are not so convincing and plausible.

\footnote{15. See Indian Express, September 6, 1988, p.4.}
Further, the institution will not be handicapped from the angles of vastness of the country, and jurisdictional confusion. As such it is imperative on our part to suggest a model integrated Lokpal and Lokayukta system keeping in view the essence of the functions of Ombudsman in Scandinavian countries, the major recommendations of ARC and the Lokpal Bill 1985. So to tackle the problem of redress of public grievances as well as of investigation of allegations of corruption an over-haul of the entire redress machinery is called for. For that matter the institutions of 'Lokpal' at the centre and Lokayukta at the state level are to be created by a constitutional amendment incorporating a new Part XIVB after Part XIVA of the constitution and by inserting two new Articles 323C and 323D dealing with Lokpal for Union and Lokayukta for States respectively. Concomitantly, the provisions for special Officer for Scheduled Castes and Scheduled Tribes, Art 338 and Special Officer for linguistic minorities Art 350B may be repealed for the purpose. Moreover, the institutions of two specialized bodies, namely, the Minorities Commission, and the Scheduled Castes and Scheduled Tribes Commission are to be abolished. Besides, the Central Vigilance Commission and the State Vigilance Commission are to be integrated respectively into constitutional authority of the Lokpal of the Union and Lokayuktas of the States. The pattern then will be uniform; it will enhance credulity among citizens. Therefore, the necessity arises to analyse the
### Chart 6: Lokpal Grievance

**Chief Lokpal Coordinates the Whole Function**

LOKPAL's Secretariat

**Lokpal Allegation**

(central merger of Vigilance Commission)

**Functions**

1. **Public Functionary**
   - Membership of Parliament or Assembly
   - Office of Profit
   - Connection with political party
   - Business or practice any profession

2. **In incumbents** should not be members of Parliament or assemblies, hold office of profit, be connected with a political party, carry on business or practice any profession.

3. **Judicial Qualification**
   - Sixty-five years or five years earlier, whichever is earlier.
   - No reappointment.

4. **Removal**
   - President for proved misbehaviour and incapacity after inquiry by Chief Justice of Supreme Court & Parliament approval.
   - Appointed by President in consultation with a Committee of Chief Justice of Supreme Court & Two Other Judges and Chief Lokpal.

5. **Jurisdiction**
   - Covers grievances or allegations.
   - Role
   - Procedure
   - Person or matter
   - Ground on which it is entertained.

### Miscellaneous Provisions

- Power to pass grievance information from news reports or otherwise.
- Power to punish frivolous reports.
- Integrated collegial system of Ombudsman for Indian Federation to meet volumes of complaints.
- Lokpal to direct to seek other channels of grievances with fixed time limit for disposal.
- Lokpal to appoint 'Grievance Correspondents' for decentralisation.
- On valid complaint, Lokpal will fix the final processing fee and shall have power to reduce or waive it.
- Lokpal to decide the budget. Start for its secretariat with approval of President.
- Central Vigilance Commission merged with Lokpal Allegation with investigating staff.
- Lokpal to decide its budget. Start for its secretariat with approval of President.
- Directive power to remedy defects in legislation and administrative practice.
- Lokpal's power to recover fees.
- Lokpal's power to investigate from news reports or otherwise.
- Power to punish frivolous reports.
- Model Lokpal plans also contain certain other provisions of the Lokpal Bill.
provisions of the model Lokpal and Lokayukta plans for Union and states respectively.

Salient Features of the Proposed Ombudsman in India.

Union People's Commissioner (UPC) or the Lokpal.

There shall be Union People's Commissioner or the Lokpal consisting of three members - Chief Lokpal, Lokpal Grievances and Lokpal Allegation to investigate into complaints involving grievances and allegations respectively against public functionaries. Obviously, the office of Lokpal is a collegial body with a functional division or task and equal status. And they will handle less important cases individually and most important cases collectively. All have equal powers and jurisdiction. Only Chief Lokpal shall function as Co-ordinator of the institution for the proper discharge of functions catering to the need involving gigantic and multifarious complaints.

