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RESIDENTS OF INDIA'S NATIONAL CAPITAL TERRITORY OF DELHI DESERVE A STRONGER ANTI-CORRUPTION OMBUDSMAN LEGISLATION

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Abstract:

Much has been written and opined, by both scholars and political commentators, on the famous 2011 campaign led by Anna Hazare which eventually led to the enactment of the anti-corruption ombudsman legislation i.e. The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014). Strangely, the ombudsman legislation operating in the National Capital Territory of Delhi, the hotbed and centre stage of the aforesaid campaign, has invited little scholarly attention. The present article seeks to fill that vacuum insofar as a critical analysis of The Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996) is concerned.

Since The Delhi Janlokpal Bill, 2015 is yet to receive the assent of the Lt. Governor, the people of Delhi continue to rely on the Lokayukta for redressal of grievances qua maladministration and corruption. Unfortunately, the Delhi Ombudman is neither efficacious nor fully independent as duly noted recently by the High Court of Delhi.

Introduction

The present article contains a detailed analysis of the existing anti-corruption ombudsman legislation operating in the National Capital Territory of Delhi i.e. The Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996). The relevant provisions of the 1995 Act and the judicial interpretation accorded thereto in various judgments of the High Court of Delhi have been discussed.

Additionally, the significant features of The Delhi Janlokpal Bill, 2015, which seeks to repeal the aforementioned 1995 Act, have been taken note of. The 2015 Bill was passed by the

Legislative Assembly on December 4, 2015 and currently awaits the requisite assent of the Lt. Governor.

The article also examines the historical background relating to the establishment of the ombudsman type institutions in India spanning from 1963 to the passing of the well-known federal legislation i.e. The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014). The legislative history, containing parliamentary deliberations and political interventions, provides interesting reading.

The author seeks to highlight the lacunae existing in the legislative framework of the 1995 Act which tends to adversely affect the independence and efficacy of the Delhi Ombudsman. Since the raison d'être for introducing the institution of Lokayukta in the National Capital Territory of Delhi was removal of corruption and maladministration, the author has specifically referred to certain aspects of the 2013 Act and the 2015 Bill which, if incorporated, would ensure that the Delhi Lokayukta is no longer referred to as a 'paper tiger'.

1. Origin of the Ombudsman type institution in India

Recommendations of the First Administrative Reforms Commission:

The Government of India, vide its notification bearing No. 40/3/65-AR(P) dated 05.01.1966, appointed an Administrative Reforms Commission under the Chairmanship of Shri Morarji Desai (*Prime Minister of India from March 24, 1977 to July 28, 1979*) to give consideration to various issues related to public administration including, inter alia, the problems of redress of citizens' grievances. In its Interim Report of October, 1966[1], the Commission examined the existing arrangements and discussed the need to introduce a special institution to address grievances in relation to maladministration. It was stated that the institution must be such in which the average citizen will have faith and confidence and through which he/ she will be able to secure quick and inexpensive justice. The Commission took note of certain parliamentary discussions, more particularly that of April 3, 1963[2] wherein the need for the setting up of an

[1] "Problems of Redress of Citizens' Grievances", Interim Report of the Administrative Reforms Commission, Government of India (October 20, 1966).
[2] Lok Sabha Debates, April 3, 1963, Vol. XVI, P. 7556-7558.

institution of the "Ombudman-type" in India was proposed by parliamentarian Dr. L.M. Singhvi. The Interim Report noted that the first Prime Minister of India, Shri Jawaharlal Nehru, was fascinated by the system of an Ombudsman because it had overall authority to deal with charges even against the Prime Minister and commanded respect and confidence of all. However, Nehru, it was noted, felt that in a big country like India, the introduction of such a system was beset with difficulties. The Commission discussed the working of Ombudsman type institutions in Scandinavian countries (the Chancellor of Justice established by King Charles XII in 1713 in Sweden being the first such institution[3]) and the Parliamentary Commissioner in New Zealand and the United Kingdom. It was noted that these institutions tend to remove the sense of injustice from the mind of the adversely affected citizen and yet uphold the prestige and authority of the administration by instilling public confidence in its efficiency. It was observed that though none of them constituted an exact precedent for India, considering its vast territory and federal polity, their functions could be suitably adapted.

The Commission recommended the setting up of two special institutions for redress of citizens' grievances that would be independent of the executive, legislature and judiciary. It was envisaged that one authority would deal with complaints against administrative acts of Ministers/ Secretaries to the government at the Centre and in the States (to be designated "Lokpal") and the other authority, to be established in each State and at the Centre, would deal with complaints against the administrative acts of other officials (to be designated "Lokayukta"). A draft bill was appended to the aforesaid Interim Report providing for the appointment and functions of the Lokpal. It was suggested that the bill may be suitably modified in the case of Lokayukta.

As per the draft bill, the jurisdiction of Lokpal extended to any administrative action involving injustice, corruption or favoritism. However, certain actions concerning foreign relations, appointments, etc. and those in respect of which the person aggrieved had a right to appeal, reference or review before a tribunal or any remedy by way of proceedings in any court of law were excluded from its jurisdiction, unless the Lokpal was satisfied that it would be unreasonable to take recourse to such proceedings. Lokpal could commence investigation pursuant to a written complaint or even *suo motu* on the basis of information received

[3] Office of the Chancellor of Justice, Stockholm, http://www.jk.se/Languages/English.aspx; The Swedish Parliamentary Ombudsman – JO, http://www.jo.se/en/About-JO/History/

otherwise. The investigation would be conducted in private and the minister/ secretary concerned would get an opportunity to comment on any allegation of maladministration. If, after conducting the investigation, it was felt that injustice had been caused to the person aggrieved in consequence of maladministration, the Lokpal would inform the concerned minister/ secretary and require that it be remedied with a specified period. If the recommendation for remedial action was not accepted, it would be open to the Lokpal to apprise the Prime Minister or the Chief Minister, as the case may be, for action to be taken. Thereafter, if dissatisfied with the action taken, the Lokpal may make a special report upon the case to the Lok Sabha or the State Legislative Assembly, as the case may be. Additionally, a report may be made to the Prime Minister or the Chief Minister, in cases where an administrative action of a Minister/ Secretary has resulted in undue favour to another person or in accrual of personal benefit or gain to the said Minister/ Secretary. The Prime Minister or the Chief Minister would then take necessary action on the report and inform the Lok Sabha accordingly.

In its observations, the Commission felt that the institutions of Lokpal and Lokayukta ought to be accorded Constitutional status so that they would function more effectively and without any conflict with other functionaries but it was considered unnecessary to wait for a Constitutional amendment.

In its concluding remarks, the Commission urged the government to act on the Interim Report as expeditiously as possible.

2. Legislative History

Central/ Federal Level:

The enactment of the Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014) providing for the establishment of Lokpal at the Central level was preceded by many unsuccessful legislative attempts.

