CHAPTER IV
Legal control of maladministration and corruption in India

Introduction

A student from a foreign soil landed and lived in India for over five years, finds in this country what historians have marked 'Unity in diversity. India is a Union of States. What is diverse in it? and what unites it into a nation with a strong Central Government? The most unifying factor is the Constitution. What is unique about India is evident from the following data(1)

According to the 1991 census, India has an area of 3287263 sq.km. It has a population of 843930861 people living in its territory. Per capita income during 1990-91 was Rs. 5471, perhaps the lowest among the developing nations of the world. India consists of 25 states and seven Union territories. Each having its own Government and is a member of the federal government. There are 18 officially recognised principal languages. The 1971 census had listed 1652 languages as months tongues; some of them do not have their own alphabets. People of India belong to different religious orders, each different from each other. The major religious communities of India are the Hindu, Muslims, Christians, Sikhs, Buddhists, Jains, Parsis and others.
Scheduled Castes and Scheduled Tribes who are part of the Hindu community form over 23.5 per cent of the population. The Supreme Court of India has held that reservation in employment for the Sc/St and other backward classes upto 50 per cent is desirable.

The last Lok Sabha had 22 Political Parties besides a sizable number of independent members. The present Lok Sabha has at least seven more new political parties. None of the political parties could make it, alone to form a Government at the Centre and now a Government formed by large number of small political parties, come together, under the banner of National Front with the erstwhile ruling party, the Congress supporting it from outside. All of the Government Parties have their aspirations and commitments to their own party cadres.

In terms of population size India is the second largest country after China. It contains 16 percent of World population while it has only 2.42 per cent of its area. The population of India is projected to reach one billion by the end of this century.

Viewed from the above background, to expect the Governments, and their bureaucrats and the public servants
above board the normal characteristics of democratic Governments sans maladministration, corruption and arbitrary decisions' is but wishful thinking. In fact in the past few years, the media gives all sorts of scams and kickbacks, hawalas and favouritism involving ministers politicians, bureaucrats and influential relatives of people who matter in politics.

In this context a study of the institutions and the legislations in vogue in India to check maladministration and corruption, along with the Scandinavian and Common wealth countries, will help us draw a total scenario from which the lines can be drawn for Thailand.

Unlike in the systems available in Sweden, Denmark, New Zealand, England, Australia etc. we have examined in Chapter 2 and Chapter 3 where Ombudsman type of institutions are significant and positive in their contributions, India has different Legislations and institutions; each one differ from each other and finally leaves an impression that 'too many cooks spoil the broth'.

The Indian Penal Code, the criminal procedure code, the criminal law Amendment Act contain provisions to prevent corruption The Prevention of Corruption Act 1988,
repealing and consolidating the Prevention of Corruption Act 1947 and consolidating the criminal law has now the Provisions of the Indian Penal Code Section 161 to 165 in it. The Commission of Inquiries Act 1952 which has been used and misused to shield corrupt ministers, politicians and bureaucrats without any powers is also a part of the mechanism. The Lok Ayuktas are working in the states. Lokpal Bills are hanging from 1969, the last one being of 1995, without any impact, but each one is a departure from the earlier one in some respect.

The special Police Establishments, the Central Bureau of Investigation and the vigilance Commission are some of the investigating agencies.

In the following pages we will examine the legal provisions in the Prevention of Corruption Act 1988, the Commission of Inquiries Act 1952, the Lok Ayuktas and Upa LokAyuktas of Maharashtra and the Lok pal Bills 1969, 1977, and 1989, the contents of the 1995 Bill have not been publicised.

Administrative action is generally subjected to Judicial review and the touchstone of such review is the doctrine of Ultra Vires. The courts have been given power to review the acts of the Executive with a view to ensuring
that they lie within the ambit of the limited power given to the Executive by the Indian Constitution and the law. Gener­ally no Executive can impinge on the liberty of an individu­al unless there is an authority of law.(2).

The Constitution of India has incorporated this principle in three specific provisions which say that:

(i) no person shall be deprived of this life and personal liberty except according to procedure established by law.^(3)^ (ii) no tax shall be levied or collected except by authority of law, (4) and (iii) no person shall be de­prived of his property save by authority of law (5). Where an administrative action impinges on any of the above men­tioned rights of the individual, it must have an authority of law. But even where no such right is impinged the execu­tive act has to be intra virus the enabling law and the discretion conferred by such law on the administrative authority must be exercised according to law.

According to Sathe(6), an administrative action which is neither legislative nor quasi-judicial may be ministerial or discretionary. Modern Governments have to exercise discretionary powers for adequately discharging their responsibilities. While the welfare functions have increased the scope of the discretionary powers, they were
not totally absent even in the State which confined its sphere of activity to purely law and order functions. There are a number of provisions in the code of Criminal Procedure which confer discretionary power on the administrative authorities. (7).

'Discretion' means the power to decide or act according to one's judgement. If the discretion is exercised with malafide intention, it would lead to maladministration. Though the courts have tightened up their control over administrative action, yet there are situations which demand a less formal but more penetrating inquiry so as to the able to read between the lines or to see through the facade of legality, the subtle abuse of power or non-exercise of power or to set right acts of maladministration or those which cause inconvenience or hardship due to callousness, indifference, delay over-enthusiastic pursuit of policy or malafide exercise of power. The Ombudsman type of machinery has been found to be useful for redressing the grievances of citizens which fall in the above discretion.

In India there have been persistent endeavors to create a Lok Pal (Ombudsman) under a Law ever since 1969 but a Law could not be passed by the Lok Sabha so far, the latest effort having been through the Bill that was listed
in the final session of the Lok-Sabha (1995). Some of the Indian State however have their Ombudsmen (Lok Ayukta) successfully working.

Ombudsman in India

The Administration Reform Commission’s report, dated October 20, 1966, after carefully evaluating the different opinions, support the adoption of the Ombudsman-type institution in India. The Commission argued as follows in favour of the system. The redressal of citizen’s grievances is basic to the functioning of democratic Government and will strengthen the hands of the Government in administering the laws of the land, its policies "without fear or favour, affection or ill-will", and enable it to go up in public faith and confidence without which progress would not be possible. An institution for the removal of prevailing or lingering sense of injustice springing from an administrative act is the sine qua non of a popular administration. There prevails a public feeling against prevalence of corruption, widespread inefficiency and administration’s unresponsiveness to popular needs. On the other hand, there is the need to protect the administration, protect its true image, and dispel from the public mind false notions and prejudices against the quality and character of the administration.(8).
The main issue before the Commission was: How to provide the citizen with an institution to which he can have easy access for the redress of his grievances which he is unable to seek elsewhere? The fact remains that in such cases, the individual himself has a feeling of grievance whatever the nature of the grievance may be, and it is up to the State to try to satisfy him, after due investigation. That the grievance is untenable in which case no action is called for. The fact that he has had a reasonable opportunity of presenting his case before an authority which is independent and impartial, would in itself be a source of satisfaction to the citizen concerned even where the result of investigation is unfavorable to him. In the present circumstances, the exercise of discretion by administrative authorities can neither be done away with nor can it be rigidly regulated by instructions, orders or resolutions. The need for ensuring the rectitude of the administrative machinery in this vast discretionary field is not only obvious but paramount. Where the citizen can establish the genuineness of his case, it is plainly the duty of the state to set right the wrong done to him. Parliamentary supervision by itself cannot fully ensure to the citizen that rectitude over the entire area covered by administrative discretion. Nor do the various administrative tiers and hierarchies prove adequate for the purpose. A tendency to
uphold the man on the spot, a casual approach to one's own responsibilities, an assumption of unquestionable superiority of the administration, a feeling of the sanctity of authority and neglect or indifference on the part of a superior authority may prevent a citizen from obtaining justice even at the final stage of the administrative system. Therefore, an institution for redress of grievances must be provided within the democratic system. Only then citizen will have faith and confidence and through which he will be able to secure quick and inexpensive justice.\(^{(9)}\).

With the above objectives in view, the Commission propounded a scheme for setting up an Ombudsman system in India. While the Commission did draw largely from the experiences of other countries in drafting its scheme, nevertheless, it was *sui generis* in many respects and contained a manner of peculiar features of its own to meet the special circumstances of India, viz, much larger population than other countries having the Ombudsman system; federal structure; Parliamentary Government with Ministerial responsibility.