16. The New Zealand Ombudsman Act of 1962, designed on the line of manifesto of the National Party 1960, was replaced by new Act on 26, June 1975 and created Collegial Ombudsman. Also 1975 provisions of Swedish Act provided for the same type of Ombudsmanic system. Sir Guy Powels highlighting the troika system of Ombudsman expressed: "The deliberate choice for the extended jurisdiction of a collegiate system of Ombudsman-each one exercising full jurisdiction and being equal, and having the division of functions settled almost wholly by agreement is a better solution than attempting to build hierarchical structure with authority stemming from the Chief Ombudsman down through successive layers". See R.K. Dhawan, ibid., p.170-171.
Appointment

The President shall appoint Chief Lokpal on the recommendation of a Committee consisting of Chief Justice of India, and other two judges of the Supreme Court of India. Although the involvement of Speaker of Lok Sabha, Vice-Chairman of Rajya Sabha, Leader of Opposition in Lok Sabha, advice of Prime-Minister and recommendations of Parliamentary Committee on Petition in the appointment procedure could be appropriate yet it would be conflicting, dilatory and such a method would be in-capable of arriving at consensus or unanimous decision. As judges are less likely to be influenced by regional, political and personal considerations due to professional ethics, their association with appointment, suggested, seems appropriate and objective. Moreover, the Lokpal Allegations are appointed by the President, on the advice of the Chief Lokpal and the Committee.

Qualifications:

The Chief Lokpal shall possess the qualifications to be a Judge of the Supreme Court.\(^{17}\) Lokpal for Grievance

\(^{17}\) Article 124(3) provides that a person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years as an advocate of a High Court or of two or more such courts in succession; or

(c) is, in the opinion of the President, a distinguished Jurist.
and Chief Lokpal should be a man of repute from social field. And the Lokpal Allegation should be an able administrator for at least 10 years, or qualified to be central vigilance Commissioner. Further stipulations are

(1) They shall not be Members of Parliament or a Members of a Legislature of any State. In case they are so they must resign such membership;

(2) They shall not hold any office of trust or profit (other than the office of Lokpal);

(3) They should not be connected with any political party; if they are, they should sever their party connections;

(4) They should not carry on any business or practise any profession before they enter upon their office.

Term of Office and Other Conditions of Service of Lokpal:

(a) The Lokpals as appointed shall hold office for a term of five years from the date on which each of them enters upon his office or till sixty-five years whichever is earlier. To allow the person to continue after sixty-five years will naturally bring slowness in performance and decrease in efficiency.  

(b) To ensure independence on ceasing office the Lokpal shall not hold office for a second term and shall be ineligible for further employment to any office under the Government of India or the Government of a State.

18. For Parliamentary Commissioner in the U.K., the retirement age is 65 years.
(c) Lokpals may resign their office addressing a letter to the President or they may be removed from office in the manner prescribed below.

(d) The salary, allowances and pension payable to, and all other conditions of service of the Lokpal shall be the same as those of the Chief Justice of India.

Removal of Lokpal

The Lokpals shall not be removed from their office except by an order made by the President on the ground of proved misbehaviour and incapacity. The procedure would this require an inquiry to be made by the Chief Justice of India, or by any other judge nominated by him in this behalf. Also Lokpals are to be informed of the charges against them and must be given reasonable opportunity of being heard in respect of those charges. However, on obtaining the report of investigation if a resolution is passed by a majority of not less than two-thirds of the total membership of each House of Parliament, then only the President shall pass order for such removal. Stringent procedure here is prescribed only to ensure dignity and independence of the institution.

Budget and Staff of Lokpal

The Chief Lokpal for the purpose of assisting him in the discharge of his function, may appoint three Secretaries for each member of Lokpal and such other Joint Secretaries, Deputy Secretaries and Vigilance staff
and employees for the Lokpal's Secretariat as may be necessary. The Chief Lokpal has to prepare the budget subject to approval of the President. Moreover, they may seek the services of any Officer, employee or investigating agency of the Central or State Governments with the concurrence of the Government concerned.

Jurisdiction of Lokpal

The Lokpal shall investigate into complaints involving grievances and allegations against public functionaries. Here, public functionaries include Council of Ministers of the Union (Cabinet Ministers, Ministers of State, Deputy Ministers, Parliamentary Secretaries), Higher Civil Servants and Members of Parliament. In this regard three problems arise. First, whether Prime Minister is to be included under the jurisdiction of Lokpal or not. It may be noted here that it is unwise to include Prime Minister as that will give rise to unstable political situations, and will affect the essence of parliamentary system and political culture. Those who are staunch advocates of keeping the Prime Minister outside the jurisdiction of the Lokpal, argue that the proper forum to deal with allegation or grievance against him would be the Parliament. Parliament, through a vote of no-confidence, can put possible checks on the Prime Minister. But the exponents of the other view, that is, retaining Prime Minister

