

## 4

## INSTITUTIONAL FRAMEWORK

## 4.1 Existing Institutions/Agencies

## Union Government

4.1.1 The Administrative Vigilance Division of the Department of Personnel & Training is the nodal agency for dealing with Vigilance and Anti-corruption. Its tasks, *inter alia*, are to oversee and provide necessary directions to the Government's programme of maintenance of discipline and eradication of corruption from the public services. The other institutions and agencies at the Union level are - (i) The Central Vigilance Commission (CVC); (ii) Vigilance units in the Ministries/Departments of Government of India, Central public enterprises and other autonomous organisations; and (iii) the Central Bureau of Investigation (CBI).

## Central Vigilance Commission

4.1.2 In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission was set up by the Government of India by a Resolution dated 11.2.1964. It was accorded statutory status, consequent upon the judgement of the Hon'ble Supreme Court in Vineet Narain v. Union of India, through the Central Vigilance Commission Act, 2003. The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration. It exercises superintendence over the working of the Central Bureau of Investigation, and also over the vigilance administration of various Ministries and other organizations of the Union Government.

## Vigilance Units in the Government of India

4.1.3 All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission on the one hand and his organisation and the Central Bureau of Investigation on the other. Vigilance functions performed by the CVO include collecting intelligence about corrupt practices of the employees of his organisation; investigating verifiable allegations reported to him; processing

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investigation reports for further consideration of the disciplinary authority concerned; and referring matters to the Central Vigilance Commission for advice wherever necessary.

## The Central Bureau of Investigation

4.1.4 The Central Bureau of Investigation (CBI) is the principal investigative agency of the Union Government in anti-corruption matters. It derives its powers from the Delhi Special Police Establishment Act, 1946 (DSPE Act) to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. The Special Police Establishment, which forms a division of the Central Bureau of Investigation, has three units, viz. (i) Anti-corruption Division, (ii) Economic Offences Wing, and (iii) Special Crimes Division. The Anti-corruption Division investigates all cases registered under the Prevention of Corruption Act, 1988 as also cases of offences under any other sections of the IPC or other law if committed along with offences of bribery and corruption. The Anti-corruption Division investigates cases pertaining to serious irregularities allegedly committed by public servants. It also investigates cases against public servants of State Governments, if the case is entrusted to the CBI. The Special Crimes Division investigates all cases of economic offences and conventional crimes; such as offences relating to internal security, espionage, sabotage, narcotics and psychotropic substances, antiquities, murders, dacoities/robberies, cheating, criminal breach of trust, forgeries, dowry deaths, suspicious deaths and other offences under IPC and other laws notified under Section 3 of the DSPE Act.

## Vigilance Systems in State Governments

4.1.5 At the level of state governments, similar vigilance and anti-corruption organisations exist, although the nature and staffing of these organisations vary between and across state governments. While some states have Vigilance Commissions and anti-corruption bureaus, others have Lokayuktas. Andhra Pradesh has an Anti Corruption Bureau, a Vigilance Commission and a Lokayukta. Tamil Nadu and West Bengal have State Vigilance Commissions to oversee the vigilance functions. The Vigilance Commissioner in Tamil Nadu is a serving Secretary to Government and functions as a Secretary though he brings out an Annual Report in his capacity as Vigilance Commissioner. Maharashtra has a combination of an Ombudsman and a Vigilance Commissioner, a multi-member body called the Lokayukta with a retired Judge of the higher judiciary as the Chairman and a retired civil servant as Vice Chairman. There are Vigilance Commissioners in the States of Assam, Bihar, Gujarat, Jammu & Kashmir, Meghalaya and Sikkim. In the Union Territories, the Chief Secretary himself acts as the Vigilance Commissioner. Some States have adopted the pattern of the Union Government and set up internal vigilance organizations with dual responsibility of reporting to the Vigilance Commissioner and the departmental head with subordinate units in offices of Heads of Departments and the districts reporting to the higher formations and the Vigilance Commissioner.

## 4.2 Evaluation of the Anti-Corruption Machinery in India

4.2.1 The working of many of these anti-corruption bodies leaves much to be desired. In order to analyse the functioning of the anti-corruption laws and the agencies involved in their enforcement, the Commission studied the details of cases investigated, tried and convicted in the past three decades, based on the annual statistics published by the National Crime Records Bureau. The analysis is summarized in Fig-4.1 to Fig-4.4.