The Government of India accepted the recommendations of the Commission. The second definitive step was taken towards the creation of the Ombudsman system in India
when in 1969, the Lok Sabha enacted the model suggested by the Commission with a few deviations. One major deviation made by the Bill was to confine the jurisdiction of the Ombudsman to the central sphere only leaving the states out of its purview whereas the Commission had suggested a comprehensive scheme covering the Centre-State Administration as a whole. However, the whole endeavour proved abortive because before the said bill could be passed by the Rajya Sabha, the Lok Sabha was dissolved and, consequently, the Bill lapsed. A second attempt to enact the legislation to establish the system was made in 1971 when another Bill was introduced in the Lok Sabha, but again the Bill aborted owing to the dissolution of the Lok Sabha. A third attempt was made in 1977, when a new Bill, entitled the Lokpal Bill, 1977, was introduced in the Lok Sabha. The Bill was referred to the Joint Select Committee of the two Houses of Parliament which presented its report to the Houses in July 1978. But the Bill lapsed again with the dissolution of the Lok Sabha. So far, all attempts to establish the Ombudsman system at the Central level have proved futile. However, it may not be out of place to say a few words about the structure of the bills of 1971 and 1977 for two reasons: (i) these bills have served as models for state legislation establishing Ombudsman therein; (ii) these Bills may serve as the model for any future legislation as and when under-
taken by the centre in future.\(^{(10)}\)

**The main feature of Lokpal and Lokayukta**

The 1971 Bill as mentioned above was proposed only to the Central Administration. It provided for the appointment, by the President, of one Lokpal and one or more Lokayuktas. The Lokpal was to be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha.\(^{(11)}\). If there was no such leader, a person elected by the members of the opposition in the Lok Sabha for this purpose was to be consulted. The Lokayuktas were to be appointed after consultation with the Lokpal. Presumably, the President would have acted in this matter, as he does in other matters, on the advice of the Prime Minister in keeping with the theory of parliamentary form of Government. Before entering upon his office, the Lokpal-Lokayukta was to take an oath in the prescribed form. He was not entitled to be a member of Parliament or any State Legislature or to hold an office of trust or profit, or to be connected with any political party or carry on any business.\(^{(12)}\). He was to hold office for five years. The Ombudsman was given a security of tenure just like a judge of the Supreme Court. He could be removed, before the expiry of his term, only on the ground of misbehaviour or incapacity and no other ground. To remove him, an enquiry was to be
held by a sitting or retired Supreme Court judge: the en­
quiry report was to be placed before both Houses of Parlia­
ment and each House was to pass and address for his removal
by a majority of its total membership and a majority of not
less than two-thirds of its members present and voting. The
salary of the Lokpal/Lokayukta was fixed by the Bill and was
not to be varied to his disadvantage after his appointment.
These provisions made the Lokpal/Lokayukta immune from
executive and parliamentary influence and guaranteed his
independence so that he could exercise his function without
fear or favour.\(^{(13)}\).

*Functions*

The function of the Lokpal was to investigate any
action which was taken by, or with the approval of, a Min­
ister (other than the Prime Minister) or a Secretary, or any
other public servant belonging to that class which had been
notified by the Central Government in consultation with the
Lokpal for that purpose.\(^{(14)}\). Such an investigation could be
undertaken if a person made a complaint involving
"grievance" or "allegation". A "grievance" was a claim by a
person that he had sustained injustice or undue hardship in
consequence of "maladministration." "Maladministration"
meant action taken in exercise of administrative procedure
or practice governing such action was unreasonable, unjust,
oppressive or improperly discriminatory; or where there had been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involved undue delay. An "allegation" in relation to a public servant meant any affirmation that such public servant—(i) had abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue hardship or harm to any other person; (ii) was actuated in the discharge of his function as such public servant by personal interest or improper or corrupt motives; or (iii) was guilty of definition of "allegation" covered circumstances of political corruption as well. "Action" had been defined broadly so as to mean action taken by way of decision, recommendation or finding or any other manner and included failure to act. The Lokpal could also initiate investigation _suo motu_ without a complaint having been filed if in his opinion an administrative action could be the subject of a "grievance" or "allegation". From this point of view, the Lokpal was in a much stronger position than the British Ombudsman. Similarly, a Lokayukta could investigate action taken by or with the approval of a public servant, other than the one who fell within the jurisdiction of the Lokpal, if such an action amounted to "grievance" or "allegation" either on a complaint or _suo motu_.

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Grievances arising from the following types of administrative action were exempt from being investigated by Lokpal or Lokayukta- (i) action taken in a matter certified by a secretary as affecting the relations or dealings between the Government of India and a foreign government or any international organisation; (ii) action taken under the Extradition Act, 1962, or the Foreigners Act, 1946; (iii) action taken for the purpose of investigation of crime or protection of the security of the state including action taken with respect to passport and travel documents; (iv) action taken in the exercise of power in relation to determining matters arising out of a commercial contract except where the complainant alleged harassment or gross delay in meeting contractual obligations by the administration; (v) action relating to service matters; and (vi) grant of honours and awards.

The entire judicial establishment also fell outside the scope of Lokpal-Lokayukta.

A "grievance" was not to be investigated if the complainant had a remedy available by way of proceedings before a tribunal or court except where the Lokpal/Lokayukta was satisfied that the complainant could not have recourse to such a remedy for some sufficient cause. He could also
not investigate into a complaint in respect of any action which had been referred for inquiry, with his consent, to a commission of inquiry under the Commissions of Inquiry Act, 1952.

The time-limit for making a complaint involving an "allegation" was five years from the date on which the action complained against was alleged to have taken place. In the case of a "grievance", the time was twelve months from the date on which the complainant came to know of the action complained against, but this period could be relaxed if the Lokpal/Lokayukta was satisfied that the complainant had sufficient cause for not making the complaint within the period of twelve months.\(^{15}\).

In the case of a "grievance", Lokpal/Lokayukta would not question any administrative action involving the exercise of discretion except where he was satisfied that the elements involved in the exercise of discretion were absent to such an extent that the discretion could not be regarded as having been properly exercised. A complaint involving a "grievance" could be made by the person aggrieved or his legal representative or authorised agent. An "allegation" could be made by any person other than a decision from being questioned (except when discretion was not
properly exercised) was only in respect of complaints of maladministration but not with respect to complaints of corruption. The reason for this is that most of the corruption cases arise out of discretionary powers and exclusion of such decisions have provided an undue protection to corrupt public servants.

Any letter written to the Lokpal/Lokayukta by a person in police custody, or in goal or in an asylum, had to be forwarded to the addressee unopened and without delay. This overrode any law to the contrary.

When the Lokpal/Lokayukta propose to conduct an investigation, he was to forward a copy of the complaint to the public servant concerned as well as to the "competent authority". The public servant was entitled to offer his comments on the complaint. The Prime Minister was the "competent authority" in the case of a Minister or Secretary, and in the case of any other Public Servant, the "competent authority" was to be prescribed by the rules. The Lokpal/Lokayukta was to conduct an investigation in private but he had discretion to conduct an investigation in public in the case of a matter of definite public importance if he, for reasons to be recorded in writing, thought fit to do so. The Lokpal/Lokayukta could follow such procedure for con-
ducting an investigation as he considered appropriate in the circumstances of the case. The identity of the complainant or that of the public servant concerned was not to be disclosed to the public at any stage of investigation. He could refuse to investigate any complaint if in his opinion it was frivolous or vexatious or was not made in good faith, or there were no sufficient grounds for investigating, or the complainant should avail of other remedies open to him. The reasons for not entertaining a complaint were to be communicated to the complainant.

The Lokpal/Lokayukta was to have broad powers to collect evidence pertaining to an investigation undertaken by him. He could require anyone to furnish information or produce documents relevant to the investigation. He was to enjoy powers of a civil court in the matter of summoning witnesses and requiring discovery of documents. No obligation imposed by law to maintain secrecy, and no privilege allowed by any law to the Government was to apply in the matter of disclosure of evidence for purposes of any investigation by the Lokpal/Lokayukta. However, this was subject to a few exceptions. No evidence was to be produced which might prejudice the security or defence or international relations of India, or detection of any crime, or which might involve disclosure of Cabinet proceedings. For
this purpose, a certificate issued by a Secretary certifying that any information, answer, or portion of a document was of such nature was to be binding and conclusive. This was a very restrictive provision as the Secretary of the concerned Department could nullify an investigation by withholding evidence from the Lokpal. Indeed, in England or New Zealand no privilege can be claimed by the Government against the Ombudsman in the matter of production of evidence. No investigation which he could not be compelled to give or produce in court proceedings. This, therefore, meant that the rule against self-incrimination was to be operative in an investigation before the Lokpal/Lokayukta.\(^{(17)}\).

If after investigation into "grievance", the Lokpal/Lokayukta was satisfied that the action in question had resulted in injustice or undue hardship to the complainant or any other person, he was to recommend remedial measures and fix the time for taking the same, and the "competent authority" was to inform the Lokpal/Lokayukta of the action taken to comply with his suggestions within a month of the specified time. Similarly, if he found that an "allegation" could be substantiated wholly or partly, he was to report in writing to the "competent authority" who was to report back to him the action taken. The Lokpal/Lokayukta would close the case if satisfied with the action taken. If not so
satisfied, he could make a special report to the President and the report, along with an explanatory memorandum, was to be laid before the Houses of Parliament. An annual report was also to be made to the President by the Lokpal/Lokayukta which was to be laid before Parliament along with an explanatory memorandum. Provisions were made for punishing contempt of the Lokpal/Lokayukta. 