Eight Bills were introduced in the Lok Sabha between 1968 and 2001[4]. The scope and jurisdiction of the Lokpal differed in all the proposed legislations. Only some Bills sought to include the Prime Minster within the jurisdiction of the Lokpal. Some Bills completely excluded all bureaucrats from its coverage. Gradually, the focus of the Bills shifted from grievance redressal of maladministration to only corruption as defined under the Prevention of Corruption Act, 1988 (Act 49 of 1988).

In 2011, following a widely publicized campaign led by activist Anna Hazare for seeking immediate enactment of an Ombudsman legislation by Parliament, the Government of India constituted an unprecedented Joint Drafting Committee for the purpose of preparing a draft Lokpal Bill[5]. The Joint Drafting Committee, comprising five nominee Ministers of the Government of India and five nominees of Shri Anna Hazare[6], strongly differed on six crucial issues ranging from the selection of the Lokpal to its composition, scope and coverage. Unable to agree on a common draft Bill, both sections of the Committee sent their versions of the draft Bill to the Union Cabinet. On August 4, 2011 the Government of India introduced the Lokpal Bill, 2011 in Parliament and on August 8, 2011 the said Bill was referred to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for its examination and the preparation of a report. The 2011 Bill was distinct from the previous Bills in several aspects, the most notable being that it provided for a separate investigation and prosecution wing under the Lokpal. The Lokpal was also sought to be given a wide jurisdiction with Members of Parliament along with bureaucrats and certain institutions/ associations funded by the Central Government being brought within its ambit.

Accusing the Government of introducing a legislation which did not include the suggestions put forth by him and his nominees in the Joint Drafting Committee, Shri Anna Hazare commenced an indefinite hunger strike on August 19, 2011 with the demand that the Lokpal Bill, 2011 be withdrawn from Parliament and a Bill drafted by them (called the Jan Lokpal

[4] "All about the Lokpal Bill", PRS Legislative Research, http://www.prsindia.org/pages/all-about-the-lok-pal-bill-137/
[5] Notification No. 1(42)/2004-Leg-I., April 04,.2011, Gazette of India, Legislative Department, Ministry of Law and Justice, Government of India.
[6] Sandeep Joshi, "Hazare ends fast, says fight has begun", The Hindu, April 9, 2011, available at: http://www.thehindu.com/news/national/hazare-ends-fast-says-fight-has-begun/article1645213.ece

Bill) be passed instead[7]. Considering the growing media reportage of the hunger strike, the Government convened a special session of Parliament. On August 27, 2011 various issues relating to setting up of a strong and effective Lokpal were discussed at length. At the end of the deliberations, a 'Sense of the House' was conveyed by both Houses of Parliament[8] stating thereby that there was agreement in principle on the following issues: a) Citizens Charter; b) Lower Bureaucracy also to be under the Lokpal through appropriate mechanism; and c) Establishment of Lokayuktas in the States. The deliberations in the two Houses of Parliament that culminated in the aforesaid Sense of the House were transmitted to the Parliamentary Standing Committee examining the Lokpal Bill, 2011. Satisfied with the above Sense of the House, Shri Hazare ended the hunger strike on August 28, 2011[9].

The aforesaid Committee submitted a comprehensive report to Parliament on 9 December, 2011[10] containing several recommendations, including inter alia: 1) enactment of a separate legislation providing for a grievance redressal mechanism and a citizen's charter; 2) a single federal enactment dealing with Lokpal at Central level and Lokayuktas at State level; and 3) institution of the Lokpal be given Constitutional status.

The Government acted on the report and on December 22, 2011, the Lokpal Bill, 2011 was withdrawn and a fresh Lokpal and Lokayukta's Bill, 2011 was introduced in Parliament along with a Constitution 116th Amendment Bill, 2011. It may be noted that the new Bill incorporated many but not all recommendations of the Parliamentary Standing Committee. The Lokpal and Lokayuktas Bill, 2011 was passed by the Lok Sabha on December 27, 2011 with certain amendments but the Constitution 116th Amendment Bill, 2011 could not be passed for want of the requisite majority required for Constitutional amendments. The Bill passed was then referred to the Rajya Sabha for discussion and passing. 187 Amendments to the Bill were moved in the Rajya Sabha. Before any voting on the Bill could take place, the Rajya Sabha was adjourned on December 29, 2011[11]. On May 21, 2012 the Rajya Sabha adopted a motion

[7] Associated Press, "Anna Hazare leaves jail to begin public hunger strike", The Guardian, August 19, 2011, available at: http://www.theguardian.com/world/2011/aug/19/anna-hazare-leaves-jail-india
[8] Lok Sabha Debates, 27th August, 2011; Rajya Sabha Debates, 27th August, 2011.
[9] Gargi Parsai, "Anna Hazare ends fast", The Hindu, August 28, 2011, available at: http://www.thehindu.com/news/national/anna-hazare-ends-fast/article2405862.ece
[10] 48th Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the Lokpal Bill, 2011 dated 09.12.2011.
[11] K.V. Prasad, "No vote on Lokpal, Rajya Sabha adjourns abruptly", The Hindu, December 30, 2011, available at:

to refer the Lokpal and Lokayuktas Bill, 2011, as passed by the Lok Sabha, to a Select Committee of the Rajya Sabha for examination. The Select Committee submitted its report[12] to the Rajya Sabha on November 23, 2012. One of the key recommendations of the Select Committee was that all states must have absolute freedom in determining the nature and type of the Lokayuktas depending upon their needs/ requirements. The Select Committee recommended that the provisions in the Lokpal and Lokayuktas Bill, 2011 relating to setting up of Lokayuktas in states be done away with and replaced with a clause providing for enactment of a separate law for this purpose by the respective state legislature within a year of notification of the federal law. On January 31, 2013 most of the proposed amendments to the Bill as contained in the report of the Select Committee of the Rajya Sabha were accepted by the Government of India[13]. Subsequently, the Bill was passed by the Rajya Sabha on December 17, 2013 with amendments and referred to the Lok Sabha for approval. The amendments made by the Rajya Sabha were accepted by the Lok Sabha with the Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014) (hereinafter referred to as the "2013 Act") being passed on 18th December, 2013.

The 2013 Act received the assent of the President of India on January 1, 2014 and was published in the Gazette of India on the same date for general information[14]. The 2013 Act came into force on January 16, 2014[15]. In order to carry out the provisions of the 2013 Act, various rules have been framed by the Central government by virtue of Section 59 of the Act. The Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014[16] came into effect on January 17, 2014. Certain amendments[17] to the said Rules were also notified in the official gazette on August 27, 2014. The aforesaid rules have

http://www.thehindu.com/news/national/no-vote-on-lokpal-rajya-sabha-adjourns-abruptly/article2758728.ece

[12] Report of the Select Committee of Rajya Sabha on the Lokpal and Lokayuktas Bill, 2011 dated 23.11.2012.

