APPENDICES
APPENDIX I

SOME INSTANCES OF UNSOUND COMPANY PRACTICES -CATALOGUE

(i) Evasion or Avoidance of the requirements of Law:

Apart from the large number of direct evasions of the provisions of the Companies Act for which prosecutions are launched, company managements have evolved indirect and tortuous evasions through unsound company practices which though not always contravene the letter of the law, defeat its purpose and are repugnant to its spirit. Such attempts to by-pass the provisions of the law continue to be committed on an appreciably large scale. Most of these instances related to avoidance or evasion of the restrictions contained in the Act in regard to the appointment of, and remuneration payable to, managerial personnel, appointment of sole agents and intercompany loans and investments.

(ii) Management taking undue advantage of their position and authority:

(a) Property owning companies letting out houses on very low rents to relatives of managements;

(b) Donations to trust belonging to the same industrial group;

(c) Purchase of residential plots by directors out of company funds;

(d) Training relatives of management in foreign countries at company expenses although it did not utilise the trainee's services later on;

*Source: Annual Reports on the working and administration of the Companies Act, 1956, Department of Company Law Administration, Ministry of Finance, Govt. of India.*
(a) Loan at high rate of interest from a firm in which all the directors of the company are interested;

(f) In one case the director was instrumental in the purchase by the company of a large number of shares in another company, in which the directors were interested, at a price which was more than double the real value of shares. The company had to write off the whole investment as bad within two years;

(g) Deposit of moneys with banks in which directors are interested. This practice is generally followed ostensibly as a device for channelling the funds of companies, in which the public are substantially interested, to those in which the directors are interested in their personal capacity. It is also used to contravene the provisions of section 295 of the Companies Act, 1956, as such transactions may not always be regarded as "loans" within the meaning of that section;

(h) Allotment of shares to managing agents company and associates at unduly favourable terms to the detriment of the shareholders;

(i) Appointment of a company as Secretary to another company;
(j) Payment of minimum remuneration to managing agents without approval, when the net profits of the company is less;

(k) Appointment of director as sole sales representative;

(l) Companies in the same managerial group, having had no past expenses in the marketing of goods produced by the companies were appointed as sole agents;

(m) Sole selling agents were designated and described as sole distributors in order to evade the provisions of section 294 of the act;

(n) Large uncollected balances were maintained with the sole selling agents, resulting in their indirect financing at the expense of the companies.

(iii) Unusual Accounting practices etc

(a) In connection with the promotional activities of a company formed for a project estimated to cost approximately Rs. 50 lakhs the promoter had amongst other things incurred the following items of expenditure which were sought to be justified as preliminary expenses for the promotion of the company - present of shares worth Rs.12,000 and other gifts, appointment of persons drawing salary of Rs.5,000/- for a period of more than three years, large sum
spent in connection with travelling expenses and contributions made to one Swamiji;

(b) In another case, it was found that two sets of balance sheets in respect of the same period had been circulated in respect of a company;

(c) In yet another instance, it was seen that a company which was carrying on manufacturing business was also authorised to do investment business against the provisions of Section 372 of the Act,

(d) Filing of non-audited balance-sheets;

(e) Auditor’s separate report not brought to the notice of share-holders;

(f) Improper distribution of company’s assets;

(g) Redemption of share capital by way of loans;

(h) Withholding of sale proceeds of company’s assets;

(i) Maintenance of books of account at a place outside the state in which companies are registered;

(j) Persons in control of holding company drawing guarantee commission on loan taken by the subsidiary company and utilising the loan in their interest;
(k) Keeping of excessive funds with charitable
Trusts in which directors are interested,
instead of keeping their balances with
scheduled banks, thus rendering it possible
to advance loans or make investments, in
violation of the spirit, if not in letter
the provisions of sections 295 and 372 of
the Act;

(l) Unauthorised contributions to charity;

(m) Distribution of dividends without setting
off losses;

(n) Declaration of dividends a second time
out of a part year's profits;

(o) Allotment of a fractional share;

(p) Deposits of doubtful security;

(q) Investments of questionable soundness;

(r) Loans by subsidiaries to holding companies;

(s) Loans from an education trust belonging
to the same industrial house,

(iv) Unsound practices disclosed in prospectuses etc.

(a) In the prospectus issued by a company
shares of the value of about two and a half
lakhs of rupees were shown as having been
already subscribed. Actually the shares
had been "issued" to a family from which no cash had been received up to the date of the issue of the prospectus. The allotment was subsequently cancelled. This company also allotted the share before the minimum subscription had been raised. Some shares were also allotted to some minor children of a director. The publicity agents of the company, at the instance of the management, informed the press that the issue had been over-subscribed by the public although in reality it was not so.

(b) It was noticed in a prospectus issued by a company that shares which were reserved for subscription on the "firm allotment" basis were included in the number of shares offered to the public for subscription. This was considered to be a misrepresentation of the proposed transaction to mislead the intending investors.

(c) In a statement in lieu of prospectus filed by a company an amount of Rs.2,20,000 was shown as due to be reimbursed to the promoter/director on account of preliminary expenses incurred on him. On scrutiny it was found that the claim was inflated and later reduced to Rs.50,000/- . There were similar attempts to remunerate the promoters in the guise of reimbursement of promotional expenses.
(d) Cases were promised were held out by companies in their press announcements with a view to attract public subscriptions, but which could not be honoured, have come to the notice of the Department.

The above mentioned cases of unsound company practices and attempts to by-pass the provisions of the law are only illustrative of the unhealthy trends in company management during recent years. The cases are illustrative and not exhaustive. Every year more and more instances of violations of the spirit of law are detected by the Company Law Administration. This indicates a growing disregard of the sense of fiduciary responsibility on the part of the private corporate sector. The instances detected reveal violation of trust by making misrepresentations. They published false financial statements, erroneous statistics, incorrect advertisements; there was embezzlement and misapplication of funds, and bribery of public officials; there was abuse of position and power by the management to the detriment of the interests of the companies, shareholders and creditors. Many of these are cases of downright dishonesty bordering on criminality.
APPENDIX II

AN ILLUSTRATIVE LIST OF BUSINESS CRIMES PUNISHABLE UNDER THE INDIAN PENAL CODE AND OTHER SPECIAL ENACTMENTS

I. The Indian Penal Code, 1860 (45 of 1860)


(b) Administration of Food & Drugs: Sections 272, 273, 274, 275, 276 and 284.

(c) Cheating: Sections 415 - 420.

(d) Criminal Breach of Trust: Sections 406, 407 and 409.

(e) Offences Relating to Documents and to Property: Sections 465, 468, 474, 477A, 482, 493 and 495.

II. The Essential Commodities Act, 1955 (10 of 1955)

(a) Hoarding and Blackmarketing: Section 3 read with Sections 7, 8 and 10.

III. The Imports and Exports (Control) Act, 1947 (18 of 1947)

(a) Offences under the public order 1958 and Imports (Control) Order, 1955.
IV. **Industries (Development and Regulation) Act, 1951**

(a) **Offences of Preventing or Obstructing Public Economy**
Sections 10(1), 11(1), 13(1), 16(2), 18B(3), 180(2) and 29B(2) read with Section 24 and 24A of the Act.

V. **The Customs Act, 1962 (60 of 1962)**

(a) **Offences Like Smuggling and Endangering of Economic Health of the Country**
Sections 132, 133, 134, 135, 136, and 140.

VI. **The Foreign Exchange Regulation Act, 1947**

(a) **Offences Against the System of Exchange Control**
Sections 4, 5, 9, 12(2) read with Section 23 of the Act.