The primary idea of the Ombudsman in the Scandinavian and the Common Law countries (New Zealand, England and Australia) where the institution has been introduced is to oversee maladministration, e.g., negligence, delay, inefficiency, bias, abuse of power (which may not amount to corruption), and to make the administration more humane and accountable. However, the emphasis in India on Ombudsman has been both on maladministration as well as corruption, involving Ministers (other than the Prime Minister) and Government servants, and maladministration by these functionaries. In view of the prevailing situation in India, this would have been an extremely heavy burden on the functionary. It would have meant in practice that he would neglect one or the other function. It appears to be advisable to have two separate institutions for the two functions—redressal of grievances and fighting corruption.
The 1977 Central Bill completely threw overboard the Western idea of Ombudsman. The jurisdiction of the Central Lokpal was confined only to "public men" which term included Central Ministers (excluding the Prime Minister), members of Parliament, members of the Legislative Assemblies for the Union Territories and a few other categories of elected functionaries. The Government servants as such were beyond the purview of the Lokpal. However, the Lokpal could inquire into the conduct of any other person only to the extent necessary to inquire into any allegation of misconduct against a public man. Secondly, the proposed Lokpal was not to be concerned with the cases of maladministration but only with cases involving corruption. The task of the Lokpal was to be to inquire into allegation of misconduct against a public man. A public man would commit misconduct if he was actuated by corrupt motives in the discharge of his functions, or abused his position to cause harm to any body or used his position to secure any valuable or pecuniary advantage for himself or his relatives or associated or committed an act constituting corruption. In summary the purpose of the Lokpal Bill, 1977 was to control political corruption. (19).

Many other provisions of the 1977 Bill were on the same lines as those of the 1971 Bill except with the follow-
In the new arrangement, apart from what is stated above. First, the Lokpal was to be appointed by the President after consultation with the Chief Justice of India, the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha. The last two functionaries could consult the leaders of the various parties and groups in their respective Houses before expressing their views on the appointment of the Lokpal. Secondly, the Bill provided for the appointment of Special Lokpal or Lokpals by the President if he considered it necessary on a report from the Lokpal that it was necessary to do so for expeditious disposal under the Act. Thirdly, the "competent authority" for the Prime Minister was the Speaker, for a Minister, the Prime Minister, the Prime Minister; and for Members of the Parliament, the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha as the case may be. Fourthly, no matter in respect of which a complaint could be made under the Act was to be referred for inquiry under the Commissioner of Inquiry Act, 1952 on his recommendation or, with his prior concurrence. Fifthly power was given to the Lokpal to himself try summarily certain offences, that is, the offence of giving false evidence before him and offenses contained in ss.175, 178, 179 and 180 of the Indian Penal Code committed in his view or presence. A person convicted by the Lokpal could appeal to the High Court.
Maladministration which is the primary concern of the Ombudsman in other countries was thus proposed to be kept out of the purview of the Indian Ombudsman under the 1977 bill.

The 1977 Bill shifted the emphasis on corruption and since that the Lokpal has gone away from the Ombudsman model and was conceived more as a Permanent Enquiry Commission against corruption. The Bill of 1985 did not provide for the redressal of grievances of citizens but only provided for a pre-trial enquiry into the cases of corruption. The opposition members who were members of the Select Committee criticised and strongly protested the government for withdrawing the Bill and because in their opinion the Bill with suitable modifications could be adopted. The dissenting members of the Select Committee stated in their note that the Lokpal's jurisdiction should not be restricted to examine only of those complaints which involve corruption but should also cover complaints about abuse of power, gross misconduct, maladministration causing harassment to citizens etc.

The opposition members also insisted that the Prime Minister should be brought within the purview of the Lokpal. The 1989 Bill introduced by the National Front
Government included the Prime Minister within the purview of the Lokpal. However, the 1989 Bill introduced by the National Front Government in all other respects almost reproduced the 1985 Bill with minor modifications. This Bill for the first time provided for a Chairman and two members to make the Lokpal. The Chairman and the members of the Lokpal are to be appointed by the President in consultation with the Chief Justice of India. Only persons who are or have been judges of the Supreme Court are eligible to be appointed as Chairman and members of the Lokpal. Members of Parliament or members of State Legislature or persons holding any office of profit under the Government are disqualified from becoming the Chairman or the members of the Lokpal. The tenure of the members of the Lokpal shall be five years. Members have been made ineligible to hold any office of profit under the Government of India after ceasing to be members of the Lokpal. Member of the Lokpal cannot be removed except by the procedure of removal as prescribed in the Bill (Act) which is similar to that provided by the Constitution for the removal of judges of the High Court and the Supreme Court.

The Jurisdiction of the Lokpal has been very narrowly defined. He is to inquire into "any matter involved in or arising from, or connected with any allegation made in a complaint. The Word complaint has been defined as a
a complaint alleging that a public functionary has committed an offence punishable under the Prevention of Corruption Act 1988." A Public functionary has been defined as a person who holds, or had held, the office of the Prime Minister, Minister, Minister of State, or Deputy Minister of the Union. The Lokpal may enquire into any act or conduct of any person other than a public functionary in so far as it considers it necessary so to do for the purpose of its inquiry into any allegation regarding the public functionary. Thus the Bill provides for a three member Lokpal to deal with a narrowly defined category of cases involving at the most fifty to seventy people at a time (depending upon the size of the Union Council of Ministers).\(^{(22)}\)

Sathe\(^{(23)}\) fears that "the Lokpal is to deal only with cases of corruption by such people. It is quite clear that the Ombudsman aspect has totally been sidetracked in the Bill. The Lokpal is going to merely conduct pre-trial enquiry against persons holding ministerial posts who are alleged to be guilty under the Prevention of Corruption Act 1988. This is going to create very embarrassing situations for the Lokpal. A pre-trial enquiry conducted by the Lokpal would merely enable the Government to put forward cases before a competent court under the Prevention of Corruption Act and since standards of evidence in a criminal case are
bound to be much more demanding, it may happen quite often that the person held to be *Prima facie* culpable by the Lokpal could be acquitted by the trial court under the Prevention of Corruption Act”.

The Bill also provides\(^{(24)}\) that the Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act 1952 on its recommendation or with prior concurrence. The Bill however provides that no matter in respect of which a complaint could be made under the Lokpal Act shall be referred for inquiry under the Commissions of Inquiry Act 1952, except on the recommendations or with the concurrence of the Lokpal\(^{(25)}\). The Lokpal has also been prohibited from inquiry into any matter if the complaint is made after the expiry of five years from the date on which the offence mentioned in such complaint is alleged to have been committed.\(^{(26)}\)

A complaint may be made by any person other than a public servant. For the purpose of this Act, the term public servant has been defined so as to include a member of a defence service, or a civil service of the Union or a State and any person who is the service of a local authority, a corporation established under a Central or State Law or a Government company as defined in the Sec 617 of the Compa-
nies Act. No obvious reason can be ascribed for preventing public servants from making complaint.

The Lokpal may award compensation or give reward to the complainant if the complaint has been substantiated either wholly or partially. The Lokpal has been given the power to try certain offenses such as giving false evidence etc.

Disclosure of information and publication of false information in respect of complaints and proceeding under the Lokpal Act has been made an offence. The Lokpal may by an order suspend or defer an offence by a police officer. The Lokpal shall have power to require any public servant or any person who in its opinion is able to furnish information or produce documents relevant to the inquiry to be made by him to furnish such information or produce such documents, subject to the freedom of the Government servant to withhold information as might prejudice the security or defence or international relations with the Government of any other country or with any international organisation or with the investigation or detection of crime or as might involve disclosure of proceedings of the cabinet of the Union Government or of any committee of the Union Cabinet. For this purpose the certificate is issued by
the Secretary of the Government of India certifying that any information of the above description shall be considered as binding and conclusive.

The Lokpal shall have powers of a Civil Court in respect of the following matters:

a) summoning and enforcing attendance of any person and examining him on oath;
b) requiring the discovery and production of any document;
c) receiving evidence on affidavits;
d) requisitioning any public record or copy thereof from any court in office;
e) issuing commissions for the examination of witnesses or documents;
f) such other matters as may be prescribed.

The Lokpal has been given the power of pre-trial inquiry in respect of offenses under the Prevention of Corruption Act 1988 and give a trial court in respect of certain offenses created by the Act. An appeal would lie to the Supreme Court from the decision of the Lokpal in respect of offenses defined under the Act.