Fig. 4.1: Analysis of Cases Prosecuted by CBI under the Prevention of Corruption Act

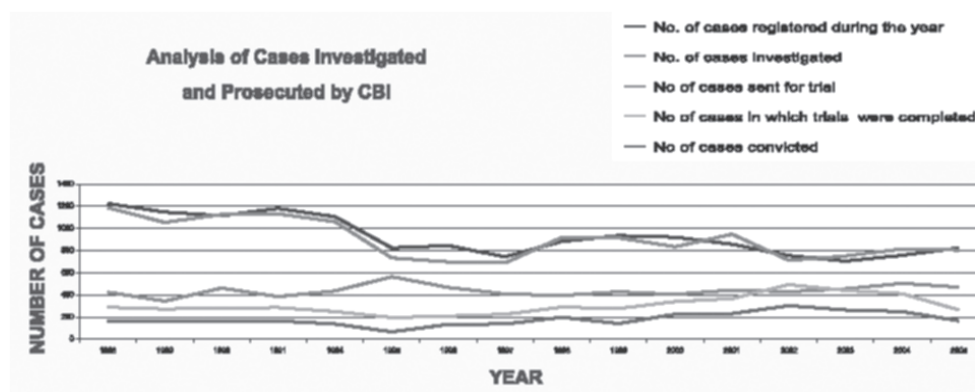
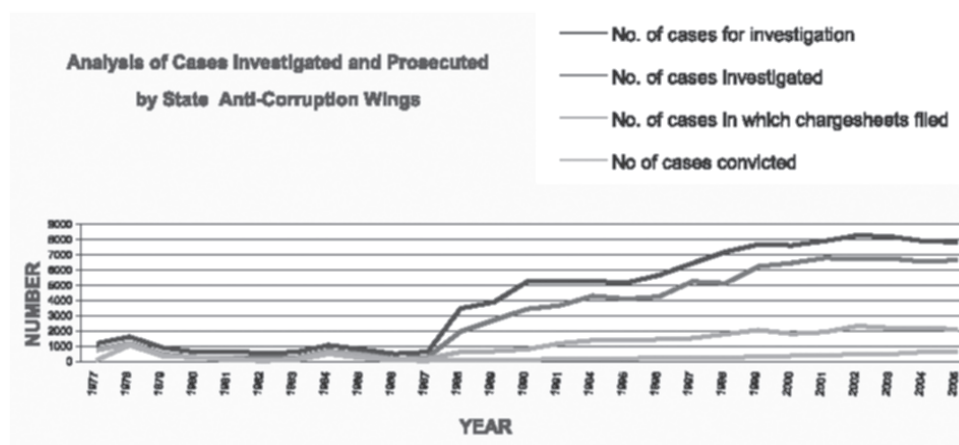


Fig.4.2: Analysis of Cases Investigated and Prosecuted by State Anti Corruption Wings



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Fig 4.3: Comparison of Conviction Rates of CBI and State Anti Corruption Organisations

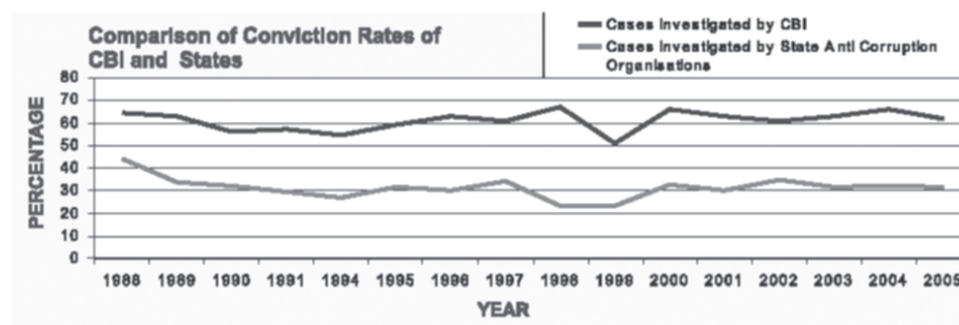
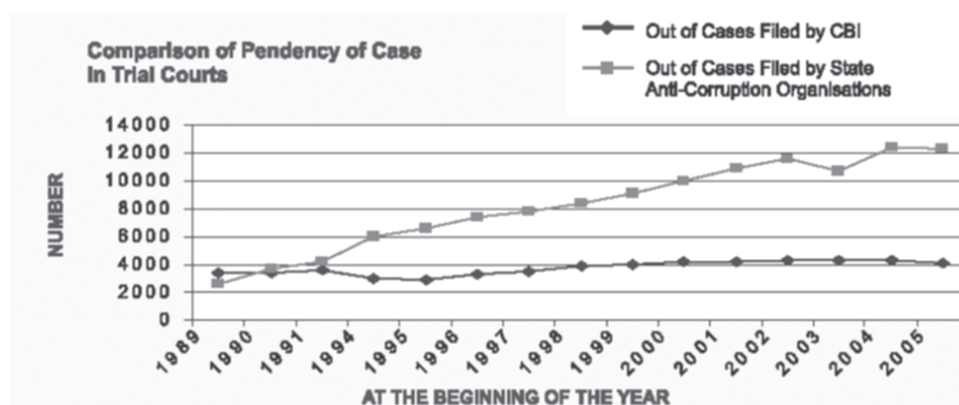


Fig. 4.4: Pendency of Cases in Courts



4.2.2 From an analysis of the available statistics, the following broad conclusions may be drawn:

- a. The conviction rate in cases by CBI is low compared to the cases registered, which nevertheless is double that of the State Anti Corruption organisations. The number of cases of the CBI pending for trial at the beginning of the year 2005 was 4130 and 471 more cases were added during the year. But only 265 cases could be disposed of during the year. Similarly, in the States there were 12285 cases pending at the beginning of 2005, and 2111 cases were added during the year. But only 2005 cases were disposed of during the year. If one were to assume that no cases are filed from now onwards, it would take about six years to clear the backlog in the states.