VII. **The Prevention of Food Adulteration Act, 1954 (37 of 1954)**

(a) **Adulteration of Food**
Sections 16, 17 and 18 of the Act.

VIII. **The Drugs and Cosmetics Act, 1940 (23 of 1940)**

(a) **Adulteration and Misbranding of Drugs**
Sections 13, 14, 17, 18, 27, 28, 30 and 34 of the Act.

IX. **The Indian Companies Act, 1956**

There are large number of offences under this Act, the most important of which are dealt with under Sections 63, 68, 116, 538, 539, 540, 541, 542, 628, 629 and 630 of the Act.
   (a) **Evasion of Tax**

   Sections 276, 277, 278 and 281 of the Act.

XI. **The Wealth Tax Act, 1957 (37 of 1957)**

   Sections 17, 18 and 36 of the Act.

XII. **The Expenditure Tax Act, 1957 (39 of 1957)**

   Sections 16, 17 and 32 of the Act.

XIII. **The Central Sales Tax Act, 1956 (74 of 1956)**

   Sections 9(3), 10 and 13(5) of the Act.

XIV. **Super Profits Tax Act, 1963 (14 of 1963)**

   Sections 10, 11, 19 and 22 of the Act.

XV. **The Companies (Profits) Surtax Act, 1964 (7 of 1964)**

   Sections 8, 20, 21 and 22 of the Act.
A bill to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement .........
2. Definitions......

(i) "monopolistic trade practice" means a practice which has, or is likely to have the effect of,-

(i) maintaining prices at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of any goods of any description or the supply of any services or in any other manner,

(ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services, whether by the adoption of any practice or by pursuing any commercial policy or by any act or omission,

* Bill as introduced in the Rajya Sabha. Only certain important provisions of the bill are reproduced here.
(iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed in India to deteriorate;

(j) "monopolistic undertaking" means-

(i) a dominant undertaking, or

(ii) an undertaking which, together with one or more independent undertakings, produces, supplies, distributes or otherwise controls not less than one-half of the goods of any description that are produced, supplied or distributed in India, or provides not less than one-half of any services that are rendered in India, and indulges in any monopolistic trade practice, whether such practice is indulged in by itself or by any independent undertaking hereinbefore referred to;

(o) "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular, -

(i) which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions

3. Act not to apply in certain cases ......
CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

5. Establishment and (1) For the purposes of this Act, the Constitution of the Commission, Central Government shall establish, by notification in the Official Gazette, a commission to be known as the Monopolies and Restrictive Trade Practices Commission which shall consist of a Chairman and not less than two and not more than eight other members, to be appointed by the Central Government.

(2) The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, industry, public affairs or administration.

(3) Before appointing any person as a member of the Commission, the Central Government shall satisfy itself that the person does not, and, will not have, any such financial or other interest as it likely to affect prejudicially his functions as such member.

6. Conditions of Service of Members ..... 

7. Removal of Members from Office in certain Circumstances ..... 

8. Staff of the Commission. The Central Government may appoint a Director of Investigation for making investigations for the purposes of this Act and may, in addition, make provision with respect to the number of members of the staff of the Commission and their conditions of service.

9. Salaries, etc., to be defrayed out of the Consolidated Fund of India. The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions, payable to or in respect of officers and other employees of the
Commission, shall be defrayed out of the Consolidated Fund of India.

**JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION**

10. Inquiry into Moropolistic or Restrictive Trade practices by Commission. The Commission may inquire into—

(a) any restrictive trade practice—

(i) upon receiving a complaint of facts which constitute such practice from any trade or consumers' association or from any seven or more consumers, or

(ii) upon application made to it by the Registrar or the Director;

(b) any monopolistic trade practice, upon a reference made to it by the Central Government.

11. Investigation by Director before issue of process in certain cases. In respect of any restrictive trade practice of which complaint is made under clause (a) of section 10, the Commission shall, before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into.

12. Powers of the Commission. (1) The Commission shall, for the purposes of any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

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

(b) the discovery and production of any document or other material object producible as evidence,
(c) the receipt of evidence on affidavits;

(d) the requisitioning of any public record from any court of office;

(e) the issuing of any commission for the examination of witnesses.

(2) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

(3) The Commission shall have power to require any person—

(a) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act; and

(b) to furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession or in relation to the trade carried on by any other person.

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

13. Orders of Commission may be subject to Conditions, etc. (1) In making any order under this Act, the Commission may make such provisions not inconsistent with this Act, as it may think necessary or desirable for the proper execution of the
order and any person who commits a breach of or fails to comply with any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practices or to a particular trade practice or to a particular locality.

14. Orders where party concerned does not carry business in India Where any practice substantially falls within monopolistic or restrictive trade practice, or both, relating to the production, supply, distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practice which is carried on in India.

15. Restriction of Application of Orders in certain Cases.....

16. Sittings of the Commission........

17. Hearing to be in Public except in Special Circumstances.....

18. Procedure of the Commission........

19. Proceedings of the Commission to be conducted with expedition.

20. Orders of the Commission to be noted in the Register....

CHAPTER III

CONCENTRATION OF ECONOMIC POWER

PART A

21. Undertakings to which this part applies. This Part shall apply to-

(a) an undertaking if the total value of-

(i) its own assets, or

(ii) its own assets together with the assets of its inter-connected undertakings, or

(iii) its own assets together with the assets of its inter-connected undertakings and the assets of every other undertaking if such other undertaking and one or more of the inter-connected undertakings so referred are inter-connected undertakings;

is not less than twenty crores of rupees.

(b) a dominant undertaking-

(i) where it is a single undertaking, the value of its assets; or

(ii) where it consists of more than one undertaking, the sum-total of the value of the assets of all the inter-connected undertakings constituting the dominant undertaking,

is not less than one crore of rupees.

22. Expansion of Undertakings. (1) Subject to the provisions of section 24, where an undertaking to which this part applies proposes to substantially expand its activities by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner, it shall, before
taking any action to give effect to the proposal for such expansion, give to the Central Government notice, in the prescribed form, of its intention to make such expansion, stating therein whether it is connected with any other undertaking and if so, giving particulars relating to all the inter-connected undertakings and the scheme of finance with regard to the proposed expansion and such other information as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no undertaking shall give effect to any proposal for its expansion unless such proposal has been approved by the Central Government.

Explanation - For the purpose of this section, an undertaking shall be deemed to expand in substantially if, after such expansion,

(a) in the case of an undertaking to which clause (a) of section 21 applies,

(i) the value of the assets referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent. of such value, or

(ii) the production, supply or distribution of any goods or the provision of any services by the undertaking or undertakings referred to in the said clause, before the expansion, would result in an increase by not less than twenty-five per cent. of its production, supply or distribution of goods or the provision of services by it;

(b) in the case of an undertaking to which clause (b) of section 21 applies, the production, supply, distribution or control of any goods or the provision by it of any services would result in an increase by not less than twenty-five
per cent. of the value of its production, supply, distribution or control of goods or the provision of services by it before the expansion.

(3) (a) The Central Government may call upon the undertaking concerned to satisfy it that the proposed expansion or the scheme of finance with regard to such expansion is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and thereupon the Central Government may, if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal for such expansion.

(b) If the Central Government is of opinion that no such order as is referred to in clause (a) can be made without a further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such orders with regard to the proposal for the expansion of the undertaking as it may think fit.

(d) No scheme of any expansion approved by the Central Government and no scheme of finance with regard to such expansion shall be modified except with the previous approval of the Central Government.