We may conclude this discussion about the Lokpal, quoting the pertinent observation made by Sathe.
"We do not know how far the Lokpal will be able to unearth cases of corruption by ministers. This is going to be a top heavy machinery for that purpose. But certainly the Lokpal Bill totally buries the concept of Ombudsman which the Administrative Reforms Commissions had spelt out in its report. The Lokpal will not be of any use to the common man whose main grievance is against maladministration, red tape, callousness and negligence. We feel that it might turn out to be another cosmetic office to induct a sense of complacency. What we need is a system which will provide quick relief to people against administrative action as well as administrative inaction. Going to court is too expensive and many a time are cannot marshal evidence enough to obtain a favorable Judicial response. So far as corruption is concerned, the Prevention of Corruption Act could be suitably strengthened and even a special tribunal or court with appeal only to the Supreme Court on questions of Law could be provided for dealing with those cases. Ombudsman is not the remedy for that purpose”.

The Parliament just dissolved had another Lokpal Bill in its hold but did not present it due to dissolution. It is understood that this proposed Bill was in no way different from the Lokpal Bill 1989, discussed above and is stated to be introduced in the current Lok Sabha as reported
In the meanwhile various state Governments have setup the office of the Lokayukta. Lok Ayuktas are not always Judicial persons. In Maharashtra the Lok Ayukta has always been a Judicial person, the present being Hon. Justice Kantharia of the Bombay High Court who recently retired from the High Court Bench and has varied experiences, a very eminent lawyer, the President of the Judicial Court under the Bombay Industrial Relations Act, 1946, a senior judge of the High Court and has had a checkered Judicial career, unblemished ever. During the last almost two years he has, as the Maharashtra Lok Ayukta done remarkable work dealing with grievance of the public. The first Lokayukta of Bihar has been a Civil Servant. Sathe feels that many cases in what the Supreme Court of India had intervened in the past were cases which could have been successfully dealt with by LokAyukta. He as cited many such situations. Thus, according to him situation such as prolonged imprisonment of under trial prisoner(36), torture of prison inmates,(37) plight of women prisoners,(38) or of women in protective homes,(39) payment of sub standard wages to workers as by contractors engaged by Government (40) in which the Supreme Court has intervened on behalf of the victims were really such as could have been effectively dealt with by the Ombudsman.
As stated earlier, various states have set up LokAyukta and Upa Lokayukta in the seventies and the eighties. We will briefly examine LokAyukta and Upa-LokAyukta of Maharashtra to ascertain if there is any differences between the Lokpal and the LokAyukta.

LokAyukta and Upa LokAyukta in Maharashtra

The law in this regard, the Maharashtra Lok Ayukta and Upa Lokayukta Act No XLVT of 1971.

This Act contains 22 sections and three schedules. The Act provides for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government of Maharashtra or certain public authorities in the state of Maharashtra, in certain cases and for matters connected therewith.

In this Act, unless the context otherwise requires, "action" means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act; and all other expressions connoting action shall be construed accordingly. "Allegation", in relation to a public servant, means any affirmation that such public servant
(i) has abused his position as such to obtain any gain or favor to himself or to any other person or to cause any undue harm or hardship to any other person,
(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or
(iii) is guilty of corruption, or lack of integrity in his capacity as public servant. Grievance means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration.

"Maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case,—
(i) Where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or unreasonable,
(ii) Where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay.

For the purpose of this Act, "public servant" denotes a person falling under any of the description given below:
(a) every minister as a member, other than the Chief Minister of the Council of Ministers by whatever name called, for the State of Maharashtra, that is to say, a Minister, Minister of State and Deputy Minister
(b) every officer appointed to a Public Service or post in connection with the affairs of the State of Maharashtra
(c)(i) every President and Vice President of a Zilla Parishad, Chairman and Dy. Chairman of a Panchayat Samiti and Chairman of the Standing Committee or any subject committee, constituted under the Maharashtra Zilla Parishad and Panchayat Samiti Act 1961;
(c)(ii) every President and Vice President of a Municipal Council and Chairman of the standing or any subject Committee constituted or deemed to be constituted under the Maharashtra Municipalities Act 1965;
(d) every person in the service or pay of -
   (i) any local authority in the State of Maharashtra which is notified by the State Government in this behalf in the official gazette;
   (ii) any corporation (not being a local authority) established by or under a State or Provincial Act and owned or controlled by the State Government,
   (iii) any Government Company within the meaning of Section 617 of the Companies Act, 1956, in which not less than fifty one per cent of the paid up
share capital is held by the State Government

(iv) any society registered under the Societies Registration Act 1860 which is subject to the control of the State Government in this behalf in the official gazette

Appointment of LokAyukta and Upa LokAyuktas

The Governor shall by warrant under his hand and seal, appoint a person to be known as the Lokayukta and one or more persons to be known as Upa Lokayuktas or Upa Lokayuktas

The Lokayukta shall be appointed after consultation with the Chief Justice of the High Court and the Leader of the opposition in the Legislature Assembly, or if there be no such leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct

The Upa Lokayukta or Upa-Lokayuktas shall be appointed after consultation with the Lokayukta.

Every person appointed as the Lokayukta or an Upa-Lokayukta shall before entering upon his office make and subscribe, before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form
setout for the purpose in the First Schedule which is as follows:

"The First Schedule"
(see section 3(2))

I..........., having been appointed Lokayukta/Upa-Lokayukta do swear in the name of God that I will bear faith and allegiance to the Constitution of India as by law established, and I will fully and faithfully and to the best of my ability; knowledge and judgement perform the duties of my office without fear or favor, affection or ill will"(51)

The Upa-Lokayukta, shall be subject to the administrative control of the Lokayukta, and in particular for the Purpose of convenient disposal of investigations under the Act, the Lokayukta may issue such general or special directions as he may consider necessary to the Upa-Lokayuktas (52)

The above clause does not authorise the Lokayukta to question any finding, conclusion or recommendation of an Upa-Lokayukta (53)

The Lokayukta or an Upa-Lokayukta 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 the Lokayukta, or as the case may
be, Upa-Lokayukta or be connected with any Political Party or carry on any business or practice any profession; and accordingly before he enters upon his office, a person appointed as the Lokayukta or, as the case may be Upa-Lokayukta, shall—

(a) If he is a member of Parliament or of the Legislature of a 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 connections (short of divesting himself of ownership) with the conduct and management of such business; or
(e) if he is practicing any profession, suspend practice of such profession.

Term of office and conditions of service

Every person appointed as the Lokayukta or an Upa-Lokayukta shall hold office for a term of five years from the date on which he enter upon his office.

The Lokayukta or an Upa-Lokayukta may, by writing under his hand, addressed to the Governor, resign his office;
The Lokayukta or an Upa-Lokayukta may be removed from office in the manner specified in Section 6.

Section 6 is reproduced below:

"6.(i) Subject to the provisions of article 311 (55) of the Constitution the Lokayukta or an Upa-Lokayukta may be removed from his office by the Governor on the ground of misbehavior or incapacity and on no other ground;

Provided that the inquiry required to be held under clause 2 of the said Article before such removal-

(i) in respect of Lokayukta shall only be held by the person appointed by the Governor being a person who is or has been a judge of the Supreme Court or a Chief Justice of a High Court; and

(ii) in respect of an Upa-Lokayukta shall be held by a person appointed by the Governor being a person who is or has been judge or the Supreme Court or who is or has been a judge of a High Court

2. The person appointed under the proviso to sub-section(1) shall submit the report of his inquiry to the Governor who shall, as soon as may be, cause it to be laid before each House of the Legislature.

3. Not withstanding anything contained in sub section(1)the
Governor shall not remove the Lokayukta or an Upa-Lokayukta unless an address by each House of the State Legislature supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting, has been presented to the Governor in the same session for such removal."

Matters which may be investigated by Lokayukta or Upa-Lokayukta(56)

From within the confines of the Act, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of,—

i) a minister or secretary; or

ii) any public sessions referred to in sub clause (iii) of clause (k) of section 2;

iii) any other public servants being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta, in this behalf, in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.
An Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of any Public Servant not being a Minister, Secretary or other Public Servant referred to above in any case where a complaint involving a grievance or an allegations made in respect of such action or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of a grievance or an allegation.

Sub Section (3) of Section of empowers the Lokayukta to investigate any action which may be investigated by an Upa-Lokayukta under sub section (2) whether or not a complaint has been made to the Lokayukta in respect of such action. Before the Lokayukta investigate any action for which under Sub Section (2) of Section 3 Upa-Lokayukta is empowered to investigate, he shall give reason, to be recorded in writing.

Matters not subject to investigation\(^{(57)}\)

The Lokayukta or an Upa-Lokayukta shall not conduct any investigation in the case of a complaint involving a grievance in respect of any action,-

a) if such action relates to any matter in the Third Schedule viz,

i) action taken for the purpose of investigating
crime or protecting the security of the State.

ii) action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not.