19. Grievances, allegations are defined at page of the thesis.
within the jurisdiction of the Lokpal, contend that charges of corruptions could never be treated as vote of no confidence. Moreover, under one party dominant system and political surroundings it is very difficult to get permission from the Presiding Officers to table the complaints involving allegations against Prime Minister. Therefore, there is no reason as to why the Prime Minister cannot be subjected to investigation by the Lokpal. The Lokpal Bill of 1977 did provide for inclusion of the Prime Minister within the jurisdiction of the Lokpal while the Bills of 1969 and 1971 and 1985 were identical in keeping the Prime Minister outside the purview of the Lokpal. But in order to make the Model Plan feasible under a parliamentary system of government it would be sound to keep the Prime Minister outside the purview of the Lokpal.

A second important question arises as to whether Lokpals shall have the power to investigate into the conduct of Members of Parliament. On the one hand, it is argued that as Lokpal is a creature of Parliament, it should not have the authority to look into corruptions of Members of Parliaments. It will appear quite anomalous.

20. Mr. P.K. Tripathy, a professor of Law and P. Mohan Kumamangalam, renowned lawyer and Parliamentarian, in their evidence before the Joint Select Committee on the Lokpal and Lokayukta Bill, 1968, took strong exceptions to the exclusion of the Prime Minister from the jurisdiction of the Lokpal. For details refer to the Evidence of the Joint Select Committee on the Lokpal and Lokayukta Bill, 1968 (New Delhi, 1969), pp. 98 and 256 respectively.
Further, on reporting to Parliament Members of Parliament are the Judges for their own case. On the other hand, it is contended that if allegations against Ministers, who are selected from among the Members of Parliament, are subjected to the jurisdiction of the Lokpal, there is no reason why the individual members of Parliament be kept outside the Lokpal's purview.

Another controversial question relates to the inclusion of Higher Civil Service within the jurisdiction of the Lokpal. The 1985 plan did not specifically prohibit the Lokpal to look into cases of corruptions by Members of Parliaments and Higher Civil Service. According to Clause 8(2) of the 1985 Bill the Lokpal could inquire into any act or conduct of any person other than public functionary, and as such its scope of jurisdiction was quite extensive. In short, the higher civil service should be included within the purview of the Lokpal.

Special Provisions:

Any model plan for Ombudsman raises several issues such as the quantum of complaint fee, the mode of filing complaints, power to initiate complaints suo moto, integrated power over state functionaries, power of giving directions and so forth. The resolution of these issues calls for special provisions in the model plan which would be assuming legal character through legislation. These special provisions must find a place in the Act which would incorporate the model plan and cover the following matters.
Complain fee:

The 1985 Bill required a complainant to deposit Rs.1000/- while filing the complaint. Since this amount is heavy it is suggested that a sum of Rs.300/- may be deposited at first along with the complaint. If the complaint is found to be worthy of entertainment, the Lokpal should have the power to determine the amount to be deposited for processing the complaint for investigation. Whatever the case, it should not exceed rupees three thousand, otherwise the character of 'Cheap Justice' will be vanished. As such Lokpal have the power to lessen or waive altogether the deposit fee and processing fee for sufficient reasons. To this end the waiving of deposit fee and lessening altogether is a praise worthy provision of 1985 plan.

Complaint:

To debate the question, as to entertaining of complaints by telephone, anonymous letters for fear of intimidation and reprisals or to insist legal formalities. Certainly, insisting on legal paraphernalia (affidavit to that effect) will hinder the role of Lokpal as common man's watch-dog, serving the needs of relatively well-off sections of the system.\(^{21}\) However to check the floodgates of

frivolous complaints legal formalities are highly desirable. And to extend the help to toiling masses another provision, suo moto power of investigation is to be included. It will enable the institution to take cases from anonymous letters, telephone calls etc. if he thinks fit.

Suo Moto Power

It is highly desirable that Lokpal should be given ample scope to enquire into complaints on its own will from the reports of News Papers or otherwise. Also accompanying provision shall be made for the punishment of frivolous reporting and propagating "yellow journalism".

Integrated Power over State Functionary

Lokpal shall have the powers to investigate into allegations of corruptions of State functionaries only if it is controversial, and referred by Lokayukta to that effect.