[13] "Official Amendments to Lokpal and Lokayuktas Bill, 2011", Press Release dated 31.01.2013, Press Information Bureau, Government of India.

[14] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), January 1, 2014, Gazette of India, Legislative Department, Ministry of Law and Justice, Government of India, available at: http://www.indiacode.nic.in/acts2014/1%20of%202014.pdf

[15] Notification No. S.O. 119 (E) dated January 16,.2014, Gazette of India, Legislative Department, Ministry of Law and Justice, Government of India.

[16] Available at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/SearchCommitteeRules_English.pdf

[17] Available at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/Search_Committee_Amendment_Rules_dated-27082014.pdf

been challenged by way of two Public Interest Litigations bearing W.P. (C) Nos. 245/ 2014 and 673/ 2015 which are pending disposal before the Supreme Court of India.

Whilst the 2013 Act came into force in January 2014, the anticorruption institution envisaged is yet to become functional as the Selection Committee tasked with appointing the ombudsman body has not been constituted till date. Under the 2013 Act, the selection committee must necessarily include the Leader of Opposition in the Lower House of Parliament. Currently, no parliamentarian has been recognized as Leader of Opposition in the Lower House. This is because no opposition party commands the numerical strength required for such recognition.

In order to deal with this anomalous situation, the government introduced the Lokpal and Lokayuktas and other related law (Amendment) Bill, 2014[18] (hereinafter referred to as the "2014 Bill") which provides that in the absence of a Leader of Opposition in the Lower House, the leader of the single largest opposition party will be included in the selection committee. The 2014 Bill is pending in the Lower House of Parliament since December 18, 2014.

State Level:

While the Bill for the establishment of Lokpal at the Central/ Federal level came to be passed by the Parliament only in the year 2013, Bills for the establishment of Lokayukta at the State level have been passed by twenty five State legislatures and one Union Territory as of now, namely, Maharashtra (1971), Rajasthan (1973), Bihar (1973), Uttar Pradesh (1975) Madhya Pradesh (1981), Andhra Pradesh, (1983), Himachal Pradesh (1983), Karnataka (1984), Assam (1985), Punjab (1996), Kerala (1999), Jharkhand (2001), Chhattisgarh (2002), Haryana (1997 & 2002), West Bengal (2003), Tripura (2008), Goa (2011), Gujarat (1986 & 2013), Odisha (1995 & 2014), Uttarakhand (2011 & 2014), Arunachal Pradesh (2014), Manipur (2011 & 2014), Meghalaya (2012 & 2014), Mizoram (2014), Sikkim (2010 & 2014) and Delhi (1995 & 2015).

Some State legislatures have passed another Bill after the 2013 Act was passed by the Parliament in order to grant their existing Lokayuktas with powers similar as that of the Lokpal

[18] Lok Sabha Debates, 18th December, 2014, http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/190_2014_LS_Eng.PDF

under the 2013 Act. However, many of these recent Bills passed by various State legislatures have not received the required assent from the President or the Governor as the case may be. It is pertinent to note that in certain States where the Lokayukta legislation is already in force, the appointment of a Lokayukta is awaited due to unfulfilled vacancy. These are States where the previous Lokayukta has retired after finishing his/ her term and a fresh appointment is yet to be made even after a lapse of a few months/ years. Thus, at present, Lokayuktas are functioning in only few of the aforementioned Indian States.

It may also be noted that out of the twenty nine State legislatures in India, the ones which are yet to pass an appropriate legislation for the establishment of a Lokayukta are Nagaland, Tamil Nadu, Telangana and Jammu and Kashmir.

In the States where a Lokayukta enactment is in force, there are significant variations between the structure, jurisdiction and powers granted to the respective Lokayuktas[19]. On the one hand, some Lokayuktas function primarily as grievance redressal institutions as originally envisaged in the Interim Report of the First Administrative Reforms Commission[20] and on the other hand, some Lokayuktas focus exclusively on conducting inquiries in cases of corruption[21]. In a few States, a wide range of public functionaries including the Chief Minister, Vice Chancellor and Heads of Cooperatives are within the purview of the Lokayukta; in others, the coverage is restrictive. In some States, the Lokayukta is vested with investigative powers with separate investigation machinery attached and also the power to direct search and seizure. Only some Lokayuktas enjoy financial independence with their expenditure charged on the consolidated fund of the State. Unlike the Lokayukta in Delhi, the Lokayukta in Karnataka has the power to punish for contempt. The difference in the provisions of the aforesaid legislations explains why the institution is seen as successful only in some States.

3. The Ombudsman legislation applicable to the National Capital Territory of Delhi

[19] Supra note 10 at 6.
[20] Supra note 1 at 3.
[21] "Ethics in Governance", 4th Report of the Second Administrative Reforms Commission, Government of India, (January 16, 2007).

The preamble to The Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996)[22] (hereinafter referred to as the "1995 Act") states that it was enacted by the legislative assembly of the National Capital Territory of Delhi ("NCT of Delhi") to "*make provision for the establishment and functioning of the Institution of Lokayukta to inquire into the allegations against public functionaries in the National Capital Territory of Delhi and for matters connected therewith".* The said Act came into force on September 22, 1997. The first Lokayukta for the NCT of Delhi was appointed on December 1, 1997 for a period of five years. The third and most recent Lokayukta, Justice Manmohan Sarin[23], demitted office on November 6, 2013 after completing his tenure of five years. Section 5 (5) of the 1995 Act provides that a vacancy occurring in the office of the Lokayukta shall be filled not later than six months from the date of occurrence of such vacancy. However, the vacancy was not filled within the time period prescribed under the Act of 1995. The High Court of Delhi, vide its judgment dated September 26, 2014[24] "requested" the Lieutenant Governor of the NCT of Delhi to initiate the process of filling up the vacancy in the office of Lokayukta. However, no such appointment was made since at that point of time there was no government or opposition in place in Delhi owing to the imposition of President's rule in February, 2014.