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

iv) action taken in respect of appointments, removals, pay, discipline, super annuation or other matters relating to conditions of service of Public Servants but not including action relating to claims for pension, gratuity, Provident Fund or to any claims which arise on retirement, removal or termination of service,

v) grant of honors and awards

b) If the complaint has or had any remedy by way of proceedings before any tribunal or court of law;

c) any action in respect of which a formal and public inquiry has been ordered under the Public Servants (inquiries) Act 1850, with the prior concurrence of the Lokayukta.

d) In respect of a matter which has been referred for
inquiry under the Commissioner of Inquiry Act 1952, with the prior concurrence of the Lokayukta.

e) any complaint involving a grievance against a Public Servant referred to in sub clause (iv) of clause (k) of Section 2

f) any complaint which is excluded from his Jurisdiction by virtue of a notification issued under Section 18

g) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date of which the action complained against becomes known to the complainant;

h) any complaint involving an allegation, if the complaint is made after the expiry of three years from the date on which the action complained against is alleged to have taken place;

The Lokayukta or Upa-Lokayukta may entertain a complaint referred to in clause (g) above if the complainant satisfies him that he had sufficient cause for not making a complaint within the period specified in that clause.

Procedure in respect of investigation

Where the Lokayukta or the Upa-Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under that Act, he
a) shall forward a copy of the complaint or in the case of an investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefore, to the public servant concerned and the competent authority concerned;

b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint or statement; and

c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit

Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the Public Servant affected by the investigation shall not be disclosed to the public or the Press whether before, during or after the investigation.

For reasons to be recorded in writing, if the Lokayukta or the Upa-Lokayukta thinks fit to do so he may conduct any investigation relating to a matter of definite public importance, in public.

The Lok Ayukta or the Upa-Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving grievance or an allegation if in his
opinion-
a) the complaint is frivolous or vexatious or is not made in good faith or
b) there are no sufficient grounds for investigation or, as the case may be, for continuing the investigation; or
c) Other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

In any case the Lok Ayukta or the Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reason there of and communicate the same to the complainant and the Public Servant concerned.

For the purpose of any investigation (including the preliminary inquiry), if any before such investigation under this Act, the Lok Ayukta or an Upa-Lokayukta may require any Public Servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish such information or produce any such document (60)

For the purpose of any such investigation (including the preliminary inquiry), the Lokayukta or an Upa-Lo-
kayukta 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:—

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

b) requiring the discovery and production of any document;

c) receiving evidence or affidavits;

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

e) issuing commissions for the examination of witnesses or documents;

f) such other matters as may be prescribed.

Any proceeding before the Lokayukta and Upa-Lokayukta shall be deemed to be a Judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the State Government or any Public Servant, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act and the State Government or any Public Servant shall not be entitled in relation to any such investigation 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 rule of law in legal proceedings.

However, the following are the exceptions:

No person shall be required or authorized 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

b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that cabinet; and for the purpose of this sub section a certificate issued by the Chief Secretary Certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b) shall be binding and conclusive

Reports of Lokayukta and Upa-Lokayuktas

If after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokayukta or an Upa-Lokayukta is satisfied that such action has resulted in injustice or
undue hardship to the complainant or any other person, the Lokayukta or Upa-Lokayukta shall, by a report in writing, recommend to the Public Servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

The competent authority to whom a report is sent, shall within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokayukta or as the case may be, the Upa-Lokayukta, the action taken for compliance with the report.

If after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokayukta or an Upa-Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

The competent authority shall examine the report forwarded to it and intimate within three months of the date of receipt of the report, the Lokayukta, or as the case may
be, the Upa-Lokayukta, the action taken or proposed to be taken on the basis of the report.

If the Lokayukta or the Upa-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to the competent authority, he shall close the case under information to the complainant, the Public Servant 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 Governor and also inform the complainant concerned.

The Lokayukta and the Upa-Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the Governor.

On receipt of the reports and the annual consolidated reports, stated above the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

The State Government may on the recommendation of the Lokayukta(64) and on being satisfied that it is necessary or expedient in the public interest so to do, exclude,
by notification in the official gazette, complaints involving grievances or allegation or both against persons belonging to any class of Public Servant specified in the notification, from the Jurisdiction of the Lokayukta or, as the case may be, Upa-Lokayukta.

No such notification shall be issued in respect of Public servant holding posts carrying a minimum monthly salary (exclusive of allowance) of seven hundred and fifty rupees or more.

Every notification issued in the manner stated above shall be laid as soon as may be after it is issued before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both the Houses agree that the notification shall from the date of publication of such decision have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or amendment shall be without prejudice to the validity of anything previously done by virtue of that notification.
General remarks

(1) It has been suggested that, so far, the institution of Ombudsman has succeeded only in countries with small population and that in a populous country like India, the Ombudsman may be overwhelmed with complaints of maladministration and allegations against the administration. The appointment of one Lokpal and a number of Lokayuktas takes this factor into consideration. Further, being a federal country, the Central Administration is not concerned with the totality of Government functions but only with a portion of these, the other portion being discharged by the States, and each State has its own Ombudsman system. Specialized Ombudsman for specific activities may also be thought of. In the long run, however, it is necessary to improve the tribunal system in India so that tribunals can provide an effective review-mechanism of administrative decisions. To the extent, tribunals can provide such a review, the need to resort to the Lokpal would be reduced. Also, it has been the experience of the Ombudsman in other countries that many grievances against the Administration arise because of the failure of the Administration to give reason for the decisions taken by it and that if reasons are given as a matter of course then the number of complaints may be reduced. It will be a great advantage to the individual affected by an administrative action if the administration were to disclose
to him the reasons for acting in the way it is acting. He can then decide whether he should challenge the action or not in a court of law. Many challenges to administrative action are made at present because the individual affected, being ignorant of the reasons, does not know whether the action suffers from some law or not. In the area of quasi-judicial adjudication, an obligation to make speaking orders has come to be imposed on the concerned bodies. A similar development is a desideratum in the area of administrative powers.

The Council d'Etat in France has gone far in the direction of requiring administrative decision must contain at least the findings upon which they are based. In India as well such a rule should be promoted. Therefore, if the administration in India as were made to adopt the practice of furnishing reasons for its decision to a person feeling aggrieved by it, then the number of complaints sent to the Ombudsman may be reduced and become manageable. In any case, there is a great need to supplement experiment of the Ombudsman. It is worth a trial. It is blunt to result in the improvement of administrative procedures affecting the individuals dealing with the administration.
While the idea of establishing Ombudsman at the Central level has proved abortive so far, several States have adopted the system. These States are: Orissa, Maharashtra, Rajasthan, Bihar, Uttar Pradesh, Andhra Pradesh, Karnataka, Madhya Pradesh, Gujarat and Himachal Pradesh. The State Acts do not follow any uniform pattern. In some of the States, the task assigned to the Ombudsmen is to look into cases of corruption as well as maladministration. These Acts follow the model of Central Bill of 1971. In other States, the task assigned to the Ombudsmen is confined only to allegations of corruption involving Ministers (other than the Chief Minister) and Government Servants. Thus, there is no uniform pattern followed in the States in this respect. For example, in Andhra Pradesh, the Governor appoints the Lokayukta after consultation with the Chief Justice. Only a Judge or retired Chief Justice of a High Court can be appointed to this office. The Governor also appoints one or more Upa-Lokayukta from amongst the District Judges. The term of office for each is five years but any of them can be removed from office by the Governor for misbehaviour or incapacity after an inquiry by a Supreme Court or the Chief Justice of a High Court. The function of the Lokayukta is to investigate any action taken by, or with the approval of, or at the behest of - a) a Minister or a Secretary; b) a member of the State Legislature; or c) a Mayor of a Municipal
Corporation.

All other public servants in the States fall under the purview of the Upa-Lokayukta. The Chief Minister does not come within the purview of the Lokayukta.

In an interesting case Ram Nagina Singh Vs S.V.Sohni the appointment of the Lokayukta in Bihar was challenged through a writ petition for quo warranto under Art.226. Dismissing the petition, the High Court made the important point that when a statute confers power on the Governor to appoint the Lokayukta, the Governor is to exercise the power on the aid and advice of the Council of Ministers.

The fact remains, however, that the Ombudsman institution has not been very successful so far in the States. The reason is that each State Government seeks to install the system for cosmetic purposes, to give a sense of confidence to the public that corruption is being eliminated or that one can have redress against maladministration, while, in practice, the Government does not take the institution seriously. The reasons are primarily political; the ruling party does not wish to lower its image by accepting the fact that there is any corruption or maladministration.
(3) Information about the working of the State Ombudsman is scarce. Their annual reports are not released regularly. Some Ombudsmen have criticised their governments for delays in placing the reports before the Legislatures. The lack of public information indicates that the Ombudsman have encountered difficulties which have reduced their utility in remedying individual grievances. They lack adequate resources. They have no investigatory staff of their own and have to rely on public agencies to investigate complaints. The agencies shuffle the task around administrative units, or put a low priority on furnishing information. Many pending cases are carried from year to year.