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- b. There has been rapid increase in the number of cases registered and investigated by the State Anti-Corruption organisations after 1988.
- c. The number of cases pending for investigation before the State Anti Corruption organisations has been increasing.
- d. The number of cases disposed of in trials each year is much less than the number of cases filed, indicating that the backlog of cases in trial courts is increasing.

4.2.3 An international comparison of the conviction rate for the offence of bribery, as indicated in Figure 4.5, reveals that most countries have a much higher rate of conviction than India.<sup>50</sup>

Table 4.1: International Comparison of Persons Convicted for Bribery

Country	Year			Rate per 100,000 inhabitants		
	1998	1999	2000	1998	1999	2000
Albania			1			0.03
Armenia	13	12	28	0.34	0.32	0.74
Azerbaijan	45	45	45	0.57	0.56	0.56
Belarus	246	224	220	2.44	2.24	2.20
Bulgaria	32	26	38	0.39	0.32	0.47
Chile	5	8	7	0.03	0.05	0.05
China	8,770	8,568	9,729	0.71	0.69	0.77
Costa Rica	10	4	4	0.27	0.11	0.10
Croatia	31	55	44	0.71	1.26	1.00
Cyprus	1	1	-	0.13	0.13	-
Czech Republic	111	110	118	1.08	1.07	1.15
Egypt	-	528	1,225	-	0.84	1.92
Estonia	28	20	43	1.99	1.44	3.14
Finland	5	3	3	0.10	0.06	0.06
France	193	314	279	0.33	0.54	0.47
Georgia	11	2	18	0.20	0.04	0.36
Germany	427	395	-	0.52	0.48	-
Guatemala	380	369	600	3.52	3.32	5.26
HongKong, China (SAR)	130	74	107	1.96	1.10	1.57
Hungary	278	297	294	2.75	2.94	2.94
India	654	684	-	0.07	0.07	-
Indonesia	136	391	232	0.07	0.19	0.11
Italy	963	723	717	1.67	1.26	1.24
Japan	187	153	119	0.15	0.12	0.09
Korea, Republic of	803	1,466	960	1.73	3.13	2.03
Latvia	17	32	10	0.69	1.33	0.42
Lithuania	44	43	51	1.19	1.16	1.38
Macedonia, FYR	11	23	19	0.55	1.14	0.94
Malaysia	230	641	800	1.04	2.82	3.43
Mexico	49	239	247	0.05	0.25	0.25

Population source: World Bank

<sup>50</sup> Source: Eighth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 2001-2002, <http://www.unodc.org/pdf/crime/eighthsurvey/8ps.pdf>



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## 4.3 The Lok Pal

4.3.1 The first Administrative Reforms Commission had recommended the establishment of the institution of Lok Pal. The Lok Pal Bill has been introduced several times but due to various reasons it has not been enacted into law. The Lok Pal is supposed to be a watchdog over the integrity of Ministers and the Members of Parliament. The Indian Lok Pal was intended to be similar to the institution of Ombudsman existing in the Scandinavian countries. The institution of Ombudsman has emerged 'as a bulwark of democratic government against the tyranny of officialdom'. The Lok Pal Bill provides for constitution of the Lok Pal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc.

4.3.2 The Commission is of the view that the Lok Pal Bill should become law with the least possible delay. As recommended in the Bill, the Lokpal should deal with allegations of corruption against Ministers and Members of Parliament.

4.3.3 Allegations of corruption against government officials are dealt with departmentally and also by the Central Bureau of Investigation under the Central Vigilance Commission. In some cases of corruption there may be collusion between the Ministers and the officers. Therefore there should be an organic link between the Lok Pal and the Central Vigilance Commissioner. The reason for this is that an overarching approach to fighting corruption in high places is necessary. Corruption at the political level is at times with the connivance of officials. Some cases of corruption involving officers may also point towards political patronage and involvement. Thus the linkage between the CVC and the Lok Pal would enable sharing of information and prompt action against all persons involved. It may also be provided that all cases of corruption involving Ministers or Members of Parliament which also have elements of connivance or collusion by officials, should be enquired into by the Lok Pal only. While the Central Vigilance Commission should enjoy full functional autonomy, it should nevertheless work under the overall guidance and superintendence of the Lok Pal.

4.3.4 The Commission is of the view that the Lok Pal should be a three-member body. This would bring in the expertise and insight of more than one person which would be essential for transparency and objectivity. Moreover, the multi-member characteristic would render it more immune to any extraneous influence. The Commission is also of the view that of the three members, the Chairman should be from the judiciary (a serving or retired Supreme Court Judge), the second member should be an eminent jurist and the third should be the Central Vigilance Commissioner (ex-officio).