A new government for the NCT of Delhi was formed pursuant to the completion of the legislative assembly elections conducted in February, 2015[25]. In May, 2015 a writ petition bearing W.P. (Civil) No. 4764/ 2015 titled *Sat Prakash Rana vs. Government of NCT of Delhi & Ors.* was filed in the High Court of Delhi, praying for the issuance of a writ of Mandamus thereby directing the government to appoint a Lokayukta at the earliest since the statutory time period prescribed under the aforementioned Section 5 (5) of the 1995 Act had already expired. During the course of hearing of the aforesaid writ petition on September 17, 2015 the counsel for the Government of NCT of Delhi informed the Court that the Lokayukta appointment would be made by October 28, 2015[26]. Subsequently, on December 17, 2015[27] Justice Reva Khetrapal

[22]Available at: http://lokayukta.delhigovt.nic.in/uplok.asp (last visited on May 26, 2016).
[23] See http://delhi.gov.in/wps/wcm/connect/doit_lokayukta/Lokayukta/Home/Bio-Data/ (last visited on May 26, 2016).
[24] *Kamran Siddique vs. Union of India and Ors.*, 2014 SCC OnLine 1766.
[25] Press Release, office of the Lt. Governor of NCT of Delhi, available at: http://delhi.gov.in/wps/wcm/connect/DOIT_LG/new/press+releases/press+release+10.02.2015
[26] Mohammed Iqbal, "Lokayukta to be appointed by Oct 28", The Hindu, September 18, 2015, available at: http://www.thehindu.com/news/cities/Delhi/lokayukta-to-be-appointed-by-oct-28/article7663266.ece
[27] Press Release issued, office of the Lt. Governor of NCT of Delhi, available at: http://delhi.gov.in/wps/wcm/connect/DOIT_LG/new/press+releases/press+release+17.12.2015

(Former Judge of the High Court of Delhi) was appointed as the Lokayukta for the NCT of Delhi for a period of 5 years.

Relevant provisions of The Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996):

The procedure for the appointment of Lokayukta is contained in Section 3 of the 1995 Act which provides that such appointment shall be made by the Lt. Governor of the NCT of Delhi in consultation with the Chief Justice of the High Court of Delhi and the Leader of the Opposition in the Legislative Assembly. To be qualified for the post, the proposed appointee should be or have been the Chief Justice of any High Court in India or a judge of a High Court for seven years. As per Section 5, the term of the appointment is five years and re-appointment for a second term is impermissible.

Under Section 7, the Lokayukta is empowered to inquire and investigate into an allegation made against public functionaries either *suo motu* or pursuant to a written complaint. Section 8 makes it clear that the complaint must be made within five years of the date on which the conduct complained against is alleged to have been committed.

Public functionaries covered under the 1995 Act include members of the Delhi Legislative Assembly, Chief Minister and other Ministers, members of the three Municipal Corporations of Delhi and the Chairman/ Vice-Chairman/ Managing Director/ Member of the Board of Directors, etc. in respect of cooperative societies, government companies, local authorities and commissions/ bodies/ corporations set up and controlled by the government[28]. Section 17 makes it clear that members of the judicial service as well as the civil service, whether of the Union or the States, are outside the purview of the 1995 Act.

The definitions of the terms and expressions used in the 1995 Act are contained in Section 2. The terms “allegation” and “corruption” are defined as under:

[28] The Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996), s. 2 (m).

"*b. "**allegation**" in relation to a public functionary means by affirmation that such public functionary in capacity as such:-*

i. *has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs;*
ii. *has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person;*
iii. *was actuated in the discharge of his functions as such public functionary by improper or corrupt motives or personal interest;*
iv. *is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known resources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf;*

Explanation -For the purpose of this sub-clause "family" means husband, wife, sons and unmarried daughters living jointly with him;

e. *"**corruption**" includes anything made punishable under Chapter IX of the Indian Penal Code, 1860 or under the Prevention of Corruption Act, 1988*"

According to Section 10, the Lokayukta can decide the procedure to be followed for making an inquiry in each case before it and such procedure must be in accordance with the principles of natural justice. Section 11 deals with certain provisions of the Indian Evidence Act, 1872 (Act 1 of 1872) and the Code of Criminal Procedure, 1973 (Act 2 of 1974) that apply to the procedure of inquiry before the Lokayukta.

In the normal practice, the Lokayukta conducts the inquiry by issuance of notice to the concerned public functionary. In case a complaint has been filed, the public functionary is supplied with a copy of the complaint and other documents received from the complainant. The public functionary is given an opportunity to file a reply. After completion of pleadings, evidence is led by the complainant as also the public functionary with an opportunity for cross-examination and presentation of arguments.

On consideration of pleadings, evidence and submissions, if the allegations are established, the Lokayukta prepares a Report containing his/ her findings and recommendations under Section 12. The Report along with relevant documents, materials and other evidence is submitted to the Competent Authority (Lt. Governor for the NCT of Delhi, in case the public functionary is a member of any of the Municipal Corporations or of the Legislative Assembly and the President of India, in case the public functionary is the Chief Minister or any other Minister).

As per Section 12 (2), the concerned Competent Authority is under a mandate to examine the Report and intimate the Lokayukta of the action taken or proposed to be taken on the basis of the Report within three months. In terms of Section 12 (3), if the Lokayukta is satisfied with the action taken or proposed to be taken on the recommendations contained in the Report, he/ she shall close the case. Otherwise, the Lokayukta may make a Special Report upon the concerned case to the Competent Authority. Section 12 (5) states that if the Special Report contains any adverse comment against a public functionary then such Report shall contain the substance of the defence adduced by such public functionary and the comments made thereon by the government/ public authority. In case a Special Report is made by the Lokayukta, the said Special Report has to be laid before the Legislative Assembly along with an explanatory memorandum by the Lt. Governor in accordance with Section 12 (6).

According to Section 13, the Lokayukta is free to utilize the services of any officer or investigating agency of the government, with the latter's concurrence, for the purpose of conducting inquiries under the 1995 Act.

Section 16 empowers the Lokayukta to bring to the notice of the government any practice or procedure which affords an opportunity for corruption or maladministration and also make suggestions to improve such practice or procedure.

Section 18 clarifies that the 1995 Act provides for an additional and not an alternate remedy to the complainant who is free to avail of any other remedy available under any other enactment/ rule/ law in respect of any action. The provisions of the 1995 Act do not limit or affect the right of the complainant to avail of such remedy.

The Delhi Lokayukta and Upalokayukta (Investigation) Rules, 1998[29] have been framed under Section 20 of the 1995 Act. Rule 16 provides that when the Lokayukta conducts an investigation, he shall provide a reasonable opportunity to the public functionary or his authorized representative to inspect or copy the affidavit of the complaint and other documents filed in support thereof.

Judicial Interpretation qua the 1995 Act:

The role and functions of the Lokayukta under the 1995 Act have been interpreted by the High Court of Delhi in certain judgments which merit discussion.

In the case of *Office of Lokayukta vs. Govt. of NCT of Delhi & Anr.* bearing L.P.A. No. 160/ 2009 the Court observed that the object of the 1995 Act is to ensure an independent investigation of administrative action. In the aforesaid case, the question before the Court was whether the Lokayukta is precluded from conducting a preliminary inquiry prior to issuance of notice to public functionaries.