(4) Nothing in this section shall apply to any industrial undertaking (which is not a dominant undertaking) to which section 13 of the Industries (Development and Regulation) Act, 1951 applies, in so far as the expansion relates to production of the same or similar type of goods.
23. Establishment of new undertakings. (1) No person or authority, other than the Central Government, shall, after the commencement of this Act, establish any new undertaking which, when established, would become an interconnected undertaking of any undertaking to which clause (e) of section 21 applies, except under, and in accordance with, the previous permission of the Central Government.

Provided that a government, other than the Central Government, may, with the previous permission of the Central Government, establish a new undertaking which, when established, would become an interconnected undertaking of an undertaking to which clause (e) of section 21 applies.

(2) Any person or authority intending to establish a new undertaking referred to in sub-section (1) shall, before taking any action for the establishment of such undertaking, make an application to the Central Government in the prescribed form for that Government's approval to the proposal of establishing any undertaking and shall set out in such application information with regard to the inter-connection, if any, of the new undertaking (which is intended to be established) with every other undertaking, the scheme of finance for the establishment of the new undertaking and such other information as may be prescribed.

(3) (a) The Central Government may call upon the person or authority to satisfy that the proposal to establish a new undertaking or the scheme of finance with regard to such proposal is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial
to the public interest in any other manner and thereupon the Central Government may if it is satisfied that it is expedient in the public interest so to do, by order accord approval to the proposal.

(b) If the Central Government is of opinion that no such approval as is referred to in clause (a) can be made without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(c) Upon receipt of the report of the Commission, the Central Government may pass such order with regard to the proposal for the establishment of a new undertaking as it may think fit.

(d) No scheme of finance on the strength of which the establishment of a new undertaking has been approved by the Central Government shall be modified except with the approval of that Government.

25. Merger, amalgamation and take-over

(1) Notwithstanding anything contained in any other law for the time being in force, no scheme of merger or amalgamation of an undertaking to which this Part applies with any other undertaking or where a scheme of merger or amalgamation is proposed between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, shall be sanctioned by any court or be recognized for any purpose or be given effect to unless the scheme for such merger or amalgamation has been approved by the Central Government under this Act.

(2) If any undertaking to which this Part applies frames a scheme of merger or amalgamation with any other undertaking, or
where a scheme of merger or amalgamation is proposed between two or more undertakings, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 21 would apply, it shall, before, taking any action to give effect to the proposed scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.

(3) Nothing in sub-section (1) or sub-section (2) shall apply to the scheme of merger or amalgamation between such inter-connected undertakings as are not dominant undertakings and as produce the same goods.

(4) If an undertaking to which this Part applies proposes to acquire by purchase, take over or otherwise the whole or part of an undertaking which will or may result either-

(a) in the creation of an undertaking to which this Part would apply; or

(b) in an undertaking becoming an inter-connected undertaking of an undertaking to which this Part applies,
it shall, before giving any effect to its proposals, make an application in writing to the Central Government in the prescribed form of its intention to make such acquisition, stating therein information regarding its inter-connection with other undertakings, the scheme of finance with regard to the proposed acquisition and such other information as may be prescribed.

(5) No proposal referred to in sub-section (4) which has been approved by the Central Government and no scheme of finance
with regard to such proposal shall be modified except with the previous approval of the Central Government.

(6) On receipt of an application under sub-section (2) or sub-section (3), the Central Government may, if it thinks fit, refer the matter to the Commission for an inquiry and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon.

(7) On receipt of the Commission's report the Central Government may pass such orders as it may think fit.

(8) Notwithstanding anything contained in any other law for the time being in force, no proposal to acquire by purchase, take-over or otherwise of an undertaking to which this Part applies shall be given effect to unless the Central Government has made an order according its approval to the proposal.

(9) Nothing in sub-section (4) shall apply to the acquisition by an undertaking, which is not a dominant undertaking, of another undertaking, if both such undertakings produce the same goods:

Provided that nothing in this sub-section shall apply if as a result of such acquisition an undertaking comes into existence to which clause (a) or clause (b) of section 21 would apply.

25. Merger, Amalgamation or take-over in contravention of law, where any merger, amalgamation or take-over is being or has been effected in contravention of the provisions of section 24, the Central Government may, after such consultation with the Commission as it may consider necessary, direct, without prejudice to any penalty which may be imposed under this Act for such contravention, the undertaking concerned to cease and desist from such contravention, to
divest itself of the stock or other share capital or assets so acquired and to carry out such further directions as the Central Government may, in all the circumstances of the case, issue.

26. Directors of Undertakings not to be Appointed Directors of competing and Banking undertakings. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no person, who is a director of an undertaking, shall be appointed, after the commencement of this Act, as a director of any other undertaking to which this Part applies or an undertaking engaged in the same line of business or of a banking company except with the prior approval of the Central Government and any appointment contrary to the provisions of this section shall be void:

Provided that the approval of the Central Government shall not be necessary in the case of appointment of directors of undertakings which are not banking companies if the undertakings concerned are inter-connected undertakings.

(2) Notwithstanding anything contained in sub-section (1), no act done by a person as a director shall be invalid merely on the ground that his appointment was void by reason of this section or of any provision of this Part:

Provided that nothing in this section shall be deemed to give validity to any act done by a director after his appointment has been shown to the undertaking and the director concerned to be void.
(3) Notwithstanding anything to the contrary contained in any other law for the time being in force, every director holding such directorship as is not consistent with the provisions of this section shall, unless his appointment expires earlier, obtain within a period of one year from the commencement of this Act, the approval of the Central Government to such appointment and if he fails to do so, his appointment shall, on the expiry of the said period, become void.

(4) The provisions of sub-sections (1), (2) and (3) shall, as far as may be, apply to partners of any firm which is an undertaking within the meaning of this Act, as they apply to directors of companies.

PART B

27. Division of Undertaking ..........

PART C

28. Matters to be considered by the Central Government before according approval ............

29. Opportunity of being heard ............

CHAPTER IV

MONOPOLISTIC TRADE PRACTICES

30. Investigation by (1) Where it appears to the Central Commission of Monopolistic Practices, Government that one or more monopolistic undertakings are indulging in any monopolistic trade practice, or that, monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for any inquiry and the Commission shall, after
such hearing as it thinks fit, report to the Central Government its findings thereon.

(2) If as a result of such inquiry, the Commission makes a finding to the effect that, having regard to the economic conditions prevailing in the country and to all other matters which appear in particular circumstances to be relevant, the trade practice operates or is likely to operate against the public interest, the Central Government may, notwithstanding anything contained in any other law for the time being in force, pass such orders as it may think fit to remedy or prevent any mischiefs which result or may result from such trade practice.

(3) Any order made by the Central Government under this section may include an order -

(a) regulating the production, supply, distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale or supply thereof;

(b) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the production, supply or distribution of any goods or provision of any services;

(c) fixing standards for the goods used by the undertaking;

(d) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;
(a) requiring any party to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified.

31. Monopolistic Practice when to be deemed to be Prejudicial to Public interest. A monopolistic trade practice shall be deemed to be prejudicial to the public interest if the effect of the trade practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Central Government to be relevant in particular circumstances, is or would be—

(a) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(b) to increase unreasonably—

(i) the prices at which goods are sold, or

(ii) the profits derived from the production, supply or distribution of the goods or from the performance of any service;

(c) to reduce or limit unreasonably competition in the production, supply or distribution of any goods (including their sale or purchase) or in the provision of any service;

(d) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;

(e) to result in a deterioration in the quality of any goods or in the performance of any service.
CHAPTER V

REGISTRATION OF AGREEMENTS RELATING TO RESTRICTIVE TRADE PRACTICES

32. Registrable agreements relating to trade practices falling within one or more of the following categories shall be subject to registration in accordance with the provisions of this Chapter, namely:

(a) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers;

(e) any agreement to grant or allow concessions or benefit, including allowances, discount, rebates or credit in connection with or by reason of, dealings;

(f) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(g) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;
(h) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;

(i) any agreement for the unjustifiable exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;

(j) any agreement to sell goods at unreasonably low prices for the purpose of eliminating competition or a competitor;

(k) any agreement not hereinbefore referred to in this section which the Central Government may, by notification in the Official Gazette, specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;

(l) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section.