4.3.5 One issue which has been debated for long is whether the office of Prime Minister should be brought under the jurisdiction of the Lok Pal. Those who believe that the Prime Minister's conduct should be scrutinized by the Lok Pal rightly argue that all public servants should be accountable. In a democracy, the citizen is the sovereign, and every public servant holds office to serve the citizens, spending tax money and exercising authority under the laws made on citizens' behalf or under the Constitution, which we, the people, gave unto ourselves. Therefore, no functionary, however high, should be exempt from scrutiny by the Lok Pal.

4.3.6 In constitutional theory, according to the Westminster model, the Prime Minister is the first among equals in a Council of Ministers exercising collective responsibility. Therefore, whatever rules apply to other Ministers, should apply to the Prime Minister as well.

4.3.7 However, there are deeper issues that need to be examined carefully. While the Prime Minister's office was merely the first among equals in conception, over time the Prime Minister became the leader of the executive branch of government. The Cabinet accepts collective responsibility once decisions are made. That is why all policy debates are customarily within the Council of Ministers away from public gaze, and Ministers are not free to express their reservations or differences of opinion in public. It is the function of the Prime Minister to lead and to coordinate among the Ministers in framing of policies, decision making and execution of those policies and decisions. The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit. The Prime Minister is accountable to the Parliament, and on his survival, depends the survival of the government. If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy.

4.3.8 In our Constitutional scheme of things, the Prime Minister is appointed on the basis of the President's judgment of his commanding majority support in Parliament. All Ministers are then appointed only on the advice of the Prime Minister. The President cannot ordinarily dismiss the Prime Minister as long as he enjoys the majority support in the House of the People. But other Ministers are removed by the President at any time on the advice of the Prime Minister. No reasons are required to be given by the Prime Minister for removal of such Ministers. Integrity and competence of the Ministers are not sufficient conditions to continue in office. They must enjoy the confidence of the Prime Minister in order to hold office as Ministers. This scheme has been deliberately introduced in our Constitution to preserve the authority of the Prime Minister, and to ensure cohesion and coordination in the functioning of government. Any enquiry into a Prime Minister's official conduct by any authority other than the Parliament would severely

undermine the Prime Minister's capacity to lead the government. Such weakening of Prime Minister's authority would surely lead to serious failure of governance and lack of harmony and coordination, and would severely undermine public interest.

4.3.9 Those who argue that the Prime Minister is like any other Member of Parliament or any other Minister are technically correct. In reality, in all countries following the Parliamentary executive model drawing the Cabinet from the legislature, the Prime Minister becomes the leader of the country and government. The authority of the Prime Minister, as long as he enjoys Parliamentary support, has become synonymous with the nation's dignity and prestige. A Prime Minister facing formal enquiry by a Lok Pal would cripple the government. One can argue that such an enquiry gives the opportunity to the incumbent to defend himself against baseless charges and clear his name. But the fact is, once there is a formal enquiry by a Lok Pal on charges, however baseless they might be, the Prime Minister's authority is severely eroded, and the government will be paralysed. Subsequent exoneration of the Prime Minister cannot undo the damage done to the country or to the office of the Prime Minister. If the Prime Minister is indeed guilty of serious indiscretions, Parliament should be the judge of the matter, and the Lok Sabha should remove the Prime Minister from office. No lengthy enquiry or impeachment is therefore contemplated in our scheme of things, and a mere passing of no-confidence motion without assigning reasons is sufficient to change government. In the directly elected executive model of government, the Parliament cannot remove the President who is the chief executive, and therefore a complex process of impeachment, and an enquiry by Special Prosecutors to precede such an impeachment have become necessary.

4.3.10 It could be argued that since any Minister could be removed on Prime Minister's advice, or Parliament as well, the Lok Pal need not have jurisdiction on a Minister's conduct also. But Parliament does not really sit in judgment over a Minister's conduct. It is the Prime Minister and the Council of Ministers as a whole whose fate is determined by Parliament's will. And the Prime Minister does not have the time or energy to personally investigate the conduct of a Minister. The government's investigative agencies are controlled or influenced by the Ministers, and therefore it is difficult for the Prime Minister to get objective assessment of the Ministers' official conduct. Therefore, an independent, impartial body of high standing would be of great value in enforcing high standards of ethical conduct among Ministers. A similar reasoning applies to Members of Parliament, since Parliament's time and energy cannot be consumed by detailed enquiry into the conduct of a Member. But, the final decision of removing the Member must vest in Parliament, and that of removal of a Minister must be on the advice of the Prime Minister. Parliament is responsible to the



nation for its decisions, and the Prime Minister is responsible to the Parliament for his decisions. These responsibilities of Parliament and Prime Minister cannot be transferred to any unelected body.

