ADMINISTRATIVE REFORMS COMMISSION

INTERIM REPORT

PROBLEMS OF REDRESS OF CITIZENS' GRIEVANCES

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OF THE

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CHAIRMAN
GOVERNMENT OF INDIA,
ADMINISTRATIVE REFORMS COMMISSION,
NEW DELHI.

20th October, 1966.

My dear Prime Minister,

With reference to the Ministry of Home Affairs Resolution No. 40/3/65-AR(P) dated the 5th January, 1966, I enclose the interim Report of the Administrative Reforms Commission on "Problems of redress of citizens' grievances". The report contains recommendations for the setting up of two institutions, to be designated the Lokpal and the Lokayukta. The Lokpal will look into complaints against administrative acts of Ministers and Secretaries to Government—at the Centre and in the States. The Lokayukta, one to be appointed in each State and one at the Centre, will look into complaints against the administrative acts of other authorities.

The recommendations of the Commission are unanimous. As two of the Members, Shri K. Hanumanthaiya, M.P., and Shri Debabrata Mookerjee, M.P. are out of India at present, the report has not been signed by them. We had the benefit of a full discussion with them before their departure and they signified their agreement in the recommendations.

Yours sincerely,
(Sd.) Morarji Desai.

Smt. Indira Gandhi,
Prime Minister,
New Delhi.

INTERIM REPORT OF THE ADMINISTRATIVE REFORMS COMMISSION

ON

"PROBLEMS OF REDRESS OF CITIZENS' GRIEVANCES"

Appointment of Commission and its activities.

The Administrative Reforms Commission was appointed on the 5th January, 1966, by the President by Government of India Notification No. 40/3/65-AR(P), dated the 5th January, 1966, with the terms of reference indicated in the following extracts of that notification:

> "The Commission will give consideration to the need for ensuring the highest standards of efficiency and integrity in the public services, and for making public administration a fit instrument for carrying out the social and economic policies of the Government and achieving social and economic goals of development, as also one which is responsive to the people. In particualr, the Commission will consider the following:—
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> (1) the machinery of the Government of India and its procedures of work;
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> (2) the machinery for planning at all levels;
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> (3) Centre-State relationships;
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> (4) financial administration;
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> (5) personnel administration;
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> (6) economic administration;
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> (7) administration at the State level;
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> (8) district administration;
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> (9) agricultural administration; and
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> (10) problems of redress of citizens' grievances.
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> The Commission may exclude from its purview the detailed examination of administration of defence, railways, external affairs, security and intelligence work, as also subjects such as educational administration already being examined by a separate commission. The Commission will, however, be free to take the problems of these sectors into account in recommending reorganisation of the machinery of the Government as a whole or of any of its common service agencies."

The Commission was, at the outset, faced with the initial difficulties of staffing and accommodation and after meeting them as best as possible, settled down to its work towards the end of April, 1966, in an accommodation temporarily allotted to it. Since then it has set up seventeen Study Groups and held discussions with the Prime Minister, Cabinet Ministers and Ministers of State of the Central Government, Chief Ministers of Maharashtra, Mysore, Madras, Andhra Pradesh, Gujarat and U. P. and most of their Ministerial colleagues, Chief Secretaries, Secretaries and various Heads of Department of these States, the Congress President and some other prominent leaders of the Congress Party, a number of leaders of Political parties in Opposition both at the Centre and the States and various bodies of non-official opinion in different parts of the country. Although it has not so far been possible, within the time available, to visit all the States, it has been able to obtain a very considerable volume of public opinion on the various issues which are covered by the very comprehensive and important terms of reference stated above.

Problems of redress of citizen's grievances.

2. One of the terms of reference specifically assigned to us requires us to deal with the problems of redress of citizens' grievances, *viz*:

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

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

While our other terms of reference, by and large, cover problems of established administration, this item breaks comparatively new ground; yet it is basic to the functioning of a democratic Government. It touches both the administration and the citizen at the most sensitive point of their relationship and raises the very crucial issue of the contentment, or otherwise, of the common citizen with the manner in which the administration implements the policies of Government. The problem was thrown up in bold relief and in its full impact on the citizen in the very first round of our discussions with the Ministers of the Central Government and the Congress President; its importance, urgency and dimensions have been increasingly impressed upon us by the large volume of both official and non-official opinion which we have had the opportunity of consulting so far. The Commission was so impressed by both the unanimity and the strength of the popular demand on

this subject that it decided to devote itself to this problem rather than form a separate group for the specific purpose of devising a scheme to enable the citizen to seek redress for an administrative injustice. The more the Commission considered this issue, the more was it convinced that the problem brooked no delay. We have no doubt that an urgent solution of this problem will strengthen the hands of Government in administering the laws of the land, its policies "without fear or favour, affection or ill-will" and enable it to gain public faith and confidence without which social and economic progress would be impossible. In coming to this conclusion, the Commission has taken 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. The Commission feels that the answer to this outcry lies not in expressions or reiteration of Government's general satisfaction with the administration's achievements or its attempts generally to justify itself but in the provision of a machinery which will examine such complaints and sift the genuine from the false or the untenable so that administration's failures and achievements can be publicly viewed in their correct perspective. Even from the point of view of protection to the services, such an institution is necessary for projecting their image on the public in its true character and for ensuring that the average citizen is not fed on prejudices, assumptions and false notions of their quality and standards. From all these points of view, the Commission has considered itself obliged to make an interim report on this term of reference.

Obligation of a democratic Government to satisfy the citizen about its functioning.

3. In our view an institution for the removal of a prevailing or lingering sense of injustice springing from an administrative act is the *sine qua non* of a popular administration. Democracy has been defined as "Government of the people, by the people, for the people". Thus, one of the main obligations of democracy is to secure a 'Government for the people'; this is not merely a slogan but a philosophical concept. Such a concept can be translated into action by a democratic Government, not merely by displaying an attitude of benevolence or enlightened interest in the well-being of the people but also by specific measures calculated to secure all-round contentment and satisfaction with the policies of Government and their implementation. If, in the prosperity of the people, lies the strength of a Government, it is in their contentment that lie the security and stability of democracy. When, in earlier times, a

democratic Government was mainly concerned with fiscal or revenue administration and the maintenance of law and order, there was a small sector of activities designed to bring about a betterment in the conditions of the people. That sector has progressively grown with the expansion of the scope and functions of a government. With the increasing impact of government policies on administration, the need as well as the difficulty of securing popular contentment through administration has become accentuated. In recent years, the progressive regulation of a citizen's life through the acts and policies of Government and through institutions set up to implement them, has made very substantial encroachment into the spheres of individual liberty and consequently the citizen is much more affected now, than in the past, by the activities of the administration. To seek liberty for himself and not easily to part with it is inherent in any socially enlightened individual; that enlightenment has been growing under the welfare activities of Government today. This growing enlightenment has brought about, in the average citizen, a greater awareness of his own rights and needs and has changed his attitude of resignation to his own lot. Under the pressure of this change in the public psychology, the authority's attitude of complacency or taking the citizen for granted has to yield place to the exploration of ways and means to remove genuine discontent amongst the people and to promote a sense of satisfaction with, and recognition of the merits of the action taken in pursuance of State policies.