(2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the production, supply, distribution or control of goods.

(3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

33. Registrar of Restrictive Trade Agreements. For maintaining a register of agreements subject to registration under this Act and for performing the other functions imposed on him by this Act, there shall be appointed by the Central Government an xxxtt xxxxx
officer to be known as the Registrar of Restrictive Trade
Agreements.

34. Registration of Agreements.

35. Keeping the Register.

CHAPTER VI

CONTROL OF CERTAIN RESTRICTIVE TRADE PRACTICES

36. Investigation into restrictive trade practices by Commission.

(1) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under section 34 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that -

(a) the practice shall be discontinued or shall not be repeated,

(b) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

(2) The Commission may, instead of making any order under this section, permit the party to any restrictive trade practice, if he so applies, to take such steps within the time specified in this behalf by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and in any such case, if the Commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of -
(a) any agreement between buyers relating to goods which are bought by the buyers for consumption and not for ultimate re-sale whether in the same or different form, type or specie or as constituent of some other goods;

(b) a trade practice which is expressly authorised by any law for the time being in force.

(4) Notwithstanding anything contained in this Act, if the Commission, during the course of an inquiry under sub-section (1) finds that a monopolistic undertaking is indulging in restrictive trade practices, it may, after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may consider necessary, submit the case along with its findings thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government may take under section 30.

37. Trade practices A restrictive trade practice shall be deemed to be prejudicial to the public interest if, in the opinion of the Commission, the effect of the practice, having regard to the economic conditions prevailing in the country and to all other matters which appear to the Commission to be relevant in particular circumstances, is or would be -

(a) to increase unreasonably the cost relating to the production, supply or distribution of goods or the performance of any service;

(b) to increase unreasonably -

(i) the prices at which goods are sold, or

(ii) the profits derived from the production, supply or distribution of the goods or from the performance of any service;

(c) to reduce or limit unreasonably competition in the production, supply or distribution of any ....
goods (including their sale or purchase) or in the provision of any service;
(d) to limit or prevent unreasonably the supply of goods to consumers, or in the provision of any service;
(e) to result in a deterioration in the quality of any goods or in the performance of any service.

38. Special conditions

for avoidance of Conditions for Maintaining re-sale Prices.

(1) Without prejudice to the provision of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and a wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the re-sale of goods in India.

(2) After the commencement of this Act, no supplier of goods whether directly or through any person or association of persons acting on his behalf shall notify to dealers or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the re-sale of the goods in India.

(3) This section shall apply to patented articles (including articles made by a patented process) as it applies to other goods and notice of any term or condition which is void by virtue of this section or which would be so void if included in a contract of sale or agreement relating to the sale of such article shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent:

Provided that nothing in this section shall affect the
validity as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or by a licensee under any such licence or of any assignment of a patent so far as it regulates the price at which articles produced or processed by the licensee or the assignee may be sold by him.

Explanation - In this section and in section 39, the term 'Supplier' in relation to supply of any goods, means a person who supplies goods to any person for the ultimate purpose of re-sale and includes a wholesaler, and the term "dealer" includes a supplier and a retailer.

39. Prohibition of (1) Without prejudice to the provisions of Other measures for maintaining this Act with respect to registration and re-sale prices, to any of the powers of the Commission or of the Central Government under this Act, no supplier shall withhold supplies of any goods from any wholesaler or retailer seeking to obtain them for re-sale in India on the ground that the wholesaler or retailer -

(a) has sold in India at a price below re-sale price, goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or

(b) is likely if the goods are supplied to him to sell them in India at a price below that price or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) Nothing contained in sub-section (1) shall render it unlawful for a supplier to withhold supplies of goods from any wholesaler or retailer or to cause or procure another supplier to do so if he has reasonable cause to believe that the wholesaler or the retailer,
as the case may be, has been using as loss leaders any goods of the same or a similar description whether obtained from that supplier or not.

(3) A supplier of goods shall be deemed to be withholding supplies of goods from a dealer if he -

(a) refuses or fails to supply those goods to the order of the dealer;

(b) refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters which are less favourable than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

(c) treats a dealer, in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

(4) A supplier shall not be deemed to be withholding supplies of goods on any of the grounds mentioned in sub-section (1), if, in addition to that ground, he has any other ground which alone would entitle him to withhold such supplies.

Explanation I - "Resale price" in relation to sale of goods of any description, means any price notified to the dealer or otherwise published by or on behalf of the supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on, or is recommended as appropriate for, a sale of that description or any price prescribed or purporting to be prescribed for that purpose by any contract or agreement between the wholesaler or retailer and any such supplier.
Explanation II - A wholesaler or retailer is said to use goods as loss leaders when he re-sells them otherwise than in a genuine seasonal or clearance sale not for the purpose of making a profit on the re-sale but for the purpose of attracting to the establishment at which the goods are sold, customers likely to purchase other goods or otherwise for the purpose of advertising his business.

40. Power of Commission to exempt particular classes of goods from sections 38 and 39.

41. Power of Registrar to obtain information.

42. Duty of undertaking to furnish information.

43. Power to appoint inspectors.

CHAPTER VII

POWER TO OBTAIN INFORMATION AND APPOINT INSPECTORS

41. Power of Registrar to Obtain Information.

42. Duty of Undertaking to Furnish Information.

43. Power to Appoint Inspectors.

CHAPTER VIII

OFFENCES AND PENALTIES

44. Penalty for Contravention of Section 22. If any person contravenes the provisions of section 22 or any order made thereunder, he shall be punishable with fine which may extend to rupees one lakh.

45. Penalty for Contravention of Section 23 or Section 24 or Section 25 or Section 27. If any person contravenes the provisions of section 23, or section 24, or section 25 or section 27 he shall be punishable with fine which may extend to rupees one lakh, and where the offence is a continuing one, with a further fine which may
extend to one thousand rupees for every day after the first during which such contravention continues.

46. Penalty for Contravention of Section 26 If any person contravenes, without any reasonable excuse, the provisions of section 26, he shall be punishable with fine which may extend to two thousand rupees, and where the offence is a continuing one, with a further fine which may extend to two hundred rupees for every day, after the first, during which such contravention continues.

47. Penalty for failure to Register Agreements. If any person fails, without reasonable excuse, to register an agreement which is subject to registration under this Act, he shall be punishable with fine which may extend to five thousand rupees and where the offence is continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such failure continues.

48. XI Penalty for (1) If any person fails, without reasonable cause, to furnish any information required under section 42 or to comply with any notice duly given to him under section 41, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day after the first during which such failure continues.

(2) If any person, who furnishes or is required to furnish any particulars, documents or any information -

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material
particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

49. Penalty for offences If any person contravenes any order made in relation to Orders under the Act under section 13 or section 30 or section 36, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first, during which such contravention continues.

50. Penalty for Offences in relation to re-sale price maintenance. If any person contravenes the provisions of section 38 or section 39, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

51. Penalty for wrongful disclosure of information. If any person discloses an information in contravention of section 59, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

52. Offences by Companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge ...............
of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section-

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

---

CHAPTER IX

53. Power of Central Government to impose Conditions, Limitations and Restrictions on Approvals, etc., given under the Act.........