4.3.11 Finally, while the Prime Minister is yet another Member of Parliament in constitutional theory, political evolution transformed him into the leader of the nation. Theoretically, each member of the legislature is elected by his/her constituents in our model of government. But over the past century, elections even in parliamentary system have become plebiscitary in nature. Most often, the Prime Minister's personality, vision, and leadership are the issues, which determine the electoral outcomes. Similarly, the opposition focuses its energies and hopes on its leader. The electoral contest is transformed into a test of acceptability of the leaders. The constituency contests have thus become increasingly dependent on the larger question of whose governmental leadership people trust or seek at that point of time. Given this overwhelming political reality, it would be unwise to subject the Prime Minister's office to a prolonged public enquiry by any unelected functionary. Ultimately, the Parliament is the best forum we can trust to enforce integrity in the office of the Prime Minister.

4.3.12 The same principles and arguments also hold good in respect of the Chief Minister of a state. Therefore, it would be unwise to include the Chief Minister in the Lokayukta's jurisdiction. Several states have excluded the Chief Minister from the Lokayukta's ambit though in a few states, the Chief Minister is included. But, if the Chief Minister is brought under the jurisdiction of a federal institution of high standing, then the risks are mitigated. The Commission is of the view that once the Lok Pal or equivalent institution is in place, all Chief Ministers should be brought under Lok Pal's purview. Such a provision would necessitate making Lok Pal a Constitutional authority and defining his jurisdiction in the Constitution while leaving the details of appointment and composition to be fixed by parliament through legislation.

4.3.13 In order to enable the Lok Pal to enhance its effectiveness and to increase the trust the public has in the institution, it is essential for the Lok Pal to establish mechanisms for effective interaction with the public in general and the private sector and the civil society in particular. Such association would also help better understanding of the environment, build checks and balances in its functioning, and prevent abuse of authority by investigating agencies by bringing them to the Lok Pal's notice. The experience of ICAC in Hong Kong which has been elaborated upon in para 5.1.2 has shown that the education and awareness raising function is crucial to any anti-corruption strategy if it is to be effective. Botswana's DCEC, Singapore's CPIB and the ICAC of New South Wales, Australia, have similar mandates. In fact, the ICAC of New South Wales is noted for holding public hearings to

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expose corruption. In the light of the successful experience of these countries with anti-corruption efforts by associating the public in general and the private sector and the civil society in particular, the Commission would like to recommend that such activities should be taken up by the Lok Pal.

4.3.14 The role of the Lok Pal in ethical conduct in high places cannot be over-emphasised. The Commission would like to recommend, that the Lok Pal be given a Constitutional status. This would provide the eminence and status and Constitutional safeguards appropriate for such an important institution, which is expected to be a watchdog against wrong doings by high public authorities.

Another minor issue is the name itself. To provide an element of a continuum in the fight against corruption from the Union to the States, from the top to the grass roots, it may be useful to provide a connect with the State Lokayuktas and name the proposed Lok Pal as the 'Rashtriya Lokayukta'. The Commission would, therefore, like to make the following recommendations to make changes in the Lok Pal Bill.

4.3.15 Recommendations:

- a. The Constitution should be amended to provide for a national Ombudsman to be called the Rashtriya Lokayukta. The role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation.
- b. The jurisdiction of Rashtriya Lokayukta should extend to all Ministers of the Union (except the Prime Minister), all state Chief Ministers, all persons holding public office equivalent in rank to a Union Minister, and Members of Parliament. In case the enquiry against a public functionary establishes the involvement of any other public official along with the public functionary, the Rashtriya Lokayukta would have the power to enquire against such public servant(s) also.
- c. The Prime Minister should be kept out of the jurisdiction of the Rashtriya Lokayukta for the reasons stated in paras 4.3.7 to 4.3.11.
- d. The Rashtriya Lokayukta should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member.

- (e) The Chairperson of the Rashtriya Lokayukta should be selected from a panel of sitting Judges of the Supreme Court who have more than three years of service, by a Committee consisting of the Vice President of India, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India. In case it is not possible to appoint a sitting Judge, the Committee may appoint a retired Supreme Court Judge. The same Committee may select the Member (i.e. an eminent jurist) of the Rashtriya Lokayukta. The Chairperson and Member of the Rashtriya Lokayukta should be appointed for only one term of three years and they should not hold any public office under the government thereafter, the only exception being that they can become the Chief Justice of India, if their services are so required.
- (f) The Rashtriya Lokayukta should also be entrusted with the task of undertaking a national campaign for raising the standards of ethics in public life.