The Ombudsmen are often inaccessible. Complainants lose heart or become disinterested or abandon proceedings as soon as they are asked to file an affidavit or to visit the Ombudsman office to record the complaint or attend a hearing. The Maharashtra Ombudsman remarked in his first report that this was particularly hard on the rural poor. He also referred to jurisdictional problems which in effect give police immunity from investigation and place the execution of public contract beyond review. Another serious limitation has been the requirement that complainants exhaust other
avenues of redress even if, in reality, those avenues are purely theoretical. (68)

(4) Although Ombudsman type institutions sought to be created in the States; basically, the Executive does not welcome the idea of Ombudsman; it is hostile or apathetic to the institution, and tries its best to make it an ineffective institution. The Government seeks to appoint pliable persons as Ombudsmen. Their recommendations are not acted upon. In July, 1976, the Maharashtra Lokayukta found two Ministers guilty of malpractice, but the Ministers leveled a countercharge against the Lokayukta himself who incidentally was the ex-Chief Justice of the Bombay High Court (69). The Bihar Government tried to prevent an investigation into the charge against a Minister, and ultimately the appointment of the Lokayukta itself was challenged in the Patna High Court. Although the ostensible aim of the legislation is to enable the lokayukta to probe charges of corruption against Ministers, the statutory provisions are drafted more to hide than to reveal. For example, under the Orissa Act, once a charge against a Minister is made, there is to be no public hearing; the proceedings are to be held in camera; no lawyer is allowed to argue and only the Lokpal decides the case. Section 10(2) provides:
"Every such investigation shall be conducted in private and in particular, the identity of the complainant and the public servants affected by the investigation shall not be disclosed to the public or the press, whether before, during or after the investigation".

Such provisions do not inspire public confidence that there will be impartial inquiry into allegations of corruption against the Ministers. Once a charge of corruption is made, everything is shrouded in secrecy. Perhaps, because of the inaccessibility or executive opposition, the number of complaints to the Ombudsmen has been small, given the large population of the States and frequent contact between public agencies and residents. Although Uttar Pradesh is the most heavily populated State, the Ombudsman there received the lowest number of complaints, less than two hundred in 1979 and less than one hundred in 1978. Other Ombudsmen have no fared much better. The Rajasthan Ombudsman has accepted less than one-third of the complaints as being within his jurisdiction, and of the 494 complaints he accepted in 1973-1974, he only disposed of 110; he had a somewhat better record in 1975-76: of the 568 complaints, 213 were disposed of.
The Indian record, on the whole, is not impressive. Given the large population, ubiquitous Governmental regulation of private activity, sprawling administration, and general belief in widespread corruption and maladministration, the number of complaints has been very low. The reasons are obvious—illiteracy, lack of knowledge, inaccessibility, fear of offending authority, and a general feeling that nothing will come out of Ombudsmen’s intervention. The Executive has been and remains hostile to the Ombudsmen idea. Public agencies do not exhibit good-will or cooperation towards him. The Ombudsmen cannot achieve much in the face of administration’s hostility and apathy. In the absence of deep-seated democratic values in the policy and public administration, the Ombudsman idea has resulted in merely a symbolic institution rather than a real protector of the people. If the institution has to have any semblance of success in the States, it is essential to fulfill at least four minimum conditions: (1) there should be a model law for the States to follow: at present there is too much variety in State laws; (2) some autonomy will have to be granted to the Ombudsman through a Constitutional provision on the lines of the Election Commission; (3) selection of a proper person as Ombudsman would have to be ensured and necessary provisions for the purpose need to be drafted. The final decision as to whom to appoint cannot be left solely
in the hands of the Government of the day; (4) the Ombudsman institution should be exclusively confined to removal of people’s grievances; charges of corruption against administrators will have to be probed by some other high powered body; it cannot inspire any confidence if allegations of corruption against Ministers are probed into by one appointed by the Executive itself.


[An Act to consolidate and amend the law relating to the prevention of corruption and for matter connected therewith]

The present Act as the preamble states incorporates in it the Prevention of Corruption Act 1947 which was amended in 1964 based on the recommendation of the Santhanam Committee. It also incorporates the provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who above than by way of Criminal misconduct. The provisions in the Criminal Law Amendment Ordinance 1944 to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth, are also incorporated in the present Act. The Present Act has widened the scope of the definition of the expression "Public Servant" and incorporates offenses under Sections 161 to 165 A of the Indian Penal Code and enhanced penalties
provided for those offenses etc.

It is proposed to examine the provisions of the Prevention of Corruption Act 1988 in the following pages.

It extends to the whole of India except the State of Jammu and Kashmir and it applies to all citizens of India outside India. Statement of Objects and Reasons attached to the Bill proceeding the enactment of the Prevention of Corruption Act 1947 reads:"The scope for bribery and corruption of Public servants had been enormously increased by war conditions and through the War is now over opportunities for corrupt practices will remain for considerable time to come......."

"The existing law has proved inadequate for dealing with the problem which has arisen in recent years and the Bill is intended to render the Criminal Law more effective in dealing with cases of bribery and corruption of Public Servants". As mentioned in the Statement of Objects and Reasons to the Prevention of Corruption Act 1988 the scope of the definition of "public servant" has been widened. Now Public Servant as defined in the Act means-

1) any person in the service or pay of the Government or remunerated by the Government by fees or commission for
the performance of any public duty;

ii) any person in the service or pay of a local authority;

iii) any person in the service or pay of a corporation established by or under a central, provincial or state Act, or an authority or a body owned or controlled or aided by the Government or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)

iv) any judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

v) any person authorized by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioneer appointed by such court;

vi) any arbitrator or other person to whom any cause or any matter has been referred for decision or report by a court of justice or by a competent public authority;

vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;

ix) any person who is the President, Secretary or other
office bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provin­cial or State Act, or any authority or body owned or controlled or aided by the Government or a Government Company as defined in section 617 of the Companies Act 1956(1 of 1956)
x) any person who is a Chairman, member or employee of any Service Commission or Board, by whatever name called or any member of any Selection Committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

xi) any person who is a Vice Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other Public Authority in connection with holding or conducting examinations;

xii) any person who is an office-bearer or an employee of any educational, scientific, social, cultural or other institution, in whatever manner established, receiving
or having received any financial assistance from the Central Government or any State Government or local or other public authority.

Explanation 1. Person falling under any of the above sub-clauses are Public Servants whether appointed by the Government or not.

Explanation 2. Wherever words "Public servant" occur, they shall be understood of every person who is in actual possession of the situation of a Public Servant, whatever legal defect there may be in his right to hold that situation.

The above definition is an expansion of the contents of Section 21 of the Indian Penal Code.

Section 3 of the Act empowers the Central Government or the State Government to appoint by notification in the official gazette, as many special judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offenses, namely:

a) any offence punishable under the Act, and
b) any conspiracy to commit or any abetment of any of the offence specified in clause (a)
The minimum qualification prescribed for appointment of a special judge is that he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure 1973 (2 of 1974).

Procedures and powers of Special Judge

1. A special judge may take cognizance of offenses, without the accused being committed to him for trial and in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973(2 of 1974) for the trial of warrant cases by Magistrates.

A special judge may, with a view to obtaining the evidence of any persons supposed to have been directly or indirectly, concerned in, or privy to, an offence, tender a pardon to such persons on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether principal or abettor, in the Commission thereof and any pardon so tendered shall, for the purpose of sub-section (i) to sub-section 5 of section 308 of the code of Criminal Procedure, 1973 (2 of 1974) be deemed to have been tendered under Section 307 of that Code.
Except as provided in the above two paragraphs, the provisions of the Code of Criminal Procedure 1973 shall so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge, and for the purpose of the said provisions, the Court of the Special Judge shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Judge shall be deemed to be a Public Prosecutor. (76)

A Special Judge may pass upon any person convicted by him any sentence authorized by Law for the punishment of the offence of which such person is convicted. (77)

A Special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance 1944. (78).

Offenses and Penalties
a) Public Servant taking gratification other than legal remuneration in respect of an official Act. (79)

Whoever being, or expecting to be a Public Servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person
any gratification\(^{(80)}\) whatever, other than legal remunera-
tion\(^{(81)}\) as a motive or reward\(^{(82)}\) for doing or forbearing
to do any official act or for showing or forbearing to show,
in the exercise of his official functions, favor or disfavor
to any person or for rendering or attempting to render any
service or disservice to any person, with the Central Gov-
ernment or any State Government or Parliament or the Legis-
lature of any State or with any local authority, Corporation
or Government company referred to in clause (c) of Section 2
or with any Public Servant, whether named or otherwise shall
be punishable with imprisonment which shall be not less than
six months but which may extend to five years and shall also
be liable to fine.