Directive Power of Lokpal

The Lokpal should have the power of providing directives to (1) Government and to (ii) aggrieved public.

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22. To discharge the functions of Ombudsman in a positive manner, suo moto power has been provided in (a) Alberta's Ombudsman Act, 1967 (Section 11); (b) Hawaii's Ombudsman Act, 1967 (Section 7(b)); (c) Canadian Parliamentary Commission Bill (Clause 7(1)).

23. Otherwise here means, anonymous letters, telephone calls if Lokpal feels that they are worth investigating True, anonymous complaints can not be pursued in usual manner, but at times they can not be just avoided.
As to the former, the annual reports should contain desired corrective recommendations for legislative and administrative reforms to meet the social needs. Not only they are confined to formulation of policies but also to implementation\textsuperscript{24}. So far as the latter is considered to lessen the burden, it may recommend the appropriate channel of redress to the public if thinks fit, and fix the time limit for appropriate authority to take necessary action.

\textit{Action in case of frivolous complaints and disclosure of information.}

Provisions relating to providing sanctions against frivolous complaints and disclosure of information and publication of false information in respect of complaints and proceeding under 1985 Bill, are judicious. But only a little amount of flexibility and discretion are to be provided to the jurisdiction of Lokpal. As such the Lokpal shall be given discretion ranging from one year to three years of imprisonment and rupees three thousand to fifty thousand of fine depending upon nature of frivolity and economic status of the accused. So far as second is concerned, it is to be retained, as there is no case of manipulation in publication and disclosure. However, its power is not only recommendatory but here it is adjudicatory.

\begin{footnotesize}
\begin{enumerate}
\item Outstanding example of the power is that of France, where Government accepted the revolutionary law of 1978 giving the public a legal right of access to administrative records.
\end{enumerate}
\end{footnotesize}
But it will not affect constitutionality as there is provisions for appealing to Supreme Court within the thirty days of such conviction, namely for discloser of frivolous complaints. But other judgement besides punitive ones as aforesaid, should not be reviewed by the Supreme Court.

Decentralization of the Office.

Setting up of regional Lokpal office will incur a lot of expenses besides lack of control over subordinate regional personnel. To do away with the problem, a number of 'Grievance Correspondents' are to be appointed to receive, screen initial complaint and educate common people to that direction.

Drop out fee.

Another provision, that should be inserted is that complaintant is required to deposit drop out fee of rupees one hundred if he requests to drop a case. It will check whimsical complaint of today and tomorrow's withdrawal.

25. Appointment of 'Local correspondents' for Ombudsman is made in French system. In Canada through frequent visits outside State Capitals decentralisation of office is made.

26. Drop out fee of two dollars area required to pay by the clients when complaint is dropped in New Zealand.
UNIFORM PATTERN BY AMENDMENT TO CONSTITUTION
INSERTION OF NEW PART XIV B & ARTICLE 323 D

CHIEF LOKAYUKTA

* QUALIFIED TO BE A JUDGE OF STATE HIGH COURT.
* APPOINTED BY GOVERNOR ON THE ADVICE OF CHIEF JUSTICE & TWO JUDGES OF H.C. AFTER PRESIDENTIAL APPROVAL

CONDITION OF SERVICE
* LOKAYUKTA'S TERM IS FIVE YEARS OR SIXTY FIVE YEARS WHICHEVER IS EARLIER.
* EQUAL STATUS LIKE CHIEF JUSTICE OF STATE H.C.
* INELIGIBLE FOR REAPPOINTMENT

COMPLAINT & ITS PROCEDURE
* ANY PERSON OTHER THAN A PUBLIC SERVANT CAN MAKE COMPLAINT
* COMPLAINT SHALL BE IN PRESCRIBED FORM WITH DEPOSIT FEE OF UPTO RS 200 AT FIRST HAND & AFFIDAVIT
* PROCESSING FEE UPTO RS 1000/- SUBJETED TO WAIVE & LOWER SUM FOR SUFFICIENT REASON

PROCEDURE IS:
* SPEEDY  
* INFORMAL  
* CONFIDENTIAL  
* INEXPENSIVE

LOKAYUKTA SHALL ENTERTAIN LETTER COMPLAINT AS VALID FROM SPECIFIED SECTIONS OF PEOPLE.