#### 4.4 The Lokayukta

4.4.1 In the wake of the recommendations of the first Administrative Reforms Commission, many State Governments enacted legislation to constitute the Lokayukta to investigate allegations or grievances arising out of the conduct of public servants including political executives, legislators, officers of the State Government, local bodies, public enterprises and other instrumentalities of Government including cooperative societies and universities. By virtue of such legislation, a member of the public can file specific allegations with the Lokayukta against any public servant for enquiry. It is also open to the Lokayukta to initiate suo-motu inquiry into the conduct of public servants. The Lokayukta is generally a retired Judge of the High Court or the Supreme Court and normally appointed for a five-year term on the basis of a joint decision involving the Chief Minister, the Chief Justice, the Speaker of the House and leader of the Opposition. However, in many states the Lokayukta does not have an independent investigating authority at its disposal and is therefore dependent on Government agencies to carry forward its investigations. The Maharashtra and Orissa Lokayuktas assume more the character of a grievance redressal organization rather than an Ombudsman for cases of corruption.

4.4.2 Over seventeen states presently have Lokayuktas but there is no uniformity in the provisions of the enactments, with fundamental differences regarding their functions. While in all states the Lokayuktas deal with issues of corruption, in some, they also deal with other grievances. In a few states, a wide range of functionaries including Chief Ministers,

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Vice Chancellors and office bearers of cooperatives have been brought within the Lokayukta's purview; in others, the coverage is quite restrictive. In some States, investigative powers are vested in them with an investigation machinery attached. Some also provide for powers of search and seizure in the course of investigation. The expenditure on the Lokayukta is, in some States, charged on the consolidated fund of the State providing requisite financial independence for the institution. Some Lokayuktas have powers to punish for contempt.

4.4.3 Be that as it may, the experience in regard to the working of the Lokayuktas has been rather unfortunate as the following examples will show. Though Maharashtra was the first State to establish this institution as early as in 1972, its public credibility was lost when the incumbent continued to function for several months after he was asked to step down. Orissa instituted and then abolished the institution. In Haryana, the institution of Lok Pal was abolished overnight through an Ordinance as the serving High Court Judge functioning as the Lok Pal had protection against summary dismissal. The Punjab Government also repealed the Act through an Ordinance as a fallout of a matter in which the Lok Pal had received eight complaints against former Ministers in the previous ministry in the State. The Rajasthan Lokayukta was forthright in recommending to the Government in its annual report in 1996 that there was no use of continuing the institution as the institution had not proved to be effective. Even though the Madhya Pradesh Lokayukta had indicted two Ministers in a land deal and certain other Ministers were also held responsible for wrong doing, no action whatsoever was taken against any of them. Here too, in its annual report for 1997-98, the Lokayukta had advised the Government that unless adequate powers were given to it there was no need for continuance of the institution. In Andhra Pradesh and Bihar, the annual reports of the Vigilance Commission have not been laid on the table of the legislature as required by the order constituting the Commission.

4.4.4 The Karnataka Lokayukta which has been a very active institution, is headed by a retired Judge of the Supreme Court and has jurisdiction over all public servants including the Chief Minister and Ministers. With the Anti Corruption Bureau of the State forming part of the institution, it has unfettered power to enquire or investigate into cases of misconduct and deals both with allegations and grievances. However, though the Karnataka Act provides for the submission of property returns to the Lokayukta by the Chief Minister, Ministers and all legislators, few have submitted these returns so far and no action has been taken against those who have not done so.

4.4.5 In this context, the Lokayuktas' Conference<sup>51</sup> had proposed a comprehensive Bill for a uniform institution of Lokayukta in every state, based on a Central legislation with Constitutional back up. In the Draft Bill, maladministration has been defined to make it more broad based to facilitate investigation and the definition of public functionary coming

<sup>51</sup> Held on 17th and 18th January, 2003 in Bangalore.



within the ambit of the institution has been widened. Various powers have been proposed to strengthen the Lokayukta. Most importantly, it has been proposed that the proceedings before the Lokayukta should be treated as judicial proceedings investing it with jurisdiction, powers and authority to punish for contempt of itself as a High Court. The proposals include the conferment of constitutional status on par with High Court Judges.

4.4.6 The entire structure of the anti-corruption machinery in the States needs reconsideration. An all-out effort to combat corruption would require that this problem be dealt with appropriately at all levels. On the one hand, curbing corruption at the cutting edge level would require a machinery having wide reach which could investigate a large number of cases of corruption effectively. On the other, curbing corruption at the highest level would require a mechanism with adequate powers, expertise and status which could investigate cases against high public functionaries like Ministers. If the Lokayukta is to be effective, it would neither be appropriate nor feasible to make this institution investigate petty cases against junior functionaries as its primary effort. Therefore, it is necessary to have the equivalent of the Central Vigilance Commission at the state level to deal with cases of corruption among public servants. The Lokayukta could then deal with corruption at the highest level covering senior-most public functionaries. However, often the thread of corruption runs through several levels, indicating connivance of Ministers and public officials. It is therefore necessary to have a link between the Lokayukta and the State Vigilance Commissioner. The Commission in para 4.3.15 has recommended that the Central Vigilance Commissioner be made a Member of the Lok Pal. The Commission has also recommended a multi-member Lok Pal, so that it is better insulated against outside influence and also because a decision of a multi-member Commission would be more objective as it would have inputs from the different members. A similar approach at the state level would be appropriate. The multi-member Lokayukta should have a retired Supreme Court Judge or a retired Chief Justice of the High Court in the Chair, the State Vigilance Commissioner as a member and an eminent jurist or an eminent administrator of impeccable credentials as a member. A collegium comprising the Chief Minister, the Leader of the Opposition and the Chief Justice of the High Court should appoint the Chairman and Members of the Lokayukta.