Existing safeguards for the citizen and their deficiency.

4. As a part of this democratic response to the needs of the citizen, many constitutions contain provisions designed to safeguard individual rights. This has taken the form of a twin approach, namely, the formulation of fundamental rights of the citizen and the establishment of avenues for the ventilation and redress of citizens' grievances in relation not only to the encroachment on these rights but also to administrative delinquencies. A breach of fundamental rights has been made justiciable and the citizen can have access to Courts to enforce them and also to seek other remedies against the illegal actions of Government or officers and authorities subordinate to them. The doctrine of ministerial responsibility to Parliament has been one of the most frequently used weapons by Parliament to keep the administration on the *qui vive* and to achieve the desired standard of probity, propriety and efficiency in administration. Citizens have attracted parliamentary attention to their grievances through the Members of Parliament who have utilised procedures such as interpellations, adjournment motions, calling attention notices and half-an-hour and other discussions to ventilate

important matters of public grievances or to question the propriety of policies or measures or actions taken by Government or Governmental Institutions and Undertakings. Parliament, through its Committee on Petitions, has provided another forum for the citizen to secure redress against an act of injustice but this procedure is available only in a limited category and number of cases. On the whole Parliamentary procedure is more suited for the consideration of matters of public importance than for obtaining redress of individual grievances arising in the course of day-to-day Governmental administration. In discharging their constitutional functions of holding the scales of justice even between the State and the citizen the Courts have intervened to set right administrative actions on grounds of illegality, or failure to follow prescribed procedures or rules of natural justice. However, justice through Courts under the modern system of judiciary is generally both expensive and dilatory, whereas an individual wishes to seek, and appreciates, quick and cheap justice.

Facilities available for ventilation of citizens' grievances.

5. For the redress of his grievances, the individual is entitled, as we have said earlier, to approach judicial or administrative authorities at different levels in their original, appellate, revisional or supervisory jurisdiction. The administrative orders which affect the individual are firstly those that are passed in the exercise of statutory responsibilities and are subject to appeal or revision or redress in a Court of Law or before administrative tribunals or before higher departmental authorities; in some cases they are final at the stage at which the relevant statute makes it so. In the last case, there is virtually no statutory remedy open to a citizen against that final order. Secondly, there are administrative orders which are passed in the exercise of discretion in the field of executive authority, by Government or authorities subordinate to it. Such orders may be open to question either on the ground of misuse or abuse of power or on the ground of having been influenced by ulterior motives or extraneous considerations or as a result of error of judgment, negligence, inefficiency or even perversity. These are generally matters in which the citizens' forum for redress of grievances is a superior authority in the official hierarchy; in some matters he may be able to secure justice, as we have pointed out earlier, through Parliament.

The growing encroachment of the State on citizens' rights.

6. The limited remedies, open to the citizen, and the expensive or dilatory procedures, available to him, were sparingly resorted

to so long as the activities of the State were themselves confined or restricted. The citizen submitted with some demur or without much protest to the slow working of democratic institutions, procedures and practices or to the long-drawn out legal processes because he was either not keenly aware of the extent of the shortcomings of the administration or he remained, by and large, unaffected by many of its administrative acts and policies. However, since the First World War, and more so since Independence, the sphere of Governmental activities has been expanding so that today the State undertakes many and varied activities for, and in the interest of, the welfare of the community as a whole. This is being done in the fulfilment of the objectives, either defined in the various constitutions or set by different parties as their goal, and for the implementation of the State policies to achieve the social order to which it stands committed. Thus, whereas in the past the citizen was affected by the activities of a comparatively small number of State functionaries and in respect of only a small sector of his daily life, today he is exposed at numerous points to the impact of the multifarious activities of the administration ranging over a vast field, e.g., the operation of controls relating to the various commodities which he needs, the provision of many services intended for general benefit and welfare, the operation of the contractual relations between himself and the Government in various spheres, and the regulation of property rights and of the various social services, such as, labour, banking, insurance and provident funds. In all these spheres the machinery of the State comes directly into contact or conflict with the citizen and since these affect the latter in the pursuit of his daily avocations, they provide sensitive spots out of which spring many causes of public discontent and dissatisfaction.

The vast area of administrative discretion in which such facilities are not available.

7. Judgments of judicial or quasi-judicial authorities, such as administrative tribunals, on an individual's application are not open to challenge except before authorities competent to deal with them in appellate or revisional jurisdiction. The sanctity of judicial process would preclude such decisions from being reviewed in any other way. This sanctity, which is fundamental to democracy, and essential for the rule of law, has to be preserved at all costs. A conflict with judicial processes on the part of any other authority set up for the redress of grievances has, therefore, to be eschewed; judicial decisions must prevail even if they leave a feeling of grievance among those adversely affected. This would also apply *mutatis mutandis* to matters which are remediable by

administrative tribunals of a judicial or quasi-judicial nature. However, there is a vast area of cases arising out of the exercise of executive power which may involve injustice to individuals and for which no remedy is available.

The main problem concerning the redress of citizens' grievances.

8. In essence, therefore, the main issue before us is how to provide the citizen with an institution to which he can have easy access for the redress of his grievances and which he is unable to seek elsewhere. In such cases, the fact remains that the individual himself has a feeling of grievance whatever the nature of the grievance may be, and it is up to the State to try to satisfy him, after due investigation, that the grievance is untenable in which case no action is called for, or false in which case he must answer for having made a baseless accusation. The fact that he has had a reasonable opportunity of presenting his case before an authority which is in a different hierarchy from the authority which passes the order and which is independent and impartial, would in itself be a source of satisfaction to the citizen concerned even where the result of investigation is unfavourable to him. In the circumstances of today with the expanding activities of Government, the exercise of discretion by administrative authorities, howsoever large the field may be, cannot be done away with nor can it be rigidly regulated by instructions, orders or resolutions. The need for ensuring the rectitude of the administrative machinery in this vast discretionary field is not only obvious but paramount. Where the citizen can establish the genuineness of his case, it is plainly the duty of the State to set right the wrong done to him. The need for giving this approach a concrete form arises from the fact that parliamentary supervision by itself cannot fully ensure to the citizen that rectitude over the entire area covered by administrative discretion. Nor have the various administrative tiers and hierarchies proved adequate for the purpose. A tendency to uphold the man on the spot, a casual approach to one's own responsibilities, an assumption of unquestionable superiority of the administration, a feeling of the sanctity of authority and neglect or indifference on the part of a superior authority may prevent a citizen from obtaining justice even at the final stage of the administrative system. It is in these circumstances, or in instances where he is unable, for some compelling reasons, to seek other remedies open to him, that an institution for redress of grievances must be provided within the democratic system of Government. It has to be an institution in which the average citizen will have faith and confidence and through which he will be able to secure quick and inexpensive justice.

Parliamentary and other discussions of the problem in India.