Vide Judgment dated 14th May, 2009[30] the Court held as under:

> "*19. …There is no provision in the Act which says that the provisions of Section 11 of the Act, empowering the Lokayukta to summon any record, would be applicable only after issuance of notice to the parties. The Act does not require issuance of notice to the public functionary before summoning the records so as to satisfy himself that there is sufficient material to proceed against the public functionary… The proceedings before the Lokayukta are inherently informal and not technical in nature and as long as there is no violation of principles of natural justice, the interference by the High Court in writ jurisdiction under Article 226 of the Constitution would not be appropriate.*

[29] Available at: http://delhi.gov.in/wps/wcm/connect/doit_lokayukta/Lokayukta/Home/Rules/Investigation+1998 (last visited on May 26, 2016).
[30] ILR (2009) 6 Delhi 83; (2009) 160 DLT 1.

20. *...The provisions authorizing the Lokayukta to decide his procedure and power to summon the record, does not require issuance of notice to the public functionaries before summoning the records so as to satisfy himself that there is sufficient material to proceed against the public functionaries.*

...

25. *In the light of the settled legal position, it is not possible to accede to the submission that the Lokayukta has no power to call for records in a preliminary inquiry. The exercise of calling for the records was to satisfy that there was a prima facie case to proceed with...The nature of proceedings conducted by the Lokayukta are altogether different from a civil or criminal lis. Unlike civil or criminal proceedings, a citizen making allegations against a public functionary may not be in possession of complete facts or documents, unless the allegation arises out of his personal transaction with any public functionary. The powers conferred on the Lokayukta are advisedly very wide. These powers are wider than of any court of law. Notwithstanding remedies to be found in courts of law and in statutory appeals against administrative decisions, there still remains a gap in the machinery for the redressal of grievances of the individuals against administrative acts or omissions. The need to create an authority to deal with such cases was felt by Conference of Jurists representing Asia and Pacific Regions in following words:-*

> *"This gap should be filled by an authority which is able to act more speedily, informally and with a greater regard to the individual justice of a case than is possible by ordinary legal process of the Courts, it should not be regarded as a substitute for, or rival to, the legislature or to the Courts but as a necessary supplement to their work, using weapons of persuasion, recommendation and publicity rather than compulsion". The fight between an individual citizen and the State is unequal in nature. Therefore, the very existence of such an institution will act as a check and will be helpful in checking the canker of corruption and maladministration. More so when it has been repeatedly asserted that the canker of corruption, in the proportions it is said to have attained, may well dig into the vitals of our democratic State, and*

eventually destroy it (See Corruption - Control of Maladministration by John B. Monteiro).”

26. The provisions of such an enactment, which is enacted for the eradication of the evil of corruption and maladministration must be construed liberally so as to advance the remedy…”

In the case of *Sunita Bhardwaj vs. Sheila Dixit* bearing W.P. (C) No. 4870/ 2012, the central issue was whether Section 12 of the 1995 Act permits the Competent Authority to carry out any further hearing or proceedings in the nature of a hearing after the Report has been submitted by the Lokayukta. It was contended that the Competent Authority had adopted a faulty procedure by conducting a supplementary inquiry after the Lokayukta’s Report had been submitted by calling for comments/ response of the indicted public functionary as well as of the government on the findings contained in the Report. It was argued that such a flawed procedure rendered the Report a paper direction and the Lokayukta a paper tiger without having any claws.

Relying upon the judgment of the Supreme Court of India in *Chandrashekaraiah* vs. *Janekere C. Krishna*[31] which was passed in relation to the Karnataka Lokayukta Act, 1984 (Act 4 of 1985), the High Court of Delhi noted that the Lokayukta can best be described as a *sui generis* quasi-judicial authority and that, although the Lokayukta is more than an investigator or an inquiry officer, at the same time, he is not placed on the pedestal of a judicial authority rendering a binding decision. Relevant portion of the judgment dated 11.10.2013[32] in *Sunita Bhardwaj (Supra)* is reproduced hereunder:

“*23. In the present case, we find that while the inquiry is to be conducted by the Lokayukta, the decision is to be taken by the competent authority. There is no doubt that the entire process of inquiry and decision making is quasi-judicial in nature. While the Lokayukta has to act quasi-judicially and has to observe the principles of natural justice as specifically enjoined by Section 10 of the said Act, the principles of natural justice would also be applicable to the decision*

[31] (2013) 3 SCC 117.
[32] (2013) 203 DLT 743.

making process of the competent authority. However, the scenario before the competent authority is different. While before the Lokayukta, the complainant and the public functionary are, in a sense, pitted against each other because of the rival stands that they take, before the competent authority, it is only the report of the Lokayukta alongwith the ancillary documents and the public functionary against whom action is to be taken by the competent authority.

24. …While we have observed that the Lokayukta is something more than an inquiry officer, it is evident that the role of competent authority under the said Act is somewhat akin to that of a disciplinary authority…

25. …The report of the Lokayukta does not merely contain the relevant documents, materials and evidence collected by the Lokayukta during the course of inquiry conducted by the Lokayukta under the said Act. It also contains the findings of the Lokayukta…the findings and recommendations of the Lokayukta do constitute additional material before the competent authority of which the concerned public functionary has no knowledge. If such additional material, unknown to the public functionary, is to be taken into consideration by the competent authority, while taking action or proposing to take action, it is imperative under the principles of natural justice that before the competent authority takes such a decision, the public functionary is given an opportunity to respond and comment upon the Lokayukta's findings and recommendations.

26. From the above discussion, it is evident that the course adopted in the present case is in consonance with the principles of natural justice and the procedure followed by the competent authority cannot be regarded as 'faulty'…

27. …We may also point out that it was not at all necessary for obtaining or calling for the response of the complainant or the views of the Lokayukta. The complainant's stand had been examined by the

> *Lokayukta and that had culminated in the report of the Lokayukta, which contained the findings and recommendations of the Lokayukta. Therefore, nothing further was required from the complainant or the Lokayukta and it is only the grant of an opportunity to the concerned public functionary to respond to the findings of the Lokayukta that was necessary for fulfilling the requirements of natural justice.* "

In a recent judgment dated 19.02.2015[33] delivered in the case of a Public Interest Litigation titled *Common Cause vs. Subhash Jain, Ex-Councillor & Ors.* bearing W.P. (C) No. 2992/ 2013, the High Court of Delhi made a significant observation in respect of its earlier judgment in *Sunita Bhardwaj (Supra)*. The Court noted that the aspect of whether the Lt. Governor acting as the Competent Authority, in exercise of powers under Section 12 (2) of the 1995 Act, is required to act on the aid and advice of the Council of Ministers had not been addressed by the Court in *Sunita Bhardwaj's* case.

The High Court made a reference to the decision of the Supreme Court of India dated 5th November, 2004[34] in the case of *Madhya Pradesh Special Police Establishment* vs. *State of Madhya Pradesh* wherein the Apex Court examined the role and power of the Governor in a situation where there was an apparent bias in the advice of the Council of Ministers in respect of certain recommendations contained in the Report of the Lokayukta. The Apex Court clarified that though the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it, there are certain exceptions under which the Governor can act in his own discretion. It was held that there may be situations where by reason of peril to democracy an action may be compelled which from its nature is not amenable to Ministerial advice which may be inherently biased.