4.4.7 The State Vigilance Commissions should exercise superintendence over the functioning of the Anti-Corruption Bureaus. It should tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving the vigilance angle at different stages i.e. investigation, inquiry, appeal, review etc; and exercise a general check and supervision over vigilance and anti-corruption work in Departments of the State Government and other organizations within the control of the State Government.

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4.4.8 The Commission is of the view that to insulate the institution of Lokayukta from the vagaries of political expediency, of the kind witnessed in the past, it would be necessary to give the Lokayukta, as in the case of the Lok Pal, a Constitutional status. It would be necessary to amend the Constitution to provide for the institution of Lokayukta in all states. This would also provide the opportunity to vest this authority with certain uniform powers, responsibilities and functions across all states. To this effect the Commission believes that the Lokayukta can be a state level equivalent of the Rashtriya Lokayukta with a similar constitution.

## 4.4.9 Recommendations:

- a. The Constitution should be amended to incorporate a provision making it obligatory on the part of State Governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions.
- b. The Lokayukta should be a multi-member body consisting of a judicial Member in the Chair, an eminent jurist or eminent administrator with impeccable credentials as Member and the head of the State Vigilance Commission {as referred in para 4.4.9(e) below} as ex-officio Member. The Chairperson of the Lokayukta should be selected from a panel of retired Supreme Court Judges or retired Chief Justices of High Court, by a Committee consisting of the Chief Minister, Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly. The same Committee should select the second Member from among eminent jurists/administrators. There is no need to have an Up-Lokayukta.
- c. The jurisdiction of the Lokayukta would extend to only cases involving corruption. They should not look into general public grievances.
- d. The Lokayukta should deal with cases of corruption against Ministers and MLAs.
- e. Each State should constitute a State Vigilance Commission to look into cases of corruption against State Government officials. The Commission should have three Members and have functions similar to that of the Central Vigilance Commission.

- f. The Anti Corruption Bureaus should be brought under the control of the State Vigilance Commission.
- g. The Chairperson and Members of the Lokayukta should be appointed strictly for one term only and they should not hold any public office under government thereafter.
- h. The Lokayukta should have its own machinery for investigation. Initially, it may take officers on deputation from the State Government, but over a period of five years, it should take steps to recruit its own cadre, and train them properly.
- i. All cases of corruption should be referred to Rashtriya Lokayukta or Lokayukta and these should not be referred to any Commission of Inquiry.

#### 4.5 Ombudsman at the Local Level

4.5.1 The 73<sup>rd</sup> and the 74<sup>th</sup> amendments to the Constitution have firmly established decentralization of powers and functions to the third tier of the government hierarchy on a statutory footing as a measure of democratisation calculated to bring government closer to the people and increase the accountability of the local administration. However, concern has been expressed that decentralisation without proper safeguards can increase corruption, if the process is not simultaneously accompanied by the creation of suitable accountability mechanisms otherwise available at the level of the Union Government and state governments. This gives greater scope for corruption. A disturbing trend visible is the growing corruption and capture of power by local political elites with questionable integrity.

4.5.2 The Commission is of the view that a system of Local Bodies Ombudsman may be established to hear complaints of corruption against local bodies (elected members as well as officials). Such Ombudsman may be constituted for a group of districts. The Local Bodies Ombudsman should have powers to enquire into allegations of corruption against public functionaries in local bodies. They should be empowered to take action against the elected members if they are found guilty of misconduct. For this, the State Panchayat Raj Acts, and the Municipalities Acts would have to be amended to prescribe the details. The overall superintendence over the Local Bodies Ombudsman's should vest in the Lokayukta of the state, who should be given revisionary powers over the Local Bodies Ombudsman.

4.5.3 The Government of Kerala has appointed Ombudsman under the Kerala Panchayati Raj (Amendment) Act, 1999. It conducts investigations in respect of any action involving

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corruption, maladministration or irregularities in the discharge of administrative functions by local self government institutions, or by an elected representative, of or an official working in any local self government institution and for the disposal of any complaint relating to such action in accordance with the provisions of the Kerala Panchayat Raj Act, 1994 (Act No.13 of 1994).

4.5.4 In the wake of the larger Constitutional role now envisaged for decentralised local governments, it would be a good initiative to have a separate vigilance oversight agency to investigate allegations of corruption and maladministration against elected executives and members of the three tiers of these local bodies and their paid personnel. The total number of such elected personnel is so large that it is virtually impossible for the state Lokayuktas to exercise effective vigilance over these bodies.