9. This basic problem has been attracting considerable notice in our country. The need for an authority to deal with cases of corruption in the ranks of Government has also engaged the attention of popular representatives of India for several years. Strong views on this subject have been expressed in Parliamentary discussions on the Prevention of Corruption (Second Amendment) Bill, 1952, on the Criminal Law Amendment Bill, 1952, on the Commission of Inquiry Bill, 1952, on a Resolution in 1954 on the setting up of a Commission to examine the administrative set-up and procedure of work of Government of India, on the Prevention of Corruption (Amendment) Bill, 1955 and on some other occasions. During the last five years, however, there has been intensive discussion in this country about the specific problems of establishment of an effective machinery to look into the grievances of individuals against the administration. On the 3rd April, 1963, when the demands for the grants of Law Ministry were being debated, the need for the setting up of an institution of the "Ombudsman-type" in India was strongly stressed. The Law Minister, while replying to the debate, promised that the matter would be considered, but expressed his opinion that a constitutional provision might have to be made for the purpose. In July of the same year, a pointed reference to this matter was made by Shri P. B. Gajendragadkar, the then Chief Justice of India, in his address to the Indian Institute of Public Administration. He supported the establishment of an institution of this type on the ground that the confidence of the public is the main asset to a public administration and that the establishment of such an institution would create a sense of confidence in the people that their grievances would be looked into. The Rajasthan Administration Reforms Committee, under the Chairmanship of Shri H. C. Mathur, in its report submitted to that Government in September, 1963, recommended the appointment of an Ombudsman for the State. The late Prime Minister, Shri Jawaharlal Nehru, speaking to the All India Congress Committee at Jaipur on the 3rd November, 1963, said that the system of Ombudsman fascinated him, for the Ombudsman had overall authority to deal with charges even against the Prime Minister and commanded respect and confidence of all. He felt, however, that in a big country like India, the introduction of such a system was beset with difficulties.

10. On the 22nd April, 1964, during discussion on a resolution in the Lok Sabha, a strong plea was made for an impartial machinery for dealing with the day-to-day grievances of the common citizen which would inspire public confidence. Even a constitutional

amendment could be thought of should that be necessary. The idea found general support and the Minister of State in the Ministry of Home Affairs indicated that the Vigilance Commission would try to perform the functions of the Ombudsman in respect of corruption and that the question of evolving a suitable machinery for dealing with the grievances of citizens against the administration would be separately examined. At about the same time, Shri M. C. Setalvad, India's first Attorney-General, referred to the need for the expeditious redress of grievances of the people and for rooting out corruption, if democracy were to survive in India and in this connection mentioned the institution of the Ombudsman as the one which would go a long way in providing quick justice. However, he referred to the need for care in the selection of the person occupying the position of Ombudsman so that he should be outside Government's influence and should also command the respect of the general public. On the 9th April, 1965, a resolution was moved in the Lok Sabha for the constitution of a Committee of Members of Parliament to examine the question of suitable machinery for investigation and redress of public grievances including the institution of Ombudsman. The Minister of State in the Ministry of Home Affairs, in his reply, referred to the Study Group of members of both Houses on administrative reforms and suggested that the report of the Study Group should be awaited. Subsequently, we understand that the work of the Group has been suspended since the appointment of this Commission.

Studies on the subject.

11. In 1962 the Third All-India Law Conference, and in 1965 the Lok Sabha Secretariat brought out useful publications on the Ombudsman in various countries and its possibilities in India. Attention has been devoted to the subject by various scholars, some of whom have had the benefit of on-the-spot studies abroad. All this has roused and sustained considerable interest in the subject, of which we found ample evidence during our tours and discussions with representatives of public opinion of all shades.

Institutions established for the purpose in Scandinavian countries, New Zealand and the United Kingdom.

12. We have studied how other countries have bestowed attention to these problems and have solved them. The oldest institution devised for this purpose, namely, the Chancellor of Justice was established in 1713 in Sweden. However the institution of Ombudsman as such was established only in 1809, not so much to enable the citizen to have access to an authority for redress of his grievances as to enable the Parliament to discharge its responsibility for ensuring efficient administration. The Swedish effort

remained an isolated one for more than 100 years. It was followed by Finland in 1919. In 1955, the Swedish example was followed by Denmark which set up a similar institution more or less with the same objective except that the jurisdiction included complaints against Ministers, which did not involve political issues. The next country to follow in the footsteps of the sister Scandinavian country was Norway which set up the institution of Ombudsman by an act of Parliament in 1962 more or less on the Danish pattern. These are all, however, instances in which Parliament found its own procedures, etc. inadequate to deal with the citizen's grievances and, therefore, set up an institution virtually to supplement its control over administration. There are institutions of different types in USSR and France to deal with the grievances in a very limited sphere. The institution of Procurator-General in USSR which has been in existence since the Czarist regime has been devised to correct judicial aberrations whereas the institution of Conseil d'Etat set up in France during the Napoleonic days and which has continued unchanged in essentials since then, has dealt primarily with the legality of the decrees issued under the French Law and of action taken in pursuance of those decrees and only to a limited extent with the delay experienced by citizens in the disposal of their cases. In 1962, for the first time, an institution similar to Ombudsman, called the Parliamentary Commissioner for Investigation was created in a democracy of the British Parliamentary type, *viz.*, New Zealand. The British Government has recently taken a step in the same direction, in advance of the passage of a bill in the Parliament, by appointing a Parliamentary Commissioner for Administration to deal with the acts of maladministration of defined categories. None of these institutions constitutes an exact precedent for India which, unlike these countries, does not have a unitary, but a federal constitution with defined objectives, prescribed Directives of State Policy, and detailed fundamental rights and confers specific authority on the Supreme Court and the High Courts to deal with the encroachment on fundamental rights and also in the case of High Courts, the power to issue writs for any purpose other than the enforcement of fundamental rights.

Common pattern of such institutions.

13. In all these countries, the Ombudsman is virtually a Parliamentary institution though he is not, and cannot be, a Member of Parliament. He is independent of the judiciary, the executive and the legislature. Military departments are also within his jurisdiction. His position is analogous to that of the highest or high judicial functionaries in the country. He is left comparatively free to choose his own methods and agencies of investigation. The

investigations are of an informal character. The expenditure of his office is subject to Parliamentary control.

Latest model of such institution in the United Kingdom.

14. While elsewhere the Ombudsman has the power to act either on a complaint being made to him or *suo motu*, in the United Kingdom it is proposed that the complaints may be received only through a Member of Parliament. There a Parliamentary Commissioner has been appointed in anticipation of the passing of the bill relating to his appointment and functions which has been introduced in Parliament. The status of the Parliamentary Commissioner is, more or less, the same as that of the Ombudsman in the Scandinavian countries and the legislation generally follows the New Zealand pattern. The jurisdiction of the Parliamentary Commissioner has been limited to an action, taken by a Government department or other authority covered by the provisions of the Act, in the exercise of administrative functions of the authority. There must, however, be a written complaint duly made to a Member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken and the Parliamentary Commissioner can take up the complaint for investigation when it is referred to him by a Member of House with the consent of the person who made it. Where a person has or had a right of appeal, reference or review or a remedy by way of proceedings in any court of law or a duly constituted tribunal, the matter cannot be taken up by the Commissioner unless he is satisfied that in the particular circumstances of the case, it is not reasonable to expect him to take or to have taken proceedings before a Court. Certain other matters are also excluded from his purview.