The *ratio decidendi* of the judgment in *Madhya Pradesh Special Police Establishment (Supra)* is that on rare occasions where bias becomes apparent, the Governor is not bound to act in accordance with the advice of the Council of Ministers and would be right to act in his own discretion.

[33] (2015) 219 DLT 298.
[34] (2004) 8 SCC 788.

The High Court of Delhi in the case of *Common Cause (Supra)* observed that none of the counsel, despite the Court's asking, addressed the Court in *extenso* on the aspect of the Lt. Governor of Delhi acting on the aid and advice of the Council of Ministers in dealing with the recommendations of the Lokayukta even in cases where the indicted public functionary was a member of the Council of Ministers. Consequently, the High Court refrained from recording its findings on the said aspect.

Observations of the Court in relation to the nature of the Report submitted by the Lokayukta under the 1995 Act, as stated in its judgment in the case of *Common Cause (Supra)*, are reproduced hereunder:

> "*18. …The Act does not provide for any punishment to follow the findings of the Lokayukta or the Upa-Lokayukta and also does not provide for initiation of any prosecution on the basis of the findings in the report of the Lokayukta.*
>
> *19. In this context, we find the status of the report of the Lokayukta to be akin to the reports of the Comptroller and Auditor General (CAG) of India which under Section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 are also required to be submitted to the Government concerned and to be laid before the Parliament/State Legislature of the State concerned.*
>
> *20. …the role of the CAG is to enable the Legislature to oversee the functioning of the Government and it for the Legislature to take action on the basis of CAG reports or direct the Government to take action and till the Legislature has not so directed, the Court cannot direct any action to be taken on the basis of the CAG reports.*
>
> *21. Similarly, the Act with which we are concerned also leaves the decision of the action to be taken on the basis of the report of the Lokayukta to the Competent Authority or to the Legislative Assembly and no direction, on the basis of the report of the Lokayukta can be given by the Court.*

22. *Parallel in this regard may also be drawn from the provisions of the Commissions of Inquiry Act, 1952 though a Commission of Inquiry, under Section 3 thereof is to be appointed by a Resolution of the Parliament or the Legislature of the State and for the purpose of making an inquiry into a matter of public importance, but the report of the Commission of Inquiry is again to be laid before the Parliament or the Legislature of the State and it has been held in Manohar Lal v. Union of India AIR 1970 Delhi 178 DB that such a report has no force proprio vigore…*

23. *Thus, howsoever high may the findings against a public functionary in the reports of the Lokayukta or the CAG or the Commission of Inquiry set the hopes and expectations of the people/citizens of the country that the erring public functionary will now be brought to book, the legal position is that the said findings are literally for the eyes and ears of the Parliament/Legislature/Government only and do not enable or empower a citizen to demand action against the erring public functionary and do not permit the Court to on the basis thereof, direct any action.*

24. *We are conscious that the same may belie the aspirations of the citizenry to transparency in administration and probity in public life but in the face of the clear statutory provisions and the interpretation by the Supreme Court of similar provisions of other statutes aforesaid, we have no option… In fact, we have drawn parallel to the provisions of the Lokayukta Act with the provisions of the CAG Act and the Commissions of Inquiry Act only to demonstrate that there are other Constitutional offices/powerful bodies whose reports also are only for the consumption of the Legislature.*"

4. Analysis

The historical background relating to establishment of institutions of Lokpal and Lokayukta, the provisions of the 1995 Act and the judicial interpretation accorded to such provisions, leads to the following conclusions:

(i). The recommendations made by the First Administrative Reforms Commission[35] have not been strictly followed. The Commission had recommended that an institution, to be known as the Lokpal, should be set up at the Centre to exercise jurisdiction over Ministers/ Secretaries to the government at the Centre as well as the States and that separate institutions, to be known as Lokayuktas, should be set up in every State to exercise jurisdiction over other officials. This recommendation has not been accepted as the jurisdiction of the Lokpal under the 2013 Act extends only to Members of Parliament and officers employed by the Central government and not to their respective counterparts in the States who are covered under the jurisdiction of their State's Lokayukta. Insofar as the 1995 Act is concerned, though members of the Civil Service have been kept outside the ambit of the Delhi Lokayukta, all members of the Legislative Assembly, including those holding Ministerial positions, have been brought under its jurisdiction. The draft Bill prepared by the Commission did not propose to cover the Prime Minister or the Chief Ministers. However, the Prime Minister is covered under the 2013 Act and so is the Chief Minister of the Government of NCT of Delhi covered under the 1995 Act. The functions of the ombudsman institutions as envisaged by the Commission have also been modified to a certain extent. In the draft Bill prepared by the Commission, the Lokayukta was expected to focus mainly on maladministration. However, under the 1995 Act, the definition of "allegation" being wide, the scope of the Lokayukta has been enlarged and he is empowered to act not only in cases of maladministration but also in cases of corruption, accumulation of disproportionate assets, misuse and abuse of public office and failure to act in accordance with the norms of integrity and conduct ought to be followed by public functionaries. It is pertinent to note that there is one recommendation of the aforesaid Commission that has been strictly followed by the framers of the 1995 Act i.e. of granting only recommendatory value to the Report of the Lokayukta.

(ii). Several lacunae/ shortcomings exist in the 1995 Act which are listed below:

a). Members of the Civil Service have been kept outside the jurisdiction of the Lokayukta. Very often, in the course of an inquiry conducted by the Lokayukta

[35] Supra note 1 at 3.

in relation to an administrative action taken by a Minister, a need arises to investigate the role of the Secretary to the said Minister who may have influenced the decision making in respect of such administrative action. However, the 1995 Act renders the Lokayukta helpless in such a situation. Consequently, the inquiry proceedings against the concerned Minister also tend to be adversely affected. It is a matter of experience that the level at which Ministers and Secretaries function, it is difficult to decide where the role of one ends and that of the other begins[36]. While members of the Civil Service employed by the Central government are now covered under the 2013 Act, their counterparts in the State government are yet to be brought within the purview of the 1995 Act;

b). The Lokayukta has not been vested with the power of search and seizure. While carrying out an investigation and inquiry, there may be evidence which is likely to be obliterated by the accused public functionary. Without the aforesaid power, the Lokayukta is entirely dependent upon the complainant or the government agencies to provide the relevant information;

c). Power to issue contempt has not been granted to the Lokayukta. Without the contempt power, the Lokayukta has no means to thwart the deliberate attempts that may made by public functionaries or their counsel to obstruct inquiry proceedings;

d). The Lokayukta is expected to carrying out an investigation and inquiry without being provided separate investigation and prosecution wings. The 1995 Act merely states that the Lokayukta may utilize the services of officers and investigation agencies of the government with that government's concurrence. Dependence on the government to provide officers for carrying out investigation tends to have an impact on the effectiveness of the inquiry proceedings before the Lokayukta. Further, the extent of control and supervision