54. Appeals .........
55. Jurisdiction of Courts to try Offences.............
56. Commencement of Offences .............
57. Magistrates' power to impose enhanced Penalties.............
58. Protection regarding Statements made to Commission.............
59. Restriction on Disclosure of Information.............
60. Power of the Central Government to require the Commission to submit a Report.............
61. Reports of the Commission to be placed before Parliament.............
62. Members to be Public Servants.............
63. Protection of Action taken in Good faith.............
64. Inspection of and Extracts from the Register.............
65. Power to make Regulations.............
66. Power to make Rules.............
APPENDIX - IV


(AS INTRODUCED IN THE LOk SABHA ON 10TH MAY, 1968)

STATEMENT OF OBJECTS AND REASONS

On the 1st December, 1967, an assurance was given to the Lok Sabha that Government would bring forward during the next following budget session of Parliament a Bill to ban contributions by companies to any political party, or for any political purpose to any individual or body and to abolish the system of management of companies by managing agents. The Bill seeks to fulfil the assurance. It also seeks to abolish simultaneously the system of management of companies by secretaries and treasurers which is akin to the system of management of companies by managing agents.

2. The propriety of companies making contributions to any political party, or for any political purpose to any individual or body has for some time been the subject of discussion both inside and outside the Parliament. A view has been expressed that such contributions have a tendency to corrupt political life and to adversely affect healthy growth of democracy in the country, and it has been gaining ground with the passage of time. It is, therefore, proposed to ban such contributions.

3. Section 324 of the Companies Act, 1956 empowers the Central Government to notify that companies engaged in specified classes of industry or business shall not have managing agents. Under the Rules framed thereunder, Government appointed the Managing Agency Inquiry Committee to enquire into the desirability of applying the said provisions to companies engaged in established industries or any other industry or business as may be deemed fit by the Committee. In pursuance of the report of the Committee submitted on the 16th March, 1966, Government issued a notification to the effect that the term of office of a managing agent of any company in the specified industries shall expire at the end of three years from the 2nd April, 1967.

The Monopolies Inquiry Commission observed that the system of managing agencies was one of the most important causes which hastened the process of concentration of economic power in India.

Taking all the factors into consideration, it is proposed to abolish the system of management of companies by managing agents altogether at the same time as in the case of specified industries referred to above.

4. The Managing Agency Inquiry Committee observed that, at one time, the institution of secretaries and treasurers was thought of as a suitable alternative to the managing agency system but for all practical purposes secretaries and treasurers exist only in those cases where managing agents already in existence had to shed...
some of the managed companies in view of the limit of ten on the
total number of companies that a managing agent can manage. The
Committee did not seem any particular gain in such a change.
Secretaries and treasurers can be given all the powers and
privileges of a managing agent except that they (i.e., the former)
cannot appoint their representative on the Board of Directors of
the managed company, and cannot draw more than 7½ per cent. as
their commission while the managing agents can draw up to 10 per cent.
of the net profit. It would thus be obvious that no useful purpose
would be served by abolishing the managing agency system alone if the
resultant void is to be filled up by the secretaries and treasurers.
Hence the Government proposes to abolish the system of management
of companies by secretaries and treasurers simultaneously with the
abolition of the system of management of companies by managing agents.

---

A

BILL

Further to amend the Companies Act, 1956

Be it enacted by Parliament in the Nineteenth Year of the Republic
of India as follows:-

1. Short Title

This Act may be called the Companies (Amendment) Act, 1966.

2. Definition

In this Act, unless the context otherwise requires, "appointment day" means the 3rd day of April, 1970.

3. Substitution of Section

For section 293A of the Companies Act, 1956

(hereinafter referred to as the principal Act),

the following section shall be substituted, namely,

Prohibition regarding making of political contributions

"293A (1) Notwithstanding anything contained in

this Act, neither a company in general meeting nor

its Board of Directors shall, after the commencement

of the Companies (Amendment) Act, 1968, contribute any amount

or amounts-

(a) to any political party, or

(b) for any political purpose to any individual or

body.

(2) If a company contraverses the provisions of
of sub-section (1), then-

(i) the company shall be punishable with fine which may extend to five thousand rupees; and

(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine."

(4) Insertion of new section following section shall be inserted, namely:-

Abolition  " 324A (1) Notwithstanding anything contained in this Act or in the memorandum or articles of association or in any contract to the contrary where any company has, on the appointed day, a managing agent or secretaries and treasurers, the term of office of such managing agent or, as the case may be, the secretaries and treasurers shall expire, if it does not expire earlier, on the appointed day.

(2) No company shall appoint or re-appoint any managing agent or secretaries and treasurers on or after the appointed day."

5. Amendment of section 365. In section 365 of the principal Act, in clause (c), after the word and figures "section 324," the figures and letter "324A," shall be inserted.

6. Cesser of certain provisions of the Act. On and from the appointed day, so much of the provisions of the principal Act as relate to managing agents and secretaries and treasurers shall cease to have effect except as respects things done or omitted to be done under those provisions before such cesser.
OFFENCES NOTIFIED BY THE CENTRAL GOVERNMENT UNDER SECTIONS OF THE
DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946.

SOURCE: Report of the Committee on Prevention of Corruption,
Government of India (1964) - Appendix IV, Page 239

NOTIFICATION

G.O.I. No. 305 - In exercise of the powers conferred by section 3 of
the Delhi Special Police Establishment Act, 1946 (XXV of 1946), and
in supersession of the notification of the Government of India in
the Ministry of Home Affairs No. 7/5/55/VD dated the 6th November,
1956, as amended from time to time, the Central Government hereby
specifies the following offences and classes of offences for the
purpose of the said section, namely:—

(a) Offences punishable under sections 161, 163, 164, 165,
165A, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175,
176, 177, 178, 179, 180, 181, 182, 183, 184, 185,
186, 187, 188, 189, 190, 191, 192, 193, 194, 195,
196, 197, 198, 199, 200, 201, 202, 203, 204,
205, 206, 207, 208, 209, 210, 211, 212, 213,
214, 215, 216, 217, 218, 219, 220, 221, 222,
223, 224, 225, 226, 227, 228, 229, 230,
231, 232, 233, 234, 235, 236, 237, 238,
239, 240, 241, 242, 243, 244, 245,
246, 247, 248, 249, 250, 251, 252, 253,
254, 255, 256, 257, 258, 259,
260, 261, 262, 263, 264, 265,
266, 267, 268, 269, 270,
271, 272, 273, 274,
275, 276, 277, 278,
279, 280, 281,
282, 283, 284,
285, 286, 287,
288, 289, 290,
291, 292, 293,
294, 295, 296,
297, 298, 299,
300, 301, 302,
303, 304, 305,
306, 307, 308,
309, 310, 311,
312, 313, 314,
315, 316, 317,
318, 319, 320,
321, 322, 323,
324, 325, 326,
327, 328, 329,
330, 331, 332,
333, 334, 335,
336, 337, 338,
339, 340, 341,
342, 343, 344,
345, 346, 347,
348, 349, 350,
351, 352, 353,
354, 355, 356,
357, 358, 359,
360, 361, 362,
363, 364, 365,
366, 367, 368,
369, 370, 371,
372, 373, 374,
375, 376, 377,
378, 379, 380,
381, 382, 383,
384, 385, 386,
387, 388, 389,
390, 391, 392,
393, 394, 395,
396, 397, 398,
399, 400, 401,
402, 403, 404,
405, 406, 407,
408, 409, 410,
411, 412, 413,
414, 415, 416,
417, 418, 419,
420, 421, 422,
423, 424, 425,
426, 427, 428,
429, 430, 431,
432, 433, 434,
435, 436, 437,
438, 439, 440,
441, 442, 443,
444, 445, 446,
447, 448, 449,
450, 451, 452,
453, 454, 455,
456, 457, 458,
459, 460, 461,
462, 463, 464,
465, 466, 467,
468, 469, 470,
471, 472, 473,
474, 475, 476,
477, 478, 479,
480, 481, 482,
(e) Offences punishable under the Foreign Exchange Regulation Act, 1947 (VII of 1947);