4.5.5 The Commission is of the view that the Ombudsman should be appointed under the respective Panchayat Raj/Urban Local Bodies Acts in all States/UTs., for a group of connected districts. The Ombudsman should be empowered to investigate cases of corruption or maladministration by functionaries of local self government institutions. It is often argued that constitution of Local Ombudsman would lead to duplication of efforts since the Lokayukta is already there. The Commission has already recommended that the Lokayukta should investigate cases only against Ministers or equivalent rank public functionaries and legislators. Therefore, there would be no clash of jurisdiction between the Local Ombudsman and the Lokayukta. However, in order to provide proper guidance to the Local Ombudsman, they should be placed under the overall guidance and superintendence of the Lokayukta.

#### 4.5.6 Recommendations:

- a. A local bodies Ombudsman should be constituted for a group of districts to investigate cases against the functionaries of the local bodies. The State Panchayat Raj Acts and the Urban Local Bodies Act should be amended to include this provision.
- b. The local bodies Ombudsman should be empowered to investigate cases of corruption or maladministration by the functionaries of the local self governments, and submit reports to the competent authorities for taking action. The competent authorities should normally take action as recommended. In case they do not agree with the recommendations, they should give their reasons in writing and the reasons should be made public.



#### 4.6 Strengthening Investigation and Prosecution

4.6.1 Prosecution is often a weak link in the chain of anti-corruption law enforcement and there are instances where prosecutors have facilitated the discharge of a delinquent officer. It is, therefore, crucial that cases of corruption are handled by efficient prosecutors whose integrity and professional competence is above board. The Supreme Court did mandate a key safeguard in corruption cases, by decreeing that a panel of lawyers, answerable to a body similar to that of the Director of Prosecutions in the United Kingdom should be created to review the prosecution of corruption cases. As the Supreme Court observed, this panel of "competent lawyers of experience and impeccable reputation shall be prepared on the advice of the Attorney General." According to the Supreme Court, each case of prosecution by the CBI will have to be reviewed by a lawyer from the panel, and responsibility for unsuccessful prosecution should be fixed. It would be desirable that the Lokayuktas/State Vigilance Commissions are empowered to supervise the prosecution of corruption related cases. This would provide the much needed oversight of the prosecutors on the one hand, and guidance to the prosecutors on the other.

4.6.2 Corruption prevention and enforcement in an increasingly electronic environment both in government institutions and outside, requires specific measures to equip the investigating agencies with electronic investigating tools and capability to undertake such investigation. Systematic training of officers in this area more particularly at the state level is essential.

4.6.3 In view of the complexities involved in investigating modern-day corruption, the investigating agencies should be equipped with economic, accounting and audit, legal, technical, and scientific knowledge, skills and tools of investigation. More specifically they require specialised knowledge of forensic accounting, audit in different fields like engineering depending on the nature of the case. It would be advisable to have officials in the investigative agencies drawn from different wings of government.

4.6.4 Inter-agency information exchange and mutual assistance among various enforcement and investigative agencies such as the Directorate of Enforcement, Economic Intelligence Agencies including those relating to direct and indirect taxes as well as the State investigating agencies can play a key role in unearthing serious cases of frauds and economic offences. In recognition of this fact, Ministry of Finance has set up an elaborate nodal agency for this purpose. Under the present system, there is an Economic Intelligence Council chaired by the Union Finance Minister with representatives from key Ministries and investigative and intelligence agencies at the national level. Eighteen Regional Economic Intelligence

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Committees (REICs) were also set up in 1996 and reactivated in 2003 to, *inter alia*, ensure operational coordination between various enforcement and economic intelligence agencies as well as similar State level agencies. The REICs are required to meet on a monthly basis. There is perhaps need for the Ministry of Finance to monitor the work of the REICs so that they become more effective nodal agencies for checking fraud and corruption arising from economic and related offences.

4.6.5 It has been also noticed that the cases filed relate mostly to those based on complaints or press reports, being reactive action on the part of the anti-corruption agencies. Few cases emanate out of the department's own efforts. Streamlined vertical corruption runs through several levels of the official hierarchy in corruption prone departments, and does not receive the attention it deserves. This calls for strengthening sources of information to specifically target officers involved in the chain of hierarchical corruption. Anti-corruption agencies should conduct systematic surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to observe officers at the higher levels with questionable reputations.

#### 4.6.6 Recommendations:

- a. The State Vigilance Commissions/Lokayuktas may be empowered to supervise the prosecution of corruption related cases.
- b. The investigative agencies should acquire multi-disciplinary skills and should be thoroughly conversant with the working of various offices/departments. They should draw officials from different wings of government.
- c. Modern techniques of investigation should also be deployed like electronic surveillance, video and audio recording of surprise inspections, traps, searches and seizures.
- d. A reasonable time limit for investigation of different types of cases should be fixed for the investigative agencies.
- e. There should be sustained step-up in the number of cases detected and investigated. The priorities need to be reoriented by focussing on 'big' cases of corruption.