[36] Justice Manmohan Sarin, "Way Forward", Compendium of the 11th All India Lokayukta's Conference, 2012 (November, 2013).

that the Lokayukta may exercise over such officers/ agencies has not been mentioned in the Act;

e). The 1995 Act does not bind the Competent Authority to provide reasons in case it chooses not to accept the recommendations contained in the Report of the Lokayukta. This is a serious anomaly in the 1995 Act which allows the Competent Authority to reject the Lokayukta's Report without providing a speaking order. In the case of *Raj Kumar Chauhan, Minister, Govt. of NCT of Delhi – Suo Moto cognizance taken of a news report of Times of India dated 19th July 2010, titled "Delhi Minister sought relief for Resort"* bearing Complaint No. C.409/LOK/2010[37], the Lokayukta for the NCT of Delhi observed that though his findings and recommendations contained in the Report had not been accepted by the Competent Authority (President of India in this case), the reasons for such non-acceptance had not been provided, because of which the Special Report submitted thereafter was prepared without knowing the thought process behind the decision taken by the Competent Authority;

f). The findings and recommendations contained in the Report of the Lokayukta are not enforceable. If the Lokayukta is dissatisfied with the action taken or proposed to be taken by the Competent Authority, he has only one option i.e. to submit a Special Report. After the Special Report has been submitted to the Competent Authority, the Lokayukta has no further role. It is then for the Competent Authority to lay the Special Report before the Legislative Assembly along with an explanatory memorandum. The 1995 Act does not specify as to what is to be done in respect of the Special Report once it is placed before the Legislative Assembly.

(iii). The High Court of Delhi has interpreted the role of the institution of Lokayukta under the 1995 Act as that of a *sui generis* quasi-judicial authority who is more than an investigator or an inquiry officer but at the same time, is not placed on the pedestal of

[37] Substance of Case under Section 12 (7) of the Delhi Lokayukta and Upalokayukta Act, 1995 (Act 1 of 1996), (September 10, 2013), available at: http://it.delhigovt.nic.in/writereaddata/Odr201366178.pdf

a judicial authority rendering a binding decision. The Report of the Lokayukta has been declared to be akin to the Report of the Comptroller and Auditor General of India[38] and the Report of a Commission of Inquiry[39]inasmuch as the findings and recommendations contained in such Reports are not enforceable by the Court. In other words, the Court cannot pass a direction to the Competent Authority/ Legislative Assembly, in the case of the Lokayukta, or the Parliament/ Legislative Assembly, in the case of the Comptroller and Auditor General of India/ Commission of Inquiry, to take any action pursuant to the findings contained in their respective Reports.

(iv). The role of the Competent Authority under the 1995 Act has been interpreted by the High Court of Delhi to be somewhat akin to that of a Disciplinary Authority who has to apply the principles of natural justice in its decision making process. The procedure adopted by the Competent Authority in granting an opportunity to the indicted public functionary to comment/ respond to the findings and recommendations (termed by the Court as "additional material") contained in the Lokayukta's Report and at the same time not calling for comments/ response of the complainant or the Lokayukta cannot be regarded as "faulty" but in fact is in consonance with the principles of natural justice.

(v). The Court is yet to give a finding on the aspect of whether the Lt. Governor of the NCT of Delhi acting as the Competent Authority, in exercise of powers under Section 12 (2) of the 1995 Act, is required to act on the aid and advice of the Council of Ministers. By making a reference to the judgment of the Supreme Court of India in the case of *Madhya Pradesh Special Police Establishment*[40] and by categorically stating that the counsel failed to address them on the aforesaid aspect, despite their asking, the High Court of Delhi in its judgment in the case of *Common Cause*[41] has made it apparent that it is keen on returning a finding on the said aspect but in some other appropriate case.

Conclusion

[38] The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (Act 56 of 1971), s. 19A, available at: http://www.cag.gov.in/content/dpc-act-cags-duties-powers-and-conditions-service#section3
[39] The Commission of Inquiry Act, 1952 (Act 60 of 1952), s. 3 (4), available at: http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/CI_Act1952.pdf
[40] Supra note 34 at 19.
[41] Supra note 33 at 19.

In the year 1999, the Supreme Court of India, in a case pertaining to the institution of Lokayukta established in the State of Andhra Pradesh[42], observed that when statutory authorities such as the Lokayukta, which are meant to cater to the need of the public at large, consist of high judicial dignitaries, it would be obvious that such authorities should be armed with appropriate powers so that their orders and opinions do not become mere paper directions. The Court noted that "*these authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned*". For that to happen, the Court suggested that it was for the Legislature to make provision in the law for due compliance with the Report of the Lokayukta so that public confidence in its working does not get eroded and the institution can justify its creation.

The 2013 Act bestows adequate powers upon the Lokpal which, unlike the Lokayukta under the 1995 Act, is a multi-member body comprising nine persons. Though a detailed analysis of the 2013 Act is not required, the procedure in respect of inquiry, investigation and prosecution may be discussed in brief. Under the 2013 Act, the Lokpal has been granted an Inquiry Wing and a Prosecution Wing. Upon receipt of a complaint, the Lokpal can order a preliminary inquiry to be conducted by its Inquiry Wing or any other agency to ascertain whether there exists a *prima facie* case for proceeding in a matter in relation to any offence alleged to have been committed by a public servant under the Prevention of Corruption Act, 1988 (Act 49 of 1988). Where it feels that there exists a *prima facie* case, the Lokpal can order an investigation by any agency including the Delhi Special Police Establishment (commonly referred to as the Central Bureau of Investigation). On consideration of the investigation report, the Lokpal can direct the investigating agency or the Prosecution Wing to file a charge sheet and thereafter initiate prosecution in respect of the case in the Special Court. Under the 2013 Act, Special Courts are mandated to complete the trial within a period of one year. If a public servant is subsequently convicted on charges of corruption, not only will the prescribed punishment under the Prevention of Corruption Act, 1988 (Act 49 of 1988) follow but the public servant's ill-gotten assets relatable to such corruption may also be confiscated.

[42] *Institution of A.P. Lokayukta/ Upa-Lokayukta, A.P. and Ors. vs. T. Rama Subba Reddy and Anr., (*1997) 9 SCC 42.

As noted earlier, some State legislatures have recently passed Bills providing for the establishment of Lokayukta in their States with powers and functions similar to that of Lokpal under the 2013 Act of Parliament. These State legislatures include those who already had a Lokayukta legislation existing in their State but felt the need to repeal the earlier legislation and to enact a fresh one in line with the 2013 Act.

