

THE LOKPAL AND LOKAYUKTAS BILL, 2011

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THE SCHEDULE

Bill No. 134 of 2011

THE LOKPAL AND LOKAYUKTAS BILL, 2011

A

BILL

to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title,
extent,
application
and
commencement.

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2011.
- (2) It extends to the whole of India. 5
- (3) It shall apply to public servants in and outside India.
- (4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision. 10

PART II

LOKPAL FOR THE UNION

CHAPTER I

DEFINITIONS

Definitions.

2. (1) In this Act, unless the context otherwise requires,— 15
 - (a) "bench" means a Bench of the Lokpal;
 - (b) "Chairperson" means the Chairperson of the Lokpal;
 - (c) "competent authority", in relation to—
 - (i) the Prime Minister, means the House of the People;
 - (ii) a member of the Council of Ministers, means the Prime Minister; 20
 - (iii) a member of Parliament other than a Minister, means—
 - (A) in the case of a member of the Council of States, the Chairman of the Council; and
 - (B) in the case of a member of the House of the People, the Speaker of the House; 25
 - (iv) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which the officer is serving;
 - (v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body; 30
 - (vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;
 - (vii) in any other case not falling under sub-clauses (i) to (vi) above, 40 means such department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of the Council; and

5 (B) in case such member is a Member of the House of the People, the Speaker of the House;

(d) "Central Vigilance Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003;

10 (e) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

(f) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

15 (g) "investigation" means an investigation as defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;

(h) "Judicial Member" means a Judicial Member of the Lokpal;

(i) "Lokpal" means the institution established under section 3;

20 (j) "Member" means a Member of the Lokpal;

(k) "Minister" means a Union Minister but does not include the Prime Minister;

(l) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(m) "preliminary inquiry" means an inquiry conducted under this Act;

25 (n) "prescribed" means prescribed by rules made under this Act;

(o) "public servant" means a person referred to in clauses (a) to (h) of sub-section (1) of section 14;

(p) "regulations" means regulations made under this Act;

(q) "rules" means rules made under this Act;

30 (r) "Schedule" means a Schedule appended to this Act;

(s) "Special Court" means the court of a Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988.

49 of 1988. (2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to
35 them in that Act.

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

CHAPTER II

ESTABLISHMENT OF LOKPAL

Establishment
of Lokpal.

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of—

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(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members;

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Provided that not less than fifty per cent. of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

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(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

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(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

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(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

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and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

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(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment
of Chairperson
and Members
on
recommendations
of Selection
Committee.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

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(a) the Prime Minister—chairperson;

(b) the Speaker of the House of the People—member;

(c) the Leader of Opposition in the House of the People—member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—member;

(e) one eminent jurist nominated by the President—member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of
5 any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy,
10 public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes,
15 Other Backward Classes and women:

Provided further that Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

20 (5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the
25 Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he
30 attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

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

(b) be removed from his office in the manner provided in section 37.

7. The salary, allowances and other conditions of service of—

35 (i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in
40 respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

Salary, allowances and other conditions of service of Chairperson and Members.

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Restriction on employment by Chairperson and Members after ceasing to hold office.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Explanation.—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Member to act as Chairperson or to discharge his functions in certain circumstances.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary, other officers and staff of Lokpal.

10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

CHAPTER III

INQUIRY WING

11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988: Inquiry Wing.

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

CHAPTER IV

PROSECUTION WING

12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act: Prosecution Wing.

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act:

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

CHAPTER V

EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund. Expenses of Lokpal to be charged on Consolidated Fund of India.

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:— Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least three-fourth of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone; 5

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union; 10 49 of 1988.

(e) any Group 'C' or Group 'D' Official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20; 15 49 of 1988.

(f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it: 20

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government; 25 30

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify; 35

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the Central Government may by notification specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify. 40 42 of 2010.

Explanation.—For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses: 45

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly. 49 of 1988.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

(4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

Explanation.—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Matters pending before any court or committee or authority for inquiry before Lokpal not to be affected.

16. (1) Subject to the provisions of this Act,—

Constitution of benches of Lokpal.

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of
business
amongst
Benches.

17. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of
Chairperson to
transfer cases.

18. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Decision to be
by majority.

19. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

CHAPTER VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

Provisions
relating to
complaints
and
preliminary
inquiry and
investigation.