15. The Commissioner, in respect of an investigation which he proposes to undertake, is required to give an opportunity to the authority concerned to comment on the allegations made in the complaint. The investigation has to be conducted in private. Subject to this, the procedures for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case. His access to relevant information is guaranteed except where a Minister of the Crown certifies that the divulging of the information would not be in the public interest. He may determine whether any person may be represented by counsel or solicitor or otherwise in the investigations. In suitable cases, the Commissioner may pay actual expenses incurred and allowances by way of compensation for the loss of time to the complainant and to any other person who attends or furnishes informaion. The Commissioner

has also been given the right to certify an offence of contempt of his authority to a competent court which has to enquire into the matter and pass orders as though it were a contempt committed in respect of the court itself. He has to furnish to the Member of the House of Commons through which he received the complaint, a report of the result of the investigation or a statement of his reasons for not conducting an investigation. If, after conducting an investigation, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay before the House a special report on the case.

Need of such Institutions in India.

16. Our study of the institution of Ombudsman in Scandinavian countries and of the Parliamentary Commissioner in New Zealand and of the working of these functionaries convinces us that we can suitably adapt these institutions for our needs. These institutions are, generally a supplement to the Parliamentary control, independent of any political affiliations, outside the normal administrative hierarchy, and free from the formalism, publicity and delays associated with governmental machinery. They work unobstrusively to remove the sense of injustice from the mind of the adversely affected citizen and yet uphold in a very large measure the prestige and authority of the administration, instilling public confidence in its efficiency and faith in its working and introducing a proper perspective of it in the mind of the public. Our analysis of the situation in our own country convinces us that a reform in all these directions is required as a *sine qua non* of democratic functioning and as an essential pre-requisite of the progress and prosperity on which the fulfilment of our democracy depends. The development and expansion of the field of governmental enterprise and activities and the shape of things to come in the wake of State policies conforming to democratic socialism alike emphasise the need of providing a machinery to remove the grievances of the individual citizen which are likely to arise against administrative actions. Under this pattern of development it is inevitable that power should devolve on subordinate categories of officials which, if not properly exercised, might bring, not only administrative measures and schemes, but also Government, into disrepute. We, therefore, visualise an Ombudsman-type of institution not only as justified by the study of the past but also as a safeguard for the future. Nor do we consider that such an institution would be, in any way, a burden or imposition on the administrative machinery; on the other hand, we are confident that it will exercise a protective role in regard to it. If the standards of conduct of the services

are in fact as high as they are claimed to be, the functioning of such a machinery will confirm this fact against the prevailing unfavourable impressions that unfortunately exist; if facts prove otherwise, it will provide a corrective which in course of time is bound to influence the psychological attitude of the services as a whole. Its influence is bound to pervade the different strata of the administrative machinery and thereby bring all round improvement in its outlook and efficiency.

The need for bearing in mind certain important points while adopting the institution in India.

17. However, in considering the type, nature and functions of such an institution in our conditions and circumstances, several points of importance arise which may be briefly summarised as follows:—

(a) The experience of comparatively small countries like Sweden, Norway, Denmark, and New Zealand, having small areas and containing small population, cannot be necessarily a precedent for India with such a vast area and population. An institution of the type of Ombudsman on the analogy of those countries would require a very large staff and it would not be possible to maintain the private and informal character of investigation which has been a prominent feature of the institution in those countries.

(b) Norway, Sweden, Denmark, New Zealand and the United Kingdom have centralised administrations whereas India is a federation based on a division of functions between the State and the Centre in terms of Central, State and concurrent lists. This would raise the problem of separate jurisdiction of the Ombudsman and so many authorities with which he would have to deal. If the Ombudsman's functions were the same as in these countries, it might lead to a conflict of jurisdiction with the Central and State Governments, with Parliament, with the State Legislatures and with the Judiciary. There might be constitutional difficulties so far as its functioning in the State is concerned, because the executive powers, in relation to the State matters, vest in the State under Article 162. In Canada, where there is a federal government and a number of provincial governments, it was realised that if an Ombudsman were created under the federal law, he would not have jurisdiction over the provinces and the provinces would have to establish their own Ombudsman.

(c) The appointment would affect ministerial responsibility to Parliament and the State Legislatures. In a Parliamentary democracy Ministers are responsible to the Legislature for the acts of permanent officials under them. It is the Legislature which has the right as well as the duty to see that the Ministers and the administration function on right lines. If a Minister or an administration fails in his, or its, duty, or acts improperly, unjustly or illegally, a corrective is available to the citizen both in the courts and the Legislature. Even where Commissions are appointed to investigate into the conduct of Ministers, it is the Parliament or Legislature which becomes seized of the matter and is the final authority which takes action or to which action is reported.

(d) Politically, it may be argued that for a Prime Minister to act on the advice of another functionary, rather than on his own judgment, would dilute the responsibility of his colleagues to himself and weaken his authority over them.

(e) Under the Constitution, Ministers are only Advisers to the Head of the State who, in theory, is responsible for the executive acts of the Government. No Minister has any authority to pass executive orders. All enforceable orders are issued under the signature of the executive officers in the name of the Head of the State though they act in accordance with the direction of the Ministers. Under the Constitution, no Court can enquire into the question as to what advice has been tendered by the Ministers to the Head of the State. An investigation into the advice tendered by the Minister or by an outside authority would, therefore, be against the spirit of the Constitution.

(f) So far as permanent officials are concerned, the inquiry made by the Ombudsman would not answer the requirments of Article 311 of the Constitution and the executive Government would have to hold a separate inquiry to deal with the delinquent official. This would not only lead to long-drawn investigations and inquiries, but it might in the final result involve a conflict of findings between that of the Ombudsman and the departmental inquiry.

(g) The question of the rights of a citizen to have access to the Ombudsman *vis-a-vis* the rights of a Parliament or

Legislature to raise the same issue in the House by other Parliamentary means such as interpellations, adjournment motions, etc., or investigation by the Committee on Petitions, will have to be resolved.

(h) Similarly, the extensive powers of Courts to correct the actions of the administrative authorities through writs of the Supreme Court or of the High Courts would have to be taken into account and, unless very careful provisions are made in the Constitution to provide against the conflict of jurisdiction between the Ombudsman and the courts and suitable procedures devised. such conflict of jurisdiction and responsibility might make the remedy worse than the disease.

(i) The institution of Ombudsman might be abused by interested parties to make false or baseless charges against the administration either to discredit it or delay or halt the implementation of various measures that might be undertaken in pursuance of Government policies and programmes.

The difficulties pointed out above are not insurmountable.