(f) Offences punishable under sections 51, 52, 55 and 56 of the Indian Post office Act, 1898 (VI of 1898);

(g) Offences punishable under sections 63, 68, 116, 538, 539, 540, 541, 542, 628, 629 and 630 of the Companies Act, 1956 (I of 1956);

(h) Offences punishable under sections 104 and 105 of the Insurance Act 1938 (IV of 1938);

(i) Offences punishable under the Indian Official Secrets Act, 1923 (XIX of 1923);

(j) Offences punishable under sections 7 and 2 of the Essential Commodities Act, 1955 (X of 1955) and conspiracies in relation thereto or in connection therewith;

(k) Offences punishable under section 23(i)(iii) of the Industries (Development and Regulation) Act, 1951 (LXV of 1951) and conspiracies in relation thereto or in connection therewith;

(l) Offences punishable under items 26, 72, 74, 75, 76, 76A, 76B, 77, 78, 79, 80 and 81 of the Schedule to section 167 of the Sea Customs Act, 1878 (VIII of 1878);

(m) Offences punishable under sections 5 and 7 of the Land Customs Act, 1924 (XIX of 1924);

(n) Offences punishable under the Indian Wireless Telegraphy Act, 1933 (KVTI of 1933);

(o) Offences punishable under the Telegraph Wires (Unlawful possession) Act, 1950 (LXIV of 1950);

(p) Offences punishable under the Railway stores (Unlawful possession) Act, 1955 (LI of 1955);

(q) Offences punishable under section 27 the Indian Telegraph Act, 1885 (XIII of 1885);
(r) attempts, statements and conspiracies in relation to or in connection with the offences mentioned in clauses (a) to (i) and clauses (l) to (q) and any other offences committed in the course of the same transaction arising out of the same facts.
APPENDIX VI

A NOTE ON THE VIGILANCE ORGANISATION IN THE CENTRAL GOVERNMENT*

The agencies responsible for implementing the anti-corruption activities of the Central Government till 1963 were:

i) The administrative Vigilance Division in the Ministry of Home Affairs;

ii) The Vigilance units set up in the respective Ministries/Departments and their attached and subordinate offices, and in the public sector undertakings;

iii) The Delhi Special Police Establishment (now part of the Central Bureau of Investigation).

The shape of the Vigilance activities till then was in brief as follows:

i) Except when the Special Police Establishment start an enquiry or investigation on their own, the administrative Ministry decides whether it should take any action on a complaint or suspicion of dishonesty, or other irregularity and if it decides not to take any action, the matter rests there;

ii) If it thinks that an inquiry is called for it either asks an officer of the Department to look into the matter or hands over the case to the Special Police Establishment either for a preliminary inquiry or for instituting a regular case and investigating it;

iii) When the result of the preliminary departmental inquiry is available, the Ministry itself again takes a decision whether the matter should be closed or whether a regular departmental enquiry should be held, or the matter handed over to the Special Police

Establishment for instituting a case. If it decides to close the matter, the Administrative Vigilance Division of the Ministry of Home Affairs does not normally come into the picture at all. If a regular departmental inquiry is decided upon, the case is usually made over to one of the commissioners for departmental inquiries, particularly if it relates to gazetted officers or arises out of an investigation made by the Special Police Establishment. If the inquiry is made by one of the commissioners the final decision is taken by the Ministry, usually without consulting the Administrative Vigilance Division though, of course, the Union Public Service Commission is consulted when necessary.

iv) In case made over to them the Special Police Establishment recommend one or the other of the following courses of action;

a) Criminal prosecution,
b) a regular departmental inquiry or
c) such other minor action as the Ministry may consider appropriate.

v) Where criminal prosecution is recommended, sanction orders of the President or some other prescribed authority are issued by the Administrative Vigilance Division, but the substantive decision whether a sanction should be accorded is taken by the Ministry concerned. If a Ministry is not inclined to accept the Special Police Establishment's recommendation, the matter comes to the Administrative Vigilance Division for what can be best described as mediation; and

vi) In regard to punishment on the result of a departmental inquiry the Union Public Service Commission's advice, where sought, is usually accepted. In other cases, the Ministry concerned takes
the final decision without consulting the Administrative Vigilance Division or the Special Police Establishment. However, where the inquiry had been made by a Commission, the punishment imposed is reported to the Administrative Vigilance Division, who, in suitable cases ask for a review."

Thus it would appear that the Administrative Vigilance Division functioned substantively in an advisory capacity. During a little over eight years of its existence, the Administrative Vigilance Division dealt with 82,000 odd complaints of corruption, bribery and disciplinary offences, and investigated on its own into another 63,000 odd suspected cases. The work of the Vigilance Division resulted in 6,449 Government servants including 1,78 gazetted officers, receiving 'major penalties' like dismissal and compulsory retirement between April 1, 1957, and December 31, 1963. Another 61,639 Government servants including 1,061 gazetted officers, received 'minor penalties' during the period.

The Committee on Prevention of Corruption felt the arrangements to be inadequate on the following grounds and recommended many modifications:

1) The system consisting of the Administrative Vigilance Division in the Home Ministry and Vigilance officers in all the Ministries and Departments was mainly intended to investigate and punish corruption and misuse of authority by individual members of the services under the Government of India. While this was indispensable, the Committee felt that the Central Vigilance Organization should be expanded so as to deal with complaints of failure of justice or oppression or abuse of authority suffered by the citizens, though it might be difficult to attribute them to any particular official or officials. These abuses might result
from the procedure and attitudes of particular departments or sets of officials. The committee considered that the problem of maintaining integrity in administration could not be viewed in isolation from the general administrative processes. In order to deal effectively with the problem, it was necessary to take into account the root causes, of which, the most important is the wide discretionary power which had to be exercised by the Executive in carrying on the complicated work of modern administration in a Social Welfare State.

11) There was no organic relation developed between the Administrative Vigilance Division and the Vigilance Officers of the various departments. In some of the departments the vigilance officers were taking a keen interest in their work while in others they did not take their responsibilities in this matter seriously. It was also essential to evolve and apply common standards in matters relating the prosecution, departmental action and the award of punishment. In short, it was imperative to put the entire Vigilance Organisation on a proper and adequate basis without in any way undermining the general principle that the Secretaries and Heads of Departments were primarily responsible for the purity, integrity and efficiency of their departments. The Committee, therefore, recommended the setting up of a Central Vigilance Commission with a branch that would deal with general complaints and redress and another branch to deal with vigilance activities. The Committee also recommended that certain powers similar to those under sections 4 and 5 of the Commission of Inquiry Act, 1952, should be conferred on the Central Vigilance Commissioner so that he might undertake an enquiry into transactions in which public servants were suspected or alleged to have acted for improper purposes or in a corrupt manner.
The main recommendations of the Santhanam Committee may be summarized as follows:

1) The Central Vigilance Commission should in its functioning be independent of Government and may not be answerable to any Minister even though administratively placed under the Ministry of Home Affairs.