20. (1) The Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter:

Provided that the Lokpal shall, if it has decided to proceed with the preliminary Inquiry by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003:

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance the provisions of the Central Vigilance Commission Act, 2003.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case, and to proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall
5 direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal:

Provided that the Lokpal may extend the said period by a further period of six months
10 for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal
2 of 1974. Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider
15 every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against
20 the concerned public servant by the competent authority.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment).

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending
30 before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary
35 inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

21. If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely
40 to be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or
45 investigation, the Lokpal or the investigating agencies, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Persons likely to be prejudicially affected to be heard.

Lokpal may require any public servant or any other person to furnish information, etc.

Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.

23. (1) No sanction or approval of any authority shall be required by the Lokpal for conducting a preliminary inquiry or an investigation on the direction of Lokpal, under section 197 of the Code of Criminal Procedure, 1973 or section 6A of the Delhi Special Police Establishment Act, 1946 or section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or any agency (including the Delhi Special Police Establishment) or investigation by any agency (including the Delhi Special Police Establishment) into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act. 2 of 1974. 25 of 1946. 5 49 of 1988.

(2) A Special Court may, notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, on filing of a charge sheet in accordance with the provisions of sub-section (7) of section 20, take cognizance of offence committed by any public servant. 10 2 of 1974. 49 of 1988.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein. 15

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

24. (1) Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority. 20 49 of 1988.

(2) The House of the People in the case of Prime Minister, the Prime Minister in the case of the Minister, the Speaker in the case of a Member of the House of the People, and the Chairman of the Council of States in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the House of the People or the Council of States, as the case may be, while it is in session, and if the House of the People or the Council of States, as the case may be, is not in session, within a period of one week from the reassembly of the said House or the Council, as the case may be. 25 30

(3) The competent authority shall examine or cause to be examined the report forwarded to it under sub-section (1) and communicate or cause to be communicated to the Lokpal, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal. 35

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded. 40

CHAPTER VIII

POWERS OF LOKPAL

Supervisory powers of Lokpal.

25. (1) The Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 and section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act: 25 of 1946. 45 45 of 2003.

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner. 50

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under second proviso to sub-section (1) of section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

5 26. (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

Search and seizure.

10 (2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

15 Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

5 of 1908. 27. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

20 (i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

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

25 (v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

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

45 of 1860.

28. (1) The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the Central Government or any State Government, as the case may be.

Power of Lokpal to utilise services of officers of Central or State Government.

35 (2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

40 (b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

45 (3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

29. (1) Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption;
and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokpal or he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961.

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation
of attachment
of assets.

30. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relating to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988.

Explanation.—For the purposes of this sub-section, the expressions "bank", "debt" and "financial institution" shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993.

Confiscation of
assets,
proceeds,
receipts and
benefits arisen
or procured by
means of
corruption in
special
circumstances.

31. (1) Without prejudice to the provisions of sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such

public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

5 32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in clause (d) or clause (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

10 (ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

15 (2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

25 (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

34. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

30 CHAPTER IX

SPECIAL COURTS

49 of 1988. 35. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

35 (2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

40 Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three month period, but not exceeding a total period of two years.

2 of 1974. 36. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

Power to delegate.

Special Courts to be notified by Central Government.

Letter of request to a contracting State in certain cases.

inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

- (i) examine the facts and circumstances of the case;
- (ii) take such steps as the Special Court may specify in such letter of request; 5
- and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf. 10

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL 15

Removal and
suspension of
Chairperson
and Members
of Lokpal.

37. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it— 20

- (i) by the President; or
- (ii) by the President on a petition being signed by at least one hundred Members of Parliament; or
- (iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred, 25

has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference. 30

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

- (a) is adjudged an insolvent; or 35
- (b) engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested 40
in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour. 45

49 of 1988. 38. (1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section. Complaints against officials of Lokpal.

5 (2) The Lokpal shall complete the inquiry into the complaint or allegation made, within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

10 (a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

15 then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988. (4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of 20 any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

25 Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988. 30 39. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted. Assessment of loss and recovery thereof by Special Court.

35 Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

40 CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

40. The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information. Budget.

45 41. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal. Grants by Central Government.

Annual
statement of
accounts.

42. (1) The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

Furnishing of
returns, etc.,
to Central
Government.

43. The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

CHAPTER XIII

DECLARATION OF ASSETS

Declaration of
assets.

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each office or Department shall ensure that all such statements are published on the website of such officer or Department by 31st August of that year.