18. We have carefully taken note of the position mentioned in the preceding paragraph. We feel that so long as we are able, in formulating the detailed conditions of the functioning of this institution, to provide against the objections or conditions mentioned therein, there need be no apprehension that an institution analogous to that of Ombudsman for India would not be made to serve the same purpose as it has done in the Scandinavian countries and in New Zealand or is intended to do in the United Kingdom. So far as the constitutional difficulties are concerned, they can be resolved by constitutional amendments, if necessary, and consequently they do not provide any insurmountable difficulty in bringing into being an institution which has been regarded as essential by some of the enlightened democracies both of the British and other parliamentary models. The vastness of the country and its population need not be a deterrent to the establishment of such an institution. Our administrative system already provides for the functioning of the judiciary and administrative tribunals and for a hierarchy of appeals against the orders of sub-ordinate authorities to superior authorities. We do not intend the system we envisage should clash with these institutions and wish, therefore, to provide for the functioning of that institution only in respect of matters for which such remedies are not available or where, in some cases, it might not be reasonable to expect a citizen to take recourse to legal proceedings. This would substantially reduce the number of com-

plaints eligible for investigation and thus enable the institution to devote its attention and energies only to those cases in which *prima facie* the need for redressing an act of injustice or maladministration exists.

19. We do not, therefore, anticipate that the institution would be overwhelmed by the number of complaints it would be receiving. Over a period of a few years, the general public will become accustomed to the working of the system and realise the futility of approaching the institution in cases which do not need its attention or in which the complaints are not genuine. Apart from this, we consider that by a suitable division of functions between the institution and other functionaries to deal with citizens' grievances, it would be possible to distribute the workload in such a manner that all the functionaries can do adequate justice to the complaints they receive. Nor are we impressed by the argument that regulatory check on the actions of the executive in the discretionary field will lead to serious delays in developmental activities or will promote a feeling of demoralisation in, or have a cramping effect on, the administration. We strongly feel that this malaise in administration mainly arises more from a sense of frustration or lack of appreciation of good work done and from an exaggerated image of corruption, inefficiency and lack of integrity current in the public mind than from actual investigation into complaints submitted by citizens. We have every reason to believe that the working of such an institution will in the long run rectify and thus restore the correct image of the administration, create public confidence in its integrity, and thereby promote, rather than impede, the progress of our developmental activities. Apart from this, the informal character of inquiries will save the public servant from exposure to public gaze during the course of an enquiry, which often has the effect of condemning him in the public eye before he is ultimately found guilty or innocent, as the case may be. The institution will thus be a protection for, and a source of strength rather than a discouragement to, an honest official whose susceptibilities alone are germane in this context.

Necessity of including ministerial decisions within the scope of functions.

20. We have given careful thought to the problem of including, or excluding, ministerial decisions and have come to the conclusion that these should be included within the scope of the investigation of the proposed institution. In the first place, it is our experience and our considered opinion that having regard to the manner in which our democracy has been functioning both in the Centre and in the States, cases of injustice at the ministerial level must be

dealt with. Secondly, it is only at the level of Minister or Secretary, subject to his instructions and direction, that many of the important orders of Government affecting the citizen acquire finality. At lower levels, correctives through appeals, representations and personal access to various authorities are available, but at the level of the Minister or his Secretary there is a finality from which, only in very rare cases, is there any escape. Thirdly, we are convinced that if the institution could deal effectively and expeditiously with matters at the source of authority, it would have an exemplary effect on other officials and other levels of official hierarchy and thereby it would induce a rise in the general level of efficiency, propriety and justice. We recognise that it is open to the Parliament or the Legislature to deal with a Minister when he goes wrong or to deal with an officer, under him and for whom he is answerable, when he commits a wrongful act or is guilty of a culpable omission. However, apart from the fact that these institutions, in the nature of things, are not easily accessible to the common citizen, the time at their disposal, their procedures, their conventions and practices would not make for quick, speedy or effective action in a large number of cases. In the circumstances, it is, in our view, essential that an opportunity should be made available to an adversely affected citizen to ventilate his grievance against the order of a Minister or his Secretary. The action of the institution in respect of any ministerial decision need not be to the exclusion of parliamentary and legislative control in other matters or even in this matter after the investigation has been completed. Thus, the ministerial responsibility to Parliament would not be diluted, but strengthened, by the establishment of this institution. Nor are we impressed by the argument that such an appointment might be a breach of the spirit of the Constitution. There are precedents in recent years of ministerial conduct having been enquired into by a Commission appointed under the Commissions of Inquiry Act. In essence, there is no difference between these and the enquiries which the proposed institution would be conducting and therefore we do not think that this objection is valid.

21. We have carefully considered the political aspect mentioned above and while we recognise that there is some force in it, we feel that the Prime Minister's hands would be strengthened rather than weakened by the institution. In the first place, the recommendations of such an authority will save him from the unpleasant duty of investigation against his own colleagues. Secondly, it will be possible for him to deal with the matter without the glare of publicity which often vitiates the atmosphere and affects the judgment of the general public. Thirdly, it would enable him to avoid internal pressures which often help to shield the delinquent. What we have

said about the Prime Minister applies *mutatis mutandis* to Chief Minister.

The system recommended.

22. After having carefully evaluated the *pros and cons* described above, we are of the view that the special circumstances relating to our country can be fully met by providing for two special institutions for the redress of citizens' grievances. There should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the States. There should be another authority in each State and at the Centre for dealing with complaints against the administrative acts of other officials. All these authorities should be independent of the executive as well as the legislature and the judiciary. The setting up of these authorities should not, however, be taken to be a complete answer to the problem of redress of citizens' grievances. They only provide the ultimate set-up for such redress as has not been available through the normal departmental or governmental machinery and do not absolve the department from fulfilling its obligations to the citizen for administering its affairs without generating, as far as possible, any legitimate sense of grievance. Thus, the administration itself must play the major role in reducing the area of grievances and providing remedies wherever necessary and feasible. For this purpose, there should be established in each Ministry or Department, as the case may be, suitable machinery for the receipt and investigation of complaints and for setting in motion, where necessary, the administrative process for providing remedies. A large number of cases which arise at lower levels of administration should in fact adequately be dealt with by this in-built departmental machinery. When this machinery functions effectively, the number of cases which will have to go to an authority outside the Ministry or the Department should be comparatively small in number. In some States and at the Centre, there is now some provision for a Governmental authority to hear grievances and attempt to secure remedial action through the administration. The tendency is to set up such authorities independent and outside of the departmental machinery. After the setting up of the authorities we have recommended above, there would be no need for these functionaries. We would in these circumstances strongly advocate that the responsibility of the departments to deal adequately with public grievances must squarely be faced by them in the first instance and for this purpose, we shall be making our recommendations in regard to this matter at a later date when we deal with the departmental set-up.

Cases of corruption

23. Public opinion has been agitated for a long time over the prevalence of corruption in the administration and it is likely that cases coming up before the independent authorities mentioned above might involve allegations or actual evidence of corrupt motive and favouritism. We think that this institution should deal with such cases as well, but where the cases are such as might involve criminal charge or misconduct cognisable by a Court, the case should be brought to the notice of the Prime Minister or the Chief Minister, as the case may be. The latter would then set the machinery of law in motion after following appropriate procedures and observing necessary formalities. The present system of Vigilance Commissions wherever operative will then become redundant and would have to be abolished on the setting up of the institution.