Where a Public Servant induces a person erroneously-
ly to believe that his influence with the Government has
obtained a title for that person and thus induces that
person to give the Public Servant, money or other gratifica-
tion as a reward for this service, the public servant has
committed an offence under Section 7 according to explana-
tion (e) appended to that Section\(^{(83)}\)
b) Taking gratification in order by corrupt or illegal means, to influence Public Servant

"Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person any gratification whatever as a motive or reward for inducing by corrupt or illegal means, any Public servant, whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such Public Servant to show favour or disfavour to any person or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority corporation or Government Company referred to in clause(c) of section 2, or with any Public Servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine." (85)

c) Taking gratification for exercise of personal influence with Public Servant

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence,
any Public Servant, whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such Public Servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any Local Authority, corporation or Government Company referred to in clause(c) of section 2 or with any Public Servant whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine:”

d) Punishment for abetment by public servant of offenses defined in section 8 or section 9.

Whoever being a Public Servant, in respect of whom, either of the offences defined in Section 8 or 9 is committed in consequence of that abetment shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine:”
e) Public Servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such Public Servant

Whoever being a Public Servant 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 such Public servant, or having any connection with the official functions of himself or of any Public Servant to whom he is subordinate, or from any persons who he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

f) Punishment for abetment of offences defined in Section 7 or 11

Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be
Criminal misconduct by a Public Servant


1) A Public Servant is said to commit the offence of criminal misconduct 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 7; or

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 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 proceedings or business transacted or about to be transacted or about to be transacted by him, or having any connection with the official function of himself or of any Public Servant official functions of himself or of any Public Servant to whom he is subordinate, or from any person whom he

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knows to be interested in or related to the person so concerned; or

c) if he dishonestly 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,

i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

ii) by abusing his position as a Public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii) while holding office as a Public Servant, obtains for any person any valuable thing or pecuniary advantage without any Public interest; or

e) if he or any other person on his behalf, is in possession, 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) Any Public Servant who commits criminal misconduct shall be punishable with imprisonment for a term which
shall be no less than one year but which may extend to seven years and shall also be liable to fine"

In Rajagopala Ayyar v. State (92) the Madras High Court held that an attempt to obtain bribe in a single case which was never paid would not fall under clause (a) or (b) or (d) of sub section (1) of Section 5 (corresponding to clauses (a),(b),(d) of sub section(1) of Section 13 of the Present Act) and would not, therefore, be corruption within the meaning of this Act.

The word 'habitually' occurring in Section 5(1) (a) and (b) has to be regarded not to refer to an isolated act of criminal misconduct but to indicate persistency in doing the acts of accepting or obtaining of illegal gratification. In order to constitute an offence of criminal misconduct falling within Section 5(1) (a) and (b) of the Prevention of Corruption Act, *inter alia*, it has to be proved that the accused habitually accepts or obtains any illegal gratification other than legal remuneration as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code. The word 'habitually' means 'usually' or 'according to custom'. It does not refer to the frequency of the occasions but rather to the invariably of practice. (93)
What constitutes proof of habit is not indicated anywhere in the Act not in any other legal provisions in this behalf. Russel stated:

"a person can be found to be a habitual drunkard if within twelve months proceeding, he has been summarily convicted at least three times for any of the 'offences-specified in relation to drink:"

It is further stated for the purpose of preventive detention on the ground of habitual criminality:

"a person cannot be found to be habitually criminal, unless the person has been at least three times previously convicted of the crime charged!"

These provisions cannot furnish any real analogy for guidance in respect of an offence of habitual bribe taking under clause(a), sub section (1) of Section 5 of the Act because obviously it is not meant that instances of previous conviction of bribe taking should be given in evidence, nor is there any particular sanctity attached to the number 'three'. Neither does Section 110 of the Criminal Procedure Code, which in its various clauses refer to habitual commission of certain classes of offences furnish any guide, because by that section mere reliable information that a person is a habitual offender in respect of certain
specified offences without proof of actual commission of those crimes, may be enough for action under Section 10, Criminal Procedure Code. The only section that may afford some guidance is Sec.413 of the Indian Penal Code which provides for enhanced punishment in the case of habitual receiver of stolen property. It has been held with reference to that section that in order that a person may be convicted under it, it must be shown that the offence of receiving stolen property has been committed on different occasions and on different dates.\(^{(96)}\)

In Halsbury's Laws of England\(^{(97)}\) it is stated:

"There is however no exhaustive definition of a habitual criminal and the question whether an offender is or is not a habitual criminal is always one of fact for Jury. The mere fact that he has on a previous occasion been proved to be a habitual criminal and has subsequently relapsed into crime is not of itself conclusive. The accused in always entitled to call evidence to show that at material time he is not a habitual criminal".

Habitual Committing of offence under Sections 8, 9 and 12\(^{(98)}\)

Whoever habitually commits—

(a) an offence punishable under Section 9 or Section 12, shall be pun-
ishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

Punishment for attempt\(^{(99)}\)

Whatever attempts to commit an offence referred to in clause (c) or clause (d), of sub section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

Matters to be taken into consideration for fixing fine\(^{(100)}\)

Where a sentence of fine is imposed under sub. sec (2) of Section 13 or Section 14 the court in fixing the amount of the fine shall take into consider action the amount or the value of the property, if any which the accused person has obtained by committing the offence or where the conviction is for an offence refereed to in clause(e) of sub. sec. (1) of Section 13, the pecuniary resources of property referred to in that clause for which the accused person is unable to account satisfactorily.

Investigation into cases under the Act.\(^{(101)}\)

i) Persons authorised to investigate,

Not withstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974) no police officer below
the rank—

a) in the case of Delhi Police Establishment, of an inspector of Police;

b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub section (1) of Section 8 of the Code of Criminal procedure 1973 (2 of 1974) of an Assistant Commissioner of Police;

c) elsewhere, of a Deputy Superintendent of Police or a Police Officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, make any arrest therefore without a warrant.

In case a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:

It is further provided in the Section that if an offence referred to in clause (e) of sub section (1) of Section 13 (102) shall not be investigated without the order
of a Police Officer not below the rank of a Superintendent of Police.

Sanction for Prosecution

1. previous Sanction necessary for prosecution. Section 19 contains detailed provisions for prosecution of an accused thus,

1. No court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a Public Servant, except with the previous sanction,

a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government

b) in the case of a person who is employed in connection with the affairs of a state and is not removable from his office save by or with the sanction of the State Government of that Government;

c) in the case of any other person, of the authority competent to remove him from his office.

For streamlining a smooth procedure for granting permission sub section 2 gives directions. Accordingly, for any reason whatsoever any doubt arises as to whether the previous
sanction as required under sub section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the Public Servant from his office at the time when the offence was alleged to have been committed.

Sub section (3) makes a deviation from the established procedure laid down in cr.p.c.1973 and lay down the procedure as follows:

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub section(1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregular in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

c) no court shall stay the proceeding under the Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed
in any inquiry, trial, appeal or other proceedings.

In determining under sub section(3) whether the absence of or any error, omission or irregularity in such sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. (103) 

The Commission of Inquiry Act 1952(60 of 1952) (An Act to provide for the appointment of Commissions of Inquiry and for vesting such Commission with certain powers)

This Act was amended by Act 79 of 1971: 4 of 1986 and 63 of 1988; 19 of 1990. It extends to the whole of India and came into force on 1.10.52(104)

Appointment of Commission

Section 3 provides that the appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament, or as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of Public importance and performing such functions and within such time as may be specified in the notification, and the Commission so ap-
pointed shall make the Inquiry and perform the functions accordingly. *(105)*

As the above sub section empowers both the Central and State Governments (appropriate government) complying with the conditions given therein, the proviso to this sub section makes a distinction, when it states that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except, with the approval of the Central Government appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning.

This proviso appears to be vulnerable in that in the federal structure of Center State relations with multi-party Government a tendency in the part of State Government where the ruling party is not the same as that of the center, there is nothing illegal for the State Government to appoint a Commission of Inquiry as a matter where the Central Government had appointed a Commission and the Commission has submitted its report. It should have been that once the Central Government has received a report from its Commission the State Government should not investigate the same
matter through its own Commission. Such a legal provision could avoid unhealthy situation when both the Commissions have given different findings and report.

The Second clause (106) states that when the State Government has appointed a Commission, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more states.

The Commission may consist of one or more members appointed by the appropriate Government and where the Commission consists of more than one member, one of them may be appointed Chairman. (107) viewed from the point that often the Commission appointed by a Government is to look into a case where the Government itself is interested or a Minister is alleged to have been involved in maladministration, corruption or for showing unjustified favour, the appointment of the Commission by the Government would not absolve it from allegations. Surely, if the adage that 'the accused can't be the Judge in his own case' is true it is equally valid to say that the accused cannot appoint its own Judge. The argument here could be that Commission of Inquiry is
only a fact finding body, but it does not hold water as the facts may not be brought out due to pressure. In this connection a reference to Section 3 of the Maharashtra Lokayukta and Upa-Lokayukta Act 1971 shows that a Lokayukta and an Upa-Lokayukta are appointed by the Governor by warrant under his hand.