Explanation.—For the purposes of this section, "dependent children" means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

45. If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) to declare his assets; or

(b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

Presumption as to acquisition of assets by corrupt means in certain cases.

then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

CHAPTER XIV

OFFENCES AND PENALTIES

46. (1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

Prosecution for false complaint and payment of compensation, etc., to public servant.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation.—For the purpose of this sub-section, the expression "good faith" shall have the same meaning assigned to it in section 52 of the Indian Penal Code.

47. (1) Where any offence under sub-section (1) of section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

False complaint made by society or association of persons or trust.

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or

connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER XV

5

MISCELLANEOUS

Reports of
Lokpal.

48. It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respects of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

10

Lokpal to
function as
appellate
authority for
appeals
arising out of
any other law
for the time
being in
force.

49. The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

15 49 of 1988.

Protection of
action taken
in good faith
by any public
servant.

50. No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of
action taken
in good faith
by others.

51. No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

20

Members,
officers and
employees of
Lokpal to be
public
servants.

52. The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

25 45 of 1860.

Limitation to
apply in
certain cases.

53. The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Bar of
Jurisdiction.

54. No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

30

Legal
assistance.

55. The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

Act to have
overriding
effect.

56. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

35

Provisions of
this Act to be
in addition of
other laws.

57. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

58. The enactments specified in the Schedule shall be amended in the manner specified therein.

Amendment
of certain
enactments.

59. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to
make rules.

5 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of complaint referred to in clause (d) of sub-section (1) of section 2;

10 (b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of section 4;

(c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of section 10;

15 (d) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of section 36;

20 (g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 42;

25 (i) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of section 43;

(j) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (2) of section 43;

30 (k) the form of annual return to be filed by a public servant under sub-section (5) of section 44;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45;

(m) any other matter which is to be or may be prescribed.

35 60. (1) Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of
Lokpal to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

40 (a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of section 10;

(b) the place of sittings of benches of the Lokpal under clause (f) of sub-section (1) of section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (9) of section 20;

(d) the manner and procedure of conducting an preliminary inquiry or investigation under sub-section (11) of section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

Laying of
rules and
regulations.

61. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to
remove
difficulties.

62. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

PART III

LOKAYUKTA FOR A STATE

CHAPTER I

DEFINITIONS

Definitions.

63. (1) In this Part unless the context otherwise requires,—

(a) "Bench" means a Bench of the Lokayukta;

(b) "Chairperson" means the Chairperson of the Lokayukta;

(c) "competent authority", in relation to—

(i) the Chief Minister, means the Legislative Assembly of the State;

(ii) a member of the Council of Ministers, means the Chief Minister;

(iii) a member of State Legislature other than a Minister means—

(A) in the case of a member of the Legislative Council, the Chairman of that Council; and

(B) in the case of a member of the Legislative Assembly, the Speaker of that House;

(iv) an officer in the Ministry or Department of the State Government means the Minister in charge of the Ministry or Department under which such officer is serving;

(v) a chairperson or members of any body, or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or

controlled by it, means the Minister in charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (v) above, means such department or authority as the State Government may by notification specify:

Provided that if any person referred to in sub-clause (iv) or sub-clause (v) is also a Member of the State Legislature, then the competent authority shall be—

(A) in case such member is a Member of the Legislative Council, the Chairman of that Council; and

(B) in case such member is a Member of the Legislative Assembly, the Speaker of that House;

(f) "investigation" means an investigation defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;

(g) "Judicial Member" means a Judicial Member of the Lokayukta appointed as such;

(h) "Lokayukta" means the body established under section 64;

(i) "Member" means a Member of the Lokayukta;

(j) "Minister" means Minister of a State Government but does not include the Chief Minister;

(k) "preliminary inquiry" means an inquiry conducted under this Act by the Lokayukta;

(2) The words and expressions used herein and not defined in this part but defined in section 2 of this Act or defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in the said Acts.

CHAPTER II

ESTABLISHMENT OF LOKAYUKTA

64. (1) As from the commencement of this Act, there shall be established in a State, by notification in the Official Gazette, for the purpose of making preliminary inquiry, investigation and prosecution in respect of complaints made under this Act, a body to be called the "Lokayukta".

Establishment
of Lokayukta.

(2) The Lokayukta shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of the High Court or a Judge of the High Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law, and management.

(4) The Chairperson or a Member shall not be —

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if —

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

(5) The Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of this Act, and applicable to that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with this Act.

Appointment
of
Chairperson
and Members