POWERS OF LOKAYUKTA

ACTION OR INFORMATION
* LOKAYUKTA SHALL HAVE POWER TO PREPARE BUDGET AND RECRUIT ITS STAFF FOR LOKAYUKTA SECRETARIAT
* LOKAYUKTA SHALL HAVE SUO MOTO POWER OF INVESTIGATION FROM NEWS PAPER REPORT & OTHER-WISE TO PUNISH FOR FRIVOLOUS REPORT

DIRECTIVE POWER TO REMEDY DEFECTS IN LEGISLATION AND ADMINISTRATIVE PROCEDURE
* LOKAYUKTA SHALL DIRECT TO SEEK OTHER CHANNELS OF GRIEVANCES & FIX TIME LIMIT FOR DISPOSAL
* LOKAYUKTA SHALL HAVE POWER TO REFER CASES TO LOKPAL
* LOKAYUKTA SHALL RECOMMEND SANCTIONS AND DISCIPLINARY MEASURES TO BE TAKEN BY GOVERN

MISCELLANEOUS PROVISIONS

EXPENDITURE ON LOKAYUKTA IS CHARGED ON CONSOLIDATED FUND OF STATE
STATE VIGILANCE COMMISSION MERGED WITH LOKAYUKTA ALLEGATION WITH INVESTIGATING STAFF

POWER OF SEARCH & SEIZURE
* POWER TO PUNISH FOR 1) FRIVOLOUS COMPLAINT, 2) DISCLOUSER OF INFORMATION 3) DISREPUTE TO LOKAYUKTA OR INTERUPTION OF INVESTIGATION 4) TO TRY CERTAIN OFFENCES SUMMARILY. (APPEAL CAN BE MADE TO COURTS SPECIFIED AGAINST SUCH CONVICTIONS).

APPOINTMENT OF LOCAL 'GRIEVANCE CORRESPONDENTS'.
* COLLEGIAL SYSTEM OF LOKAYUKTA TO MEET VOLUMES OF COMPLAINTS
* A TOKEN DROP OUT FEE TO CHECK WHIMSICAL FILING & WITHDRAWAL,
* CAN NOT SEEK INFORMATION PREJUDICIAL TO SECURITY, DEFENCE, INTERNATIONAL RELATION OF INDIA/STATE OR INVESTIGATION OR DETECTION OF CRIME OR INVOLVE DISCLOSURE OF PROCEEDING OF CABINET OR CABINET COMMITTEE.

CHIEF LOKAYUKTA

COORDINATION THE FUNCTIONS OF

LOYAL OATH OF NEW PART XI B & ARTICLE 323 D
Model Lokayuktas for States

Although ten states in India have enacted relevant legislations for instituting the office of the Lokpal other states are yet to enact appropriate legislation. Hence a model plan for the institution of Lokayukta is worth considering.

General Features:

(i) There shall be State Peoples Commissioner or Lokayukta for each State to investigate into grievances and allegations against public functionaries.

(ii) The Lokayukta institution should be plural consisting of (i) Chief Lokayukta for dealing with grievance and (ii) Lokayukta Allegation. State Vigilance Commission will merge with its investigating staff with the Lokayukta Allegation. It will function in the states where there are provisions for High Courts.

(iii) Chief Lokpal (Grievance) and Lokpal Allegation will investigate less important related cases individually and more important cases collectively. Chief Lokayukta Co-ordinates the functions only and they enjoy equal status and equal powers pertaining to their catchment area.

Appointment:

Chief Lokayukta shall be appointed by the Governor on the advice of a Committee consisting of Chief Justice of the High Court and two other judges subject to the approval
of the President. Here the approval is imperative to make the institution more impartial and independent of State Governmental Machinery without affecting centre-State relations.

Qualifications:

The Chief Lokayukta shall possess the qualifications to be a judge of a State High Court. Lokayukta Allegation should be an able administrator for at least 10 years in State Government administration. The other disqualifications of the Lokayukta are the following:

First, he shall not be a member of Parliament or member of any State Legislature;

Second, he shall not hold any office of trust or profit other (than Lokayukta); or

Third, he should not be connected with any political party; if he is connected with any party, he has to sever connection with that party;

Fourth, he should not carry on any business or practise any processor before he enters upon his office.