Designation of the authorities of the institution

24. We suggest that the authority dealing with complaints against Ministers and Secretaries to Government may be designated "Lokpal" and the other authorities at the Centre and in the States empowered to deal wih complaints against other officials may be designated "Lokayukta". A word may be said about our decision to include Secretaries' actions along with those of Ministers in the jurisdiction of the Lokpal. We have taken this decision because we feel that at the level at which Ministers and Secretaries function, it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of demarcation between the responsibilities and influence of the Minister and Secretary is thin; in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved.

25. The following would be the main features of the institutions of Lokpal and Lokayukta:—

(a) They should be demonstrably independent and impartial.

(b) Their investigations and proceedings should be conducted in private and should be informal in character.

(c) Their appointment should, as far as possible, be non-political.

(d) Their status should compare with the highest judicial functionaries in the country.

(e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.

(f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.

(g) They should not look forward to any benefit or pecuniary advantage from the executive Government.

Bearing in mind these essential features of the institutions, we recommend that the Lokpal be appointed and invested with functions in the manner described in the succeeding paragraphs.

Appointment, conditions of service, etc. of Lokpal

26. The Lokpal should be appointed by President on the advice of the Prime Minister, which would be tendered by him after consultation with the Chief Justice of India and the Leader of the Opposition. If there be no such leader, the Prime Minister will instead consult a person elected by the members of the Opposition in the Lok Sabha in such manner as the Speaker may direct. The Lokpal will have the same status as the Chief Justice of India. His tenure will be 5 years subject to eligibility for reappointment for another term of five years in accordance with the same procedure. He may, by writing under his hand, addressed to the President, resign his office. He will not be removable from office except in the manner prescribed in the Constitution for the removal from office of a Judge of the Supreme Court. His salary and other emoluments will be the same as those of the Chief Justice of India. On appointment as Lokpal, he shall cease to be a Member of any Legislature if he was one before the appointment. He shall also resign from any post or office of profit held by him prior to that date whether in or outside the Government. He shall also sever his connections with all business activities, if any. He shall also resign his membership, if any, of a political party. After retirement from the post of Lokpal he will be ineligible for any appointment under the Government or in a Government Undertaking.

27. The Lokpal would be free to chose his own staff, but their number, categories and conditions of service will be subject to the approval of Government. His budget would be subject to the control of the Parliament.

The jurisdiction of the Lokpal

28. Subject to the exclusions which are mentioned later on, the Lokpal will have the power to investigate an administrative act done by or with the approval of a Minister or a Secretary to Government at the Centre or in the State, if a complaint is made against such an act by a person who is affected by it and who claims to have

suffered an injustice on that account. (In this context, an act would include a failure to take action). Such a complaint may be made either by an individual or by a corporation. He may in his discretion inquire into a complaint of maladministration involving not only an act of injustice but also an allegation of favouritism to any person (including a corporation) or of the accrual of personal benefit or gain to the administrative authority responsible for the act, namely, a Minister or a Secretary to Government at the Centre or in the States. In addition to making investigations on the basis of complaints received by him, the Lokpal may also *suo motu* investigate administrative acts of the types described above which may come to his notice otherwise than through a complaint of an adversely affected person.

Matters excluded from the purview of the Lokpal

29. The following matters shall, however, be excluded from the purview of the Lokpal:—

(i) Action taken in a matter certified by a Minister as affecting the relations or dealings between the Government of India and any foreign Government or any international organisation of States or Governments.

(ii) Action taken under the Extradition Act, 1962 or Foreigners Act, 1946.

(iii) Action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports.

(iv) Action taken in the exercise of power in relation to determining whether a matter shall go to the Court.

(v) Action taken in matters which arise out of the terms of contract governing purely commercial relation of the administration with customers or suppliers except complaints of harassment or delays in the performance of contractual obligations.

(vi) Action taken in respect of appointments, removals, pay, discipline, superannuation or other personnel matters.

(vii) Grant of honours and awards.

(viii) A decision made in exercise of his discretion by an administrative authority unless the elements involved in the exercise of discretion are absent to such an extent that no discretion has been exercised to all.

(ix) Any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal.

(x) Matters in respect of which a person aggrieved has or had a remedy by way of proceedings in any court of law. (However, he may look into such a matter if he is satisfied that in the particular circumstances it is not reasonable to expect the complainant to take or to have taken proceedings in a court of law).

(xi) An administrative decision which was taken more than twelve months before the date of the complaint.

Procedure for dealing with complaints.

30. On receipt of a complaint from a person claiming to have suffered an injustice through an administrative act for which a Minister or a Secretary to Government is finally responsible, the Lokpal will scrutinise it and come to a conclusion as to whether he has jurisdiction to deal with it and if so, whether the case is worth investigation. If his conclusion is in the negative on either of these points, he will reject the complaint and inform the complainant accordingly. If he decides to take up the investigation, he will, in the first instance, communicate the complaint to the administration and invite the administration's comments thereon. At this stage, it may be possible for the administration to rectify, on its own, any faulty decision made by it or it may seek to establish the correctness or justice of the action taken. The Lokpal on receipt of the administration's comments will decide whether the complaint is actionable and inform the complainant in case of the faulty decision has been rectified or he has decided not to take any further action. In cases in which he decides to proceed with the investigation, if on its completion, the Lokpal is satisfied that there is no cause for grievance, he will inform the complainant accordingly and close the case. If, however, he considers that an injustice has been done to the complainant, he will suggest to the administration remedial action where it is possible for it to provide the remedy. If his recommendation is accepted, the case will then be closed. If, however, the recommendation is not accepted, it will be open to him to make a report on the case to the Prime Minister or Chief Minister of the State as the case may be. The Prime Minister or the Chief Minister will inform the Lokpal of action taken on the reference within two months. Thereafter, he may, if he is dissatisfied with the action taken, bring it to the notice of the Parliament or the Legislature as the case may be through an *ad hoc* report or through the annual report. The administration's explanation in its defence

will also be brought out in the report. Also, if the Lokpal considers, as a result of his study of any case or cases, that an amendment of the law would be justified, he can make appropriate recommendations to the Prime Minister or Chief Minister as the case may be. The foregoing procedure will apply *mutatis mutandis* to investigation taken up *suo motu* by the Lokpal.

31. If during his investigations, he finds that a case involves criminal misconduct or would justify criminal proceedings, he will report to the Prime Minister or the Chief Minister as the case may be, who will take further action in the matter within two months of the receipt thereof and inform the Lokpal of the action taken.

Powers for carrying out his functions.

32. The Lokpal will have powers of a court with regard to the calling of witnesses, documents, etc. In regard to information available with government or subordinate authorities, he shall have access to whatever information, document, etc., he requires and no privilege will be claimed for any such information or document except when it affects the security of the State or foreign relations. However, it is expected that the exercise of the powers as a court will be unnecessary and that the Lokpal's procedure would be as informal as possible. The investigation by the Lokpal will be conducted in private. Nothing relating to the investigations shall be published or caused to be published by him till the enquiry is completed and his findings are communicated to the complainant, or to the Legislature. Publication of any matter pending before the Lokpal or decided by him save to the extent that it is included in the *ad hoc* or annual report or is permitted by the Lokpal should be an offence under the relevant law.