Insofar as the NCT of Delhi is concerned, the legislative assembly passed The Delhi Janlokpal Bill, 2015[43] (hereinafter referred to as the "2015 Bill") on December 4, 2015. The 2015 Bill awaits the requisite assent of the Lt. Governor as per Section 24 of the Government of National Capital Territory of Delhi Act, 1991 (Act 1 of 1992)[44].

The 2015 Bill seeks to repeal the 1995 Act. The Statement of Objects and Reasons of the 2015 Bill notes that the said Bill "*is an attempt at revamping and strengthening the anti-corruption legislation in Delhi*" and its principal aim is "*to realize the object of establishing the National Capital Territory as a "Corruption Free Zone"*". The significant features of the Bill are noted as under:

- Section 3 provides for the appointment of Janlokpal, a three-member body having one Chairperson and two Members. The appointment shall be made by the Lt. Governor on the basis of the binding recommendation made by a seven-member Selection Committee chaired by the Chief Justice of the High Court of Delhi and comprising as members, the Chief Minister of Delhi, Leader of Opposition in the Legislative Assembly, Speaker of the Legislative Assembly, an eminent citizen to be nominated by the aforementioned committee members, one judge of the Delhi High Court selected by the full court and the current Chairperson of the Janlokpal (in case the said Chairperson is not being considered for a second term). Section 3 (2) notes that the person appointed as Chairperson of the Lokpal must necessarily be a current or former judge of the Supreme Court of India or a High Court. The other two Members of the Janlokpal are required to be persons of eminence having obtained distinction, special knowledge and expertise in public administration, finance or investigation.

[43] Available at: http://delhiassembly.nic.in/Legislation/Bill_No-16of2015.pdf
[44] Rules of Procedure and Conduct of Business of the Legislative Assembly of the NCT of Delhi, Rule 155, available at: http://delhiassembly.nic.in/Books/RulesOfProce&ConductOfBusiness/englishrulebook.pdf

- Section 7 states that the Janlokpal can proceed to inquire or investigate into an allegation of 'corruption' occurring in the National Capital Territory of Delhi either on the receipt of a complaint or suo motu. The Janlokpal cannot inquire into any matter relating to which any inquiry is already pending before the Lokpal under the 2013 Act. Corruption has been defined under Section 2 (c) as including anything made punishable under Chapter IX of the Indian Penal Code, 1860 (Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Act 49 of 1988).
- Section 10 deals with the investigation and prosecution powers of the Janlokpal. The Janlokpal, with the consent of the government, can appoint/ designate certain officers or agencies as investigating officers. Such officers shall have the same powers as vested in a police officer while investigating offences under the Code of Criminal Procedure, 1973 (Act 2 of 1974). Additionally, the Janlokpal may utilize the services of any other officer or agency of the central government or any other state government. The investigating agency/ officer, on the direction of the Janlokpal, shall inquire or investigate into any matter and submit a report thereon to the Janlokpal. Upon receipt of the said report, the Janlokpal can grant sanction for prosecution against a public servant for offences committed under the 2015 Bill. After the approval of the Janlokpal, the Prosecution Wing shall proceed with the prosecution of the case before the Special Court which is mandated to complete the trial within a period of one year.
- Section 11 makes it clear that the provisions of the Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply to the procedure of inquiry and investigation by the Janlokpal.
- Sections 12 to 14 pertain to attachment and confiscation of assets believed to be procured through corruption.
- Section 15 empowers the Janlokpal to recommend the transfer or suspension of a public servant alleged to have committed corruption till such period the inquiry against him is completed.
- Section 17 provides for the quantum of punishment. In addition to punishments prescribed under the Prevention of Corruption Act, 1988 (Act 49 of 1988), the Special Court can award higher punishment to a public servant holding higher rank. Business entities who have benefited from an offence committed under the 2015 Bill shall be levied a fine of up to five times the loss caused to the public exchequer. Further,

companies and their directors, if convicted under the 2015 Bill, shall be blacklisted and ineligible for any future government contracts.

- Section 26 deals with protection for whistle-blowers. The Janlokpal can issue necessary orders for the security of any public official or person who sends any information regarding corruption to the Janlokpal.
- Section 27 states that the Janlokpal can make suggestions for the improvement of any procedure or practice of the government which affords opportunity for corruption or maladministration. Further, the Janlokpal may recommend to a public authority to stay the implementation of any decision or take any corrective measure to prevent an ongoing incident of corruption. Such public authority shall either accept such recommendation or reject the same for reasons to be recorded.
- Section 32 notes that on the date the 2015 Bill comes into force, the Lokayukta appointed under the 1995 Act shall be deemed to be appointed as Chairman of the Janlokpal.

The aforementioned features of the 2015 Bill make it evident that the Delhi Janlokpal as envisaged will have multitude of powers, including but not limited to directing inquries/ investigation into allegations of corruption and consequent grant of sanction for prosecution. The fact that the power to make suggestions to remove maladministration has been retained shows that the Delhi Ombudsman will not leave its existing crucial responsibility towards grievance redressal. Undoubtedly, the 2015 Bill takes care of much of the lacunae existing in the 1995 Act and gives enough "teeth" to the anti-corruption authority to ensure its relevance. With the establishment of Special Courts, the inquiries/ investigations conducted by the Delhi Janlokpal will not be rendered futile as opposed to the usual fate of the Reports of the Delhi Lokayukta. The independence and efficacy of such an institution can only be ensured by complete non-interference from the government. Barring the assistance in providing investigating officers and determining the salaries and administrative finances of the Janlokpal, the role of the government or even the Lt. Governor has been rightly minimized in the functioning of the Delhi Ombudsman.

However, it remains to be seen whether the 2015 Bill will receive the assent of the Lt. Governor as the same has been returned to the Legislative Assembly of Delhi on the alleged ground that

it was passed without following the requisite procedure[45]. The possibility of repugnancy[46] has not been ruled out either, considering that the 2015 Bill attempts to bring within its jurisdiction even those public servants who are already covered by the 2013 Act i.e. public servants employed by the central government. The scope of inquiry and investigation under the 2015 Bill seems to be territory specific and not person specific inasmuch as Section 7 makes any "*allegation of 'corruption' occurring in the National Capital Territory of Delhi*" come within its purview. There is a strong possibility that this aspect of the 2015 Bill may lead to litigation in the courts which will further delay the establishment of the Delhi Janlokpal.

[45] Vijaita Singh & Jatin Anand, "Centre returns 14 Bills passed by Delhi Assembly", The Hindu, June 25, 2016, available at: http://www.thehindu.com/news/cities/Delhi/centre-returns-14-bills-passed-by-delhi-assembly/article8770481.ece

[46] The Constitution of India, art. 239-AA (3) (c).