Term of Office and Other Conditions of Service of Lokayuktas:

Lokayuktas shall hold office for a period of five years or till sixty five years which ever is earlier. They are ineligible for re-appointment. They may resign office addressing a letter to the Governor or they may be removed from office in accordance with a prescribed procedure.
On ceasing office, Lokayuktas shall not hold any office under Union, State Government after retirement or removal. The salary, allowances and pension payable to and all other conditions of service of the Lokayuktas shall be the same as those of the Chief Justice of the State High Court.

Removal:

The Lokayuktas shall be removed from their office by the Governor on the ground of proved misbehaviour and incapacity after an inquiry is made by Chief Justice of a High Court or by any other Judge nominated by him for the purpose. However, Lokayukta may be given ample opportunity to be heard against. The removal should be approved by the President of India after it is passed by the legislature by absolute majority.

Budget and staff of Lokayuktas:

The Chief Lokayuktas, after receiving approval of the Governor, may make appointments of officers to the rank of Secretary, Joint Secretary etc. for the Lokayukta Secretariat and prepare budget of its own. Further, it can seek the help of any officer of the State in conducting inquiry. As in the case of the Lokpal expenditure on Lokayukta is to be charges on consolidated Fund of the State (Article 266).
Jurisdiction of Lokayukta

The Chief Lokayukta and Lokayukta Allegation shall investigate into complaints involving grievances and allegations respectively against public functionaries in a state, public functionary of a State shall include, Council of Ministers', Members of Legislative Assemblies and higher Civil Servants.

The Lokayukta may conduct inquiry into any person other than public functionary if he thinks it fit. In doing so the person should be given reasonable and ample opportunity of being heard and of producing evidence in his defence.

There are certain matters which should be kept outside the purview of the Lokayukta. He shall not inquire into any matter which has on his recommendation been referred to an inquiry Commission. The Lokayukta shall not investigate into any complaint after the expiry of five years from the date of occurrence. The Lokayukta shall not inquiry into any matter in respect of any person if he has any bias in respect of such person or matter. The Lokayukta shall have no jurisdiction over matter referred to Lokpal under its powers.

Complaints:

Any persons other than a public servant27 can

27. Public Servant is defined in Chapter V of the thesis at page 130.
make a complaint. The complaint shall be in a prescribed form, and with accompanying deposit fee of Rs. 200 at first hand, and an affidavit to that effect. After scrutiny if the complaint is valid for investigation, complainant shall deposit the processing fee of Rs. 1000/-. Lokayukta, shall have the Power to waive the deposit fee and processing fee, if he is satisfied otherwise for sufficient cause to be recorded in writing. The Lokayukta on his satisfaction can treat a letter of a person in any jail, or other place of custody or in any asylum or other place for insane persons as a valid complaint without any formalities. Also the officer incharge of the Jail or asylum or place of custody has no power to open the letter than to send it to the Lokayukta.

Competent Authority:

The report of the Chief Lokayukta has to be submitted to a competent authority, the Chief Minister. The competent authority in turn, must comply the remedial measures within stipulated period of one month.
Provisions on Central Pattern:

Certain other provisions are to be adopted on the lines of the central plan for the Lokpal. Provision has to be made regarding such matters as preliminary of complaints by Lokayukta; procedure in respect of inquiries; powers of Lokayukta to issue in certain circumstances directions for deferring or suspending police investigation into an offence; evidence, search and seizure; secrecy of information; intentional insult or interruption to or bring into disrepute; power of Lokayukta to try certain offences summarily; disclosure of information and publication of false information in respect of complaints and proceedings; action in case of false complaints, disposal of deposits etc.

The Lokayukta has to be armed with certain other powers also. For instance, he can refer certain cases of State functionaries to the Lokpal if these cases in his opinion merit such reference.

Similarly, the Lokayukta can recommend to make certain modifications in legislative or administrative procedures. Also it can advise the complainant to avail other remedies, if he thinks fit and fix time limit for appropriate authority to take necessary action.
Decentralization of the Office:

To make it responsive to people in rural areas, it can appoint a number of Local 'Grievance Correspondents' at least one for each Block, to receive, screen and educate rural folk on the matter. Further, in case of a request by the complainant to drop out a case he is required to pay a supportive token fee of rupees one hundred to prevent from whimsical and motivated filing and withdrawals of complaints.

Public Functionary Outside Jurisdiction of Lokayukta:

The Lokayukta shall have no power to investigate into allegations against: (a) Chief Justice and Justices of High Court, (b) Speaker of Legislative Assembly, (c) Chairman and Members of State Public Service Commission; and (d) Regional Election Commissioner (Art. 324)(e) The Chief Minister.