33. At the beginning of each year the Lokpal will submit a report to the Legislature concerned on his activities during the previous year. Besides giving a summary of the cases disposed of by him, he may indicate the need for amending any law in order to remove occasions for unintended hardship experienced as a result of the administration of the existing law.

34. If any person without lawful excuse obstructs the Lokpal in the performance of his functions or is guilty of any act or omission in relation to an investigation, which, had the investigation been proceeding in a court of law, would have constituted contempt of court, the Lokpal may certify the offence to the Supreme Court. If a person making a complaint of maladministration involving undue favour being shown or to the accrual of a personal benefit,

makes a false statement before the Lokpal knowing it to be such, he shall be deemed to be guilty of an act constituting contempt of court. When an offence is certified, as above, the Supreme Court may enquire into the matter and dispose of it as if it related to a charge of contempt of the Supreme Court.

35. We append herewith the draft bill providing for the appointment and functions of the Lokpal. The draft can be suitably adopted for the appointment and functions of the office of Lokayukta.

The Lokayukta.

36. So far as the Lokayukta is concerned, we envisage that he would be concerned with problems similar to those which would face the Lokpal in respect of Ministers and Secretaries though, in respect of action taken at subordinate levels of official hierarchy, he would in many cases have to refer complainants to competent higher levels. We, therefore, consider that his powers, functions and procedures may be prescribed *mutatis mutandis* with those which we have laid down for the Lokpal. His status, position, emoluments, etc., should, however, be analogous to those of a Chief Justice of a High Court and he should be entitled to have free access to Secretary to the Government concerned or to the Head of the Department with whom he will mostly have to deal to secure justice for a deserving citizen. Where he is dissatisfied with the action taken by the department concerned, he should be in a position to seek a quick corrective action from the Minister or the Secretary concerned, failing which he should be able to draw the personal attention of the Prime Minister or the Chief Minister as the case may be. It does not seem necessary for us to spell out here in more detail the functions and powers of the Lokayukta and the procedures to be followed by him.

Constitutional amendment—whether necessary?

37. We have carefully considered whether the institution of Lokpal will require any Constitutional amendment and whether it is possible for the office of the Lokpal to be set up by Central Legislation so as to cover both the Central and State functionaries concerned. We agree that for the Lokpal to be fully effective and for him to acquire power, without conflict with other functionaries under the Constitution, it would be necessary to give a constitutional status to his office, his powers, functions, etc. We feel, however, that it is not necessary for Government to wait for this to materialise before setting up the office. The Lokpal, we are confident, would be able to function in a large number of cases without

the definition of his position under the Constitution. The Constitutional amendment and any consequential modification of the relevant statute can follow. In the meantime, Government can ensure that the Lokpal or Lokayukta is appointed and takes preparatory action to set up his office, to lay down his procedures, etc., and commence his work to such extent as he can without the constitutional provisions. We are confident that the necessary support will be forthcoming from the Parliament.

Conclusion.

38. We should like to emphasise the fact that we attach the highest importance to the implementation, at an early date, of the recommendations contained in this our Interim Report. That we are not alone in recognising the urgency of such a measure is clear from the British example we have quoted above. We have no doubt that the working of the institution of Lokpal and Lokayukta that we have suggested for India will be watched with keen expectation and interest by other countries. We hope that this aspect would also be fully borne in mind by Government in considering the urgency and importance of our recommendation. Though its timing is very close to the next Election, we need hardly assure the Government that this has had nothing to do with the necessity of making this interim report. We have felt the need of such a recommendation on merits alone and are convinced that we are making it not a day too soon.

Chairman—(Sd.) Morarji Desai.

14-10-66

Member—(Sd.) Harish Chandra Mathur.

Member—(Sd.) H. V. Kamath.

Member—(Sd.) V. Shankar.

(Sd.) V. V. Chari.
Secretary.

ANNEXURE

THE LOKPAL BILL, 1966

A BILL

to make provision for the appointment and functions of an authority named Lokpal for the investigation of administrative acts in certain cases and for matters connected therewith.

Be it enacted by Parliament in the Seventeenth year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Lokpal Act, 1966.

(2) It extends to the whole of India.

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

2. **Definitions.**—In this Act,

"action" includes failure to act.

"Minister" means a person appointed to be a member of the Council of Ministers whether of the Union or of a State and by whatever name called.

"Secretary" means a person appointed to be a Secretary to the Government of India or a State Government.

CHAPTER II

THE LOKPAL

3. (1) The President shall, on the advice of the Prime Minister, appoint a person to be known as the Lokpal for exercising the powers and performing the functions assigned to the Lokpal under this Act.

(2) The Prime Minister shall tender the advice to the President, referred to in sub-section (1), after consultation with the Chief Justice of India and the Leader of the Opposition in the Lok Sabha, or, if there be no such leader, a person elected for the purpose of this sub-section, by the members of the Opposition in the Lok Sabha, in such manner as the Speaker may direct.

(3) Before he enters upon his office, the person appointed as Lokpal shall,

(a) if he be a Member of Parliament or of the Legislature of any State, resign his membership of Parliament or of the Legislature, as the case may be.

(b) if he be the holder of any office of profit, resign from such office.

(c) if he be connected with any business, sever his connection with that business.

(d) if he be connected with any political party, sever his connection with that party.

4. **Conditions of service.**—(1) Every person appointed as Lokpal 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 one more term.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal may

(a) by writing under his hand addressed to the President, resign his office at any time,

(b) be removed from his office in accordance with the provisions of sub-section (3).

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

(4) The law, if any, passed by Parliament for regulating the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (5) of Article 124 of the Constitution will also apply *mutatis mutandis* to the Lokpal

(5) On ceasing to hold office, the Lokpal shall be ineligible for further employment either under the Government of India or under the Government of a State or in any Government Undertaking.

(6) The Lokpal shall have the same status, salary and allowances and conditions of service as the Chief Justice of India.

5. **Oath of Office.**—Every person appointed as Lokpal shall, before he enters upon his office, make and subscribe before the person prescribed by the President in that behalf, an oath according to the form set out hereunder—

> "I. A. B. having been appointed Lokpal do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill."

6. (1) The Lokpal may appoint such officers and employees as may be necessary for the efficient discharge of his functions under this Act.

Provided that the category of officers and employees and the number thereof that may be appointed under this section shall from time to time be fixed with the approval of the President.

(2) The salaries of persons appointed under this section and their conditions of service shall be such as are approved by the President.

CHAPTER III

FUNCTIONS AND POWERS OF THE LOKPAL

7. **Matters subject to his investigation.**—(1) Subject to the provisions of this Act, the Lokpal may investigate any action taken by or with the approval of a Minister or Secretary being action taken in the exercise of his administrative functions, in any case where—

(a) a written complaint is duly made to the Lokpal by a person (i) who claims to have sustained injustice in consequence of maladministration in connection with such action, or (ii) who affirms that such action has resulted in favour being unduly shown to any person or in accrual of personal benefit or gain to the Minister or to the Secretary, as the case may be, or

(b) information has come to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in that clause.