2) It should deal comprehensively with two of the major problems of administration, namely -
   a) prevention of corruption and maintenance of integrity, and
   b) ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

3) The powers and responsibilities in disciplinary matters which are at present decentralised should in the main be centralised in the Commission, the only exception being the power given to the Delhi Police Establishment to make preliminary inquiries or to institute and investigate a regular case whenever they consider it necessary to do so.

4) The Central Vigilance Commission should consist of three Directorates, one to deal with general complaints of citizens (Directorate of General Complaints and Address) another to deal with all vigilance matters (Directorate of Vigilance) and the third the Central Police Organisation which would exercise the powers now exercised by the Delhi Special Police Establishment till such time as the Central Bureau of Investigation is set up (The Central Bureau of Investigation was set up on 1st April, 1963).

The Government of India accepted the recommendation of the Committee and set up a Central Vigilance Commission in December 1963.
with a retired Chief Justice of the Mysore High Court, Shri S. Sreenivasa Rau, as the first Vigilance Commissioner. It was also decided that the Central Vigilance Commission will have, in the sphere of vigilance, a status and a role broadly corresponding to those of the Union Public Service Commission. It will have extensive functions designed to ensure that complaints of corruption or lack of integrity on the part of the public servants are given prompt and effective attention, and that the offenders are brought to book without fear or favour. The commission can undertake any inquiry into transactions in which public servants are suspected or alleged to have acted for an improper purpose or in a corrupt manner. The Commission would normally get inquiries or investigation made by the Central Bureau of Investigation, the Commissioner for Departmental Inquiries or the departmental authorities. In exceptional cases where the Commission wishes to make an enquiry itself the Government may appoint it a commission of enquiry under the Commission of Inquiry Act.

Following the Centre, most of the States have also set up Vigilance Commissions modelled on the Central Commission.
APPENDIX VII
THE LOKPAL AND LOKAYUKTA BILL, 1968, BILL NO. 51 OF 1968
(As introduced in Lok Sabha on 9 May, 1968)

STATEMENT OF OBJECTS AND REASONS

The Administrative Reforms Commission was required to consider among other matters, problems of redress of citizens' grievances, keeping in mind the need for ensuring the highest standards of efficiency and integrity in the public services, and also for making public administration responsive to the people. More specifically, the Commission was expected to examine:

(i) the adequacy of the existing arrangements for the redress of grievances; and

(ii) the need for introduction of any new machinery or special institution for redress of grievances.

Giving priority to this part of its terms of reference, the Commission made an interim report in which it took note of the oft-expressed public outcry against the prevalence of corruption, the existence of widespread inefficiency and the unresponsiveness of administration to popular needs. It felt that the answer to this lay in the provision of a machinery which would examine public complaints and sift the genuine from the false or the untenable so that the administration's failures and achievements could be publicly viewed in their correct perspective. Such an institution was regarded necessary even from the point of view of affording protection to the services. The Commission, therefore, recommended that there should be a statutory machinery to enquire into complaints alleging corruption or injustice arising out of maladministration.

2. The Bill seeks to give effect to the recommendations of the Administrative Reforms Commission in so far as they relate to matters within the purview of the Union Government. In its scope, it differs from the draft bill proposed by the Administrative Reforms Commission in two major respects. It does not extend to public servants in the states. Secondly, it does not confine itself to ministers and secretaries alone. In other words, the Bill seeks to provide a statutory machinery to enquire into complaints based on actions of all Union Public Servants including Ministers.

A

to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken

* Only the important provisions of the Bill are reproduced here.
by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:-

1. Short title. (1) This Act may be called the Lokpal and extent and commencement Lokayuktas Act, 1968.

(2) It extends to the whole of India and applies also to Public servants outside India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint,

2. Definitions. In this Act unless the context otherwise requires

(a) "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;

(g) "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

(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;

(k) "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:-

(i) every Minister referred to in clause (h),

(ii) every officer referred to in clause (i),

(iii) every member of the Council of Ministers in a Union territory as defined in the Government of Union territory of Delhi, territories Act, 1963 and in the case of the every member of the Executive Council constituted under the Delhi
Administration Act, 1966,

(iv) every person in the service or pay of, -

(a) any local authority in any Union territory which is notified by the Central Government in this behalf in the Official Gazette,

(b) any corporation (not being a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(c) 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 Central Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid up share capital is held by the Central Government,

(d) any society registered under the Societies Registration Act, 1860 which is subject to the Control of the Central Government and which is notified by that Government in this behalf in the Official Gazette;

3. Appointment of Lokpal and Lokayuktas.

(1) For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas:

Provided that,

(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that
House in such manner as the Speaker may direct;

(b) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) Nothing contained in clause (b) of the proviso to sub-section (1) shall apply in the case of the appointment of the first Lokayukta under this section.

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

(4) The Lokayuktas shall be subject to the administrative control of the Lokpal and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokpal may issue such general or special directions as he may consider necessary to the Lokayuktas.

Provided that nothing in this sub-section shall be construed to authorise the Lokpal to question any finding, conclusion or recommendation of a Lokayukta.

4 Lokpal or Lokayukta to hold no other office. The Lokpal or a Lokayukta shall not be capable of being 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 Lokpal of, as the case may be, a Lokayukta), or be connected with any political party or carry on any business and accordingly before he enters upon his office, a person appointed as the Lokpal or, as the case may be, as a Lokayukta, shall,

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

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

5 Term of office and other conditions of service of Lokpal and Lokayukta.

(1) Every person appointed as the Lokpal or a Lokayukta shall hold office for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment for not more than one term.

Provided that,-

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

(b) the Lokpal or a Lokayukta may be removed from office in the manner specified in section 6;

(c) the Lokpal or a Lokayukta, shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be, until the Lokpal or such Lokayukta resumes his duties, be performed,-

(a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or if there are two or more Lokayuktas by such one of the Lokayuktas as the President may by order direct;
(b) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.

(3) Save as otherwise provided in sub-section (1), on ceasing to hold office, the Lokpal or a Lokayukta:

(i) shall be ineligible for further employment under the Government of India, or for any employment under, or office in, any such local authority, corporation, Government company or society as is referred to in sub-clause (k) of section 3;

(ii) shall not take up any employment under the Government of a State without the prior permission in writing of the President:

Provided that a Lokayukta shall be eligible for appointment as the Lokpal.

(4) The salary and allowances and other conditions of service of the Lokpal or a Lokayukta shall be such as may be prescribed:

Provided that—

(a) in prescribing the salary and allowances and other conditions of service of the Lokpal, regard shall be had to the salary and allowances and other conditions of service of the Chief Justice of India;

(b) in prescribing the salary and allowances and other conditions of service of the Lokayuktas regard shall be had to the salary and allowances and other conditions of service of a Judge of the Supreme Court of India:

Provided further that the salary, allowances and other conditions of service of the Lokpal or a Lokayukta shall not be varied to his disadvantage after his appointment.
6. Removal of (1) Subject to the provisions of article 311 of the Lokpal or a Lokayukta, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or had been a Judge of the Supreme Court of India or the Chief Justice of a High Court.

(2) The person appointed under the proviso to subsection (1) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

(3) Notwithstanding anything contained in subsection (1), the President shall not remove the Lokpal or a Lokayukta unless an address by each House of Parliament 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 President in the same session for such removal.

7. Matters which may be investigated by Lokpal or Lokayukta. (1) Subject to the provisions of this Act, the Lokpal may investigate any action which is taken by, or with the general or specific approval of,

(i) a Minister or a Secretary; or

(ii) any other public servant being a public servant of a class or sub-class of public servants notified by the Central Government in consultation with the Lokpal 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 Lokpal, the subject of a grievance or an allegation.
(2) Subject to the provisions of this Act, a Lokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being a Minister, Secretary or other Public servant referred to in sub-section (1) 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.