The judgement, decrees of Lokayukta cannot be challenged or reviewed in any court. However, any person convicted on trial under (i) Lokayukta's power to try certain offences summarily; or (ii) Lokayukta's power to provide sanction for disclosure of information; or (iii) his powers to take action in case of frivolous complaints may appeal to (1) sub-ordinate courts and (2) High Courts within thirty days of such conviction respectively.
Complaints through Letters:

Such a provision is necessary to enable the Lokayuktas to entertain letters from persons in police custody, asylum, jail, or other places of insane persons as valid complaint without legal formalities.

The suggested Lokpal model for the Union and Lokayukta model for the States will yield the following advantages. First, it would confer a constitutional status and universal character to Ombudsman institution. Second, it would encourage vertical expansion of grievance redressal machinery instead of horizontal. As such it reduces the number of such organisations and lessens a great deal of confusion for common people. Third, it would reduce the burden on the public exchequer as it would amalgamate the three existing grievance handling institutions into one and it would prohibit the frequent setting up of Commissions of Inquiry. Fourth, it is equipped with a technical know how and sophisticated, knowledge to deal with allegation cases, as the institution of Vigilance Commission is merged with the Lokpal for allegation. Sixth, it imposes constitutional obligations on the part of Central Government and State Government for creating Lokpal and Lokayuktas, ruling out whimsical abolition of such institution as was done in case of Karnataka in 1980. Seventh, the integrated system of Ombudsman institution will not affect centre-state relations. On the recommendations of Lokayukta, Lokpal can look into cases involving State functionary only.
Conditions of Success:

However, the success of Lokpal and Lokayukta institutions will depend upon a number of conditions. In the first place, to reduce the volume of complaints other channels say departmental, legislative, judiciary and others may be improved. To streamline administrative procedure stress should be put upon quick and efficient disposal of citizens' grievances and allegations. Inordinate delay is the chief drawback of the device. To this end in each Department of Ministry a "Complaint Cell" shall be constituted and be put under the charge of a Joint or Additional Secretary to Government. Further, the cell should be involved in specifying types of complaints, appropriate authority to meet the complaints, minimum time limit for disposal. To prevent protracted delay certain the following steps should be taken:

1. Acknowledgement of receipt of complaints with tentative date for disposal subject to maximum of 90 days;
2. Refusal of entertaining complaints and providing negative decision should be accompanied by specific reasons of such decisions. This will help to reduce and eliminate a large number of complaints to be lodged to Lokpal or Lokayukta.


29. Such a provision relating to decision in negative exists in an Act in Norway, concerning the handling of administrative matters. It provides that the administration must specify the reasons for its decisions, either at its own initiative or on request. See G.B. Sharma, Op.Cit., p.176.
Secondly, to have an Ombudsman institution both at the Union and States level does not mean that it can replace the judicial system. Under any constitutional government an independent judiciary is an indispensable necessity. If the judiciary acts with greater efficiency people can get justice and backlog of cases will not pile up. This will limit the number of grievances referred to the Lokpal or the Lokayukta and same the institution from getting overburdened with unnecessary and superficial allegations and grievances.

Thirdly, Ombudsman without publicity and accessibility to public will not serve the purpose for which the institution is intended. Publicity as to its services through mass media is imperative.

Above all, other accompanying remedies for curbing corruptions and lessening grievances and allegations are: public auditing of party funds, legislation of industrial donations to parties, public funding of elections as in Germany and U.S., improved role of Joint Parliamentary Committee on the line of European and American counter parts, obligatory declaration of assets and liabilities on the part of public functionaries at the time of their debut and strong action for political elites and political man as to debarring from seeking election in case of proved allegation by Lokpal or Lokayukta. To this end in maintaining undoubtedly a high status for redressing public
grievance, a cooperative action on the part of political elites, administrators, judicial incumbents and common people and media of communication is highly solicited. Also its success depends much on political communication\textsuperscript{31}. Political socialization of political actors and their surveillance and vigilance of public administration. Obviously, the toning up of the other measures will provide congenial environment for the smooth functioning and sustaining of Lokpal and Lokayuktas in Indian Political System.

\textsuperscript{31} A.G. Noorani, in his article on "Press and Citizens Right to know, Indian Express, November, 24, 1987 pointed out the need for an urgent enactment on freedom of information about the activities of all the three organs of the State including judiciary."