The appropriate Government shall cause to be laid before each House of Parliament, or as the case be, the Legislature of the State, the report if any, of the Commission, on the inquiry made by the Commission together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government. Whether to take action on the report or not is entirely for the appropriate Government.

Powers of the Commission

The Commission shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters namely:-

a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

b) requiring the discovery and production of any document;

c) receiving evidence on affidavits;
d) requisitioning any public record or copy thereof from any court or office;
ed) issuing Commissions for the examination of witnesses or documents;
f) any other matter which may be prescribed.

Additional Powers of Commission

Where the appropriate Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of Provisions of sub section(2) or sub section (3) or sub section(4) or sub section(5) of Section 5 should be made applicable to a Commission, the appropriate Government may by notification in the official Gazette, direct that all or such of the said Provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification the said provisions shall apply accordingly.

Sub. Section 2 "The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters, as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such
information within the meaning of Section 176 and 177 of the Indian Penal Code.

Sub.Section 3 "The Commission, or any other officer, not below the rank of a gazetted officer, specially authorised in this behalf of the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or document or take extracts of copies therefrom, subject to the Provisions of Section 103 of the Code of Criminal Procedure 1897, in so far as they may be applicable.

Sub.Section 4 "The Commission shall be deemed to be a Civil Court and when any offence as is described in Section 175, Section 187, Section 179 Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure 1897, forward the case to a Magistrate having jurisdiction to try the case and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under
Sub. Section 5 " Any proceeding before the Commission shall be deemed to be a Judicial proceeding with the meaning of sections 193 and 228 of the Indian Penal Code."

Commission to cease to exist when so notified.

Section 7 provides:

1) The appropriate Government may, by notification in the official gazette, declare that -

a) a Commission (other than a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be the Legislature of the State, shall cease to exist if a resolution for the discontinuance of the Commission is passed by each House of Parliament or, as the case may be, the Legislature of the State;

b) A Commission appoints in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State shall cease to exist, if a resolution for the discontinuance of the Commission is passed by each House of Parliament or, as the case may be, the Legislature of the State.
2. Every notification issued under sub section(1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.

Recently the Justice Srikrishna Commission was wound up by a resolution passed by the Maharashtra Legislature. It is now asked to resume its investigation into the holocaust of Mumbai in 1993. Why was the commission ordered to be closed and why was it asked to resume it beyond the scope of this study.

What exactly are the functions of a Commission of Inquiry? The Supreme Court has observed in Ramkrishna Dalmia v Mr. Justice Tendulkar:

"The only power that the Commission has is to inquire and make a report and embody there in its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clean 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 by some action being taken. Therefore, what, as the Commission, we are concerned which 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, and consequently, the question of usurpation by Parliament or the Government of the powers of the Judicial organs of the Union of India cannot arise on the facts of the case."
Chapter IV

References, Notes


3. Ibid., Constitution of India Art 21.

4. Ibid., Constitution of India Art 265

5. Ibid., Constitution of India Art 300 A


7. See Criminal Procedure Code (Indian) ss. 41, 48, 144, 145, 146, 151, etc.

8. Sathe S.P. Lokpal and Lokayukta. The Indian Ombudsman 38. of University of Bombay 1969 P. 215


10. Ibid., P. 938.


12. The Lokpal Bill 1977. Sec. 5

13. The Lokpal Bill 1977. Sec. 7

14. The Lokpal Bill 1977. Sec. 7
15. The Lokpal Bill 1977 Sec. 11
16. The Lokpal Bill 1977 Sec. 15
17. The Lokpal Bill 1977 sec 16
18. The Lokpal Bill 1977 Sec 16
20. See the Report of the Joint Committee on the Lokpal Bill 1985
24. Clause 9 (2) of the Lokpal Bill 1989
34. *Ibid.* pp. 499, 500
37. Sunil Batra v Delhi Administration, AIR 1978 SC. 1675
40. Peoples Union for Democratic Rights v. Union of India AIR 1982 SC. 1473.
41. The Lokpal Bill 1971 Provides for a Lokpal to be appointed by the President of India and the Lokayukta and Upa-Lokayukta Act 1971 provide for the appointment by the Government and the terms of office, powers, duties etc.
42. Preamble to the Maharashtra Act. No. XLVI of 1971
43. Section 2(a)
44. Section 2(b)
45. Section 2(d)
46. Section 2(g)
47. Section 2(k) read with Sec.2 (h) and Sec. ("i")
48. Section 3(1)
49. Section 3, Proviso(a)
50. Section 3, Proviso(b)
51. The First Schedule.
52. Section 3(3)
53. Proviso to section 3(3)
54. Section 4
55. Article 311 reads as follows:
311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State,

(1) No person who is a member of a Civil Service of the Union or an all India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation in the penalty proposed:

Provided further that this clause shall not apply

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Whether the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold
such inquiry; or
(c) Whereas the President, or the Governor, as the case
may be, is satisfied that in the interest of the securi-
ty of the State it is not expedient to hold such in-
quiry.
(3) If, in respect of any such person as aforesaid, a ques-
tion arises whether it is reasonably practicable to hold
such inquiry as is referred to in clause (2), the deci-
sion thereon of the authority empowered to dismiss or
remove such person or to reduce him in rank shall be
final.
56. Section 7
57. Section 8
58. Ibid
59. Section 10
60. Section 11
61. Section 11(4)
62. Section 11(6)
63. Section 12
64. Section 18
65
67. AIR 1971 Pat. 361
68. Jain and Jain, Principles of Administrative Law, opp.
cit., p. 947
69. Dhawan, A comment on Lokpal Bill opp. cit. p 466
70. Section 1(2),
72. Section 2(e)
73. For a detailed commentary on the term "Public Servant" as defined in Section 2(c) of the Prevention of Corruption Act 1988 and Section 21 of the Indian Penal Code, 1860 Please see P. V. Ramakrishna, A Treatise on Anti-Corruption Laws in India, S. Goggi and Company Hyderabad, edn. 1995. PP. 59-124
74. Section 5(1)
75. Section 5(2)
76. Section 5(3)
77. Section 5(5)
78. Section 5(6)
79. Section 7.1
80. The word 'gratification' is not restricted to pecuniary gratifications estimable in money. See explanation (b) to section 7.
81. 'Legal remuneration' is not restricted to remuneration which a Public Servant can lawfully demand but include all remuneration which he is permitted by the Govt or the organisation which he serves, to accept (Expln (c))
82. A 'motive or reward'. A person who receives a gratification as a motive or reward for doing what he does not in-
tend, or is not in a position to do, or has not done comes within this expression.

83. This section corresponds to section 161 of the Indian Penal Code 1860, with some modification

84. Section 8

85. This section corresponds to section 162 of the Indian Penal Code 1860 with some modifications and is complimentary to Section 7 and is intended to reach aiders and abetters of the offence. It therefore extends to all persons whether or not they are Public Servants;

86. Section 9

87. This section corresponds to section 163 of the Indian Penal Code 1860 with some modifications. Under Section 8, the Public Servant is to be induced by corrupt or illegal means whereas under this section he is induced by the exercise of personal influence.

88. Section 10. This section corresponds to Section 164 of the Indian Penal Code 1860 with some modification.

89. Section 11. This section corresponds to section 165 of the Indian Penal Code with some modification. Whereas under section 7, the illegal gratification is taken as a motive or reward for showing official favour etc, under this section the acceptance of a present is forbidden because ostensibly taken for no consideration, it is in reality a bid for an official favour, the refusal of

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which, after the acceptance of the present, may not always be possible.

90. Section 12 This section corresponds to section 165 A of the Indian Penal Code 1860.

91. Section 13. This Section corresponds to Section 5 of the repealed Act (Prevention of Corruption Act 1947) with drastic changes. Section 13(1) corresponds to section 5(1) of the repealed Act, while Section 13(2) corresponds to section 5(2) of the repealed Act. Clauses (a) to (e) of Section 13(1) corresponds to clauses (a) to (e) of section 5(1) of the repealed Act. But clauses (d) and (e) of Section 13 (1) which corresponds to clauses (d) and (e) of the repealed Act contain drastic changes.

92. AIR 1955 Mad. 182


94. Russel on Crimes vol I 1923 ed.

95. Corresponding to Section 13(1)(9) of the Act of 1988

96. Biswabhusan-Naik v. State AIR 1952 Orissa 289


98. Section 14

99. Section 15

100. Section 16

101. Chapter V Section 17

102. Section 13(1) reads "If he or any person on his behalf is in possession or has, at anytime 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."

103. Section 19.(4).
Ext. P 861.
105. Section 3.(1)
106. Section 3(1), Proviso(b)
107. Section 3(2)
108. Section 3(4)
109. Section 7
110. AIR 1958 Sc. 538.