(3) Notwithstanding anything contained in sub-section (2), the Lokpal may, for reasons to be recorded in writing, investigate any action which may be investigated by a Lokayukta under that sub-section whether or not a complaint has been made to the Lokpal in respect of such action.

(4) Where two or more Lokayuktas are appointed under this Act, the Lokpal may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by a Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

8. Matters not (1) Except as hereinafter provided, the Lokpal subject to investigation or a Lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action,-

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complaint has or had any remedy by way of proceedings before any tribunal or court of law:

Provided that the Lokpal or a Lokayukta may conduct an
investigation notwithstanding that the complaint had or has such a remedy if the Lokpal or, as the case may be, the Lokayuktta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

(2) The Lokpal or a Lokayuktta shall not conduct any investigation in the case of any complaint involving a grievance or an allegation in respect of any action inquired into by, or referred for inquiry to, a Commission of Inquiry under the Commissions of Inquiry Act, 1952.

(3) The Lokpal or a Lokayuktta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) of clause (k) of section 2.

(4) The Lokpal or a Lokayuktta shall not investigate, -

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

(b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place.

Provided that the Lokpal or a Lokayuktta may entertain a complaint referred to in clause (a), if the complainant satisfies him that he had sufficient cause for not making the within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayuktta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

(1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokpal or a Lokayukta,—

(a) in the case of a grievance, by the person aggrieved;

(b) in the case of an allegation, by any person other than a public servant:

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits and other documents as may be prescribed.

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokpal or a Lokayukta by a person in Police custody, or in a gaol or in any asylum or other receptacle for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such gaol, asylum or other receptacle.

10. Procedure

(1) Where the Lokpal or a Lokayukta proposes to conduct any investigation under this Act, he shall,—

(a) forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned; and

(b) afford to the public servant concerned an opportunity to offer his comments on such complaint or statement.

(2) 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.

(3) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokpal or, as the case may be, the Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokpal or a Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a 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 investigating 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.

(5) In any case where the Lokpal or a Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

Evidence (1) Subject to the provisions of this section, for the purpose of any investigation under this Act, the Lokpal or a 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 any such information or produce any such document.
(2) For the purpose of any such investigation the Lokpal or a Lokayukta 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 on 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.

(3) Any proceeding before the Lokpal or a Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or persons in Government service, 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.

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

(a) as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or
(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of that Cabinet, and for the purpose of this sub-section a certificate issued by a 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.

(6) Without prejudice to the provisions of sub-section (4), no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

12. Reports of Lokpal and Lokayuktas. (1) 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 Lokpal or a Lokayukta is satisfied that such action has resulted in injustice to the complainant or any other person, the Lokpal or Lokayukta shall, by a report in writing, recommend to the public servant and the competent authority concerned that such injustice shall be remedied in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta of the action taken for compliance with the report.

(3) 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 Lokpal or a Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall
by a report in writing communicate his findings along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokpal or the Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President and may also, at his discretion, inform the complainant concerned.

Provided that no such special report shall be made in respect of any action taken in consultation with the Union Public Service Commission.

(6) The Lokpal and the Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the President.

(7) Where an adverse comment against any person or department or organization has been made in any annual or special report, such report shall also contain the substance of the defence adduced by the person complained against and the comments made by or on behalf of the department or organization affected.

(8) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the President shall
cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

(9) Subject to the provisions of sub-section (2) of section 10, the Lokpal may, at his discretion, make available, from time to time, the substance of cases closed or otherwise disposed of by him or by a Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

13. Staff of

(1) The Lokpal may appoint, or authorise a Lokpal and Lokayuktas. Lokayukta or any officer subordinate to the Lokpal or a Lokayukta to appoint, officers and other employees to assist the Lokpal and the Lokayuktas in the discharge of their functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokpal and Lokayuktas shall be such as may be prescribed after consultation with the Lokpal.

(3) Without prejudice to the provisions of sub-section (1), the Lokpal or a Lokayukta may utilise the services of any officer or investigating agency of the Central Government or of any other person or agency for the purpose of conducting any investigation under this Act.

Provided that the Lokpal or a Lokayukta shall obtain the consent of the Central Government before utilising the services of any officer or agency of that Government.

14. Secrecy of

(1) Any information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this
Act, and any evidence recorded or collected in connection with such information, shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,-

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report;

(b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923, or an offence of perjury or for purposes of any proceedings under section 15; or

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

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokpal or a Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the Central Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal, the Lokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

(4) No person shall publish any proceedings relating to an investigation which is pending before the Lokpal or a Lokayukta as the case may be; nor shall any person publish such proceedings after
the investigation is completed unless prior permission for the publication is obtained from the Lokpal, or the Lokayukta, as the case may be.

(5) Whoever contravenes the provisions of sub-section (4) shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(6) Nothing in sub-sections (4) and (5) shall apply to the publication of any report laid before a House of Parliament under sub-section (8) of section 12.

15. Intentional insult or bringing into disrepute, Lokpal or Lokayukta.

16. Protection. (1) No suit, prosecution, or other legal proceeding shall lie against the Lokpal or the Lokayuktas or any member of their staff and employees in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any court.

17. Conferment of additional functions on Lokpal and Lokayuktas, etc. (1) The President may, by notification published in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta, as the case may be, such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption.
(3) The President may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokpal to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokpal or a Lokayukta), and notwithstanding anything contained in this Act the Lokpal shall comply with such order.

18. Power to Delegate....

19. Power to make rules.......

20. Removal of doubts. (1) For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokpal or a Lokayukta to investigate any action which is taken by or with the approval of—

(a) the Chief Justice or a Judge or an Officer or servant of the Supreme Court of India;

(b) the Chief Justice or a Judge of the Delhi High Court or a Judicial Commissioner, Additional Judicial Commissioner or an Assistant Judicial Commissioner in any Union territory or any District Judge in a Union territory;

(c) the Comptroller and Auditor-General of India;

(d) the Chairman or a member of the Union Public Service Commission;

(e) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution.

21. Saving. The provisions of this Act shall be in addition to the provisions of any other enactment or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.
APPENDIX VIII

COPY OF QUESTIONNAIRE I ISSUED FOR ASSESSING PUBLIC OPINION IN RELATION TO WHITE COLLAR CRIME.

Name:
Occupation:
Address:

Do you think Graft, Corruption or Fraud is prevalent on a considerable scale in India in the following areas?

Yes:  ___  No:  ___  Do not know:  ___

1) Government & Officials
2) Police
3) Defence Services
4) The Press
5) Administration of
   a) Criminal Law
   b) Civil Law
6) Customs
7) Stock Exchange
8) Big Business
9) M.Ps and Ministers
10) Dealers in Food and Drugs
11) Banking
12) Local Bodies (Panchayats and Municipal Bodies)
APPENDIX IX

CRIMES COMMITTED IN THE PUBLIC ATTITUDE TOWARDS WHITE COLLAR CRIMINALITY.

I. Do you consider the following as Crimes? II. What types of sanctions do you desire for each of them?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>I</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td></td>
</tr>
</tbody>
</table>

Yes No To definite fine imprisonment hanging and death. if so, rigorous cancellation of property and privileges.

2. Good and Drug Adulterations.
3. Violation of Tent Control
5. Foreign Exchange Violations.
7. Corruption in Public Offices.
8. Traffic Violations.
9. Violation of Professional conduct by (i) Doctors (ii) Lawyers (iii) Teachers (iv) Engineers.
10. Tax Evasion or Avoidance.
11. Violation of weights and Measures laws.