(2) Except as hereinafter provided, the Lokpal shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference, or review to or before a tribunal constituted by or under any enactment,

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Lokpal may conduct an investigation notwithstanding that the person aggrieved has or had a remedy by way of proceedings in a court of law if he is satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings.

(3) A complaint shall not be entertained under this Act unless it is made not later than twelve months from the date on which action complained against took place.

(4) The Lokpal may in his discretion refuse to investigate or may cease to investigate an administrative action if he is satisfied that—

(a) a remedy for the injustice alleged to have been caused thereby exists and he is of the opinion that the complainant should seek his remedy accordingly, or

(b) the complaint against the action is trivial, frivolous, or is not made in good faith, or

(c) there are no sufficient grounds for proceeding with his investigations.

(5) In any case where the Lokpal decides that he will not investigate or that he will cease to investigate an administrative action complained of or that the complainant should seek his remedy elsewhere, he shall inform the complainant accordingly.

(6) Without prejudice to sub-section (2) of this section, the Lokpal shall not conduct an investigation under this Act in respect of any of the following matters—

(a) Action taken in a matter certified by a Union Minister as affecting the relations or dealings between the Govern-

ment of India and any foreign Government or any international organisation of States or Governments.

(b) Action taken under the Extradition Act, 1962 or the Foreigners' Act, 1946.

(c) Action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports.

(d) Action taken in the exercise of power in relation to determining whether a matter shall go to a court or not.

(e) Action taken in matters which arise out of the terms of contract governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harrassment or gross delay in meeting contractual obligations.

(f) Action taken in respect of appointments, removals, pay, discipline, superannuation or other personnel matters.

(g) Grant of honours and awards.

(h) A decision made in exercise of his discretion by an administrative authority unless the elements involved in the exercise of discretion are absent to such an extent that no discretion has been exercised at all.

8. **Procedure in respect of investigations.**—(1) Where the Lokpal proposes to conduct an investigation under this Act, he shall afford the Minister or Secretary concerned an opportunity to comment on any allegations of maladministration made against such Minister or Secretary.

(2) Every such investigation shall be conducted in private except as aforesaid the procedure for conducting an investigation shall be such as the Lokpal considers appropriate in the circumstances of the case.

9. **Evidence.**—(1) Subject to the provisions of this section, for the purposes of investigation under this Act, the Lokpal may require any Minister or officer 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 shall have all the powers of a Civil Court while trying the suit under the Code of Civil Procedure, 1908 in respect of the following matters—

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

(b) discovery and production of documents,

(c) receiving evidence on affidavits,

(d) receiving any public record or copy thereof from any office.

(3) Subject to the provisions of sub-section (4) of this section, 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 investigation under this Act.

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

(a) which 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) which might involve the disclosure of proceedings of the Cabinet or any Committee of the Cabinet,

and for the purposes of this sub-section a certificate issued by the Secretary of the Cabinet of the Central Government or the Chief Secretary of the State concerned with the approval of the Prime Minister or the Chief Minister of the State as the case may be certifying that any information, question or document is of such a nature, shall be conclusive.

(5) For the purpose of enforcing the attendance of witnesses, the legal limits of the Lokpal's jurisdiction shall be the limits of the territory of India.

(6) Subject to the provisions of sub-section (3) of this section, 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.

10. **Obstruction and contempt.**—(1) If any person without lawful excuse obstructs the Lokpal in the performance of his functions under this Act or is guilty of any act or omission in relation to an investigation under this Act which, if that investigation were a proceeding before a court, would constitute contempt of court, the Lokpal may certify the offence to the Supreme Court. For this

purpose, if in connection with a complaint made under para (ii) of clause (a) of sub-section (1) of section 7, a person makes a false statement before the Lokpal knowing it to be false he shall be deemed to be guilty of an act constituting contempt of court.

(2) Where an offence is certified under this section, the Supreme Court may inquire into the matter and dispose it of as if it related to a charge of contempt of the Supreme Court itself.

11. **Reports by the Lokpal.**—(1) After taking into consideration the comments of the Minister or the Secretary, as the case may be, the Lokpal may decide not to proceed further with the investigation in which case he will inform the complainant accordingly.

(2) In any case where the Lokpal decides further to conduct an investigation under this Act, he shall send an intimation of the same to the Minister or a Secretary concerned and the complainant.

(3) If after conducting an investigation under this Act, it appears to the Lokpal that injustice has been caused to the person aggrieved in consequence of maladministration, he shall inform the Minister or Secretary concerned, as the case may be, and require that it be remedied within such period as he may in his discretion and having regard to the circumstances of the case deem sufficient.

(4) If the injustice is not remedied or the Lokpal considers that it will not be remedied he may bring the matter to the notice of the Prime Minister or the Chief Minister of the State, as the case may be, who will intimate to the Lokpal the action taken in the matter within a period of two months.

(5) If the Lokpal is satisfied with the action taken he will close the case but where he is not so satisfied and he considers that the case so deserves, he may make a special report upon the case to the Lok Sabha or the legislative assembly of the State concerned as the case may be.

(6) If as a result of his investigation the Lokpal comes to the conclusion that the administrative action of a Minister or Secretary has resulted in a favour being unduly shown to any person or in the accrual of a personal benefit or gain to the Minister or the Secretary, as the case may be, he shall communicate his conclusion along with the material on the basis of which he has arrived at the conclusion to the Prime Minister or the Chief Minister concerned. The Prime Minister or the Chief Minister concerned shall thereupon take such action as is considered necessary on the report and inform the Lokpal within two months of the receipt thereof of the action taken or proposed to be taken thereon.

(7) The Lokpal shall lay before the Parliament or the legislature of the State concerned annual reports on the performance of his functions under this Act.

12(1) It is hereby declared that the Lokpal, his officers and other employees are subject to the provisions of the Official Secrets Act.

(2) Information obtained by the Lokpal or his officers in the course of or for purposes of investigation under this Act shall not be disclosed except—

(a) for purposes of the investigation and for any report to be made thereon under this Act;

(b) for purposes of any proceedings for an offence under the Official Secrets Act or an offence of perjury or for purposes of any proceedings under section 10 of this Act.

(3) The Lokpal and his officers shall not be called upon to give any evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

(4) A minister may give notice in writing to the Lokpal with respect to any documents or information specified in the notice or any class of documents so specified that in the opinion of the Minister the disclosure of the documents or information or of documents or infomation of that class would be contrary to the public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal or any officer of the Lokpal to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

(5) No person shall publish any proceedings relating to an investigation which is pending before the Lokpal; nor shall any person publish such proceedings after the investigation is completed unless prior permission for the publication is obtained from the Lokpal.

(6) Any person committing a breach of sub-section (5) of this section shall be treated as having committed contempt for the purposes of section 10 and on any such contempt being certified by the Lokpal, the Supreme Court shall deal with it as if it were a case of contempt before that court.

(7) Nothing in sub-sections (5) and (6) shall apply to the publication of any report sent by the Lokpal to the complainant or to the Lok Sabha or to the Legislature of a State as the case may be.

13. **Protection of action taken in good faith.**—No suit, prosecution, or other proceeding shall lie against the Lokpal or any of his officers in respect of anything which is in good faith done or intended to be done under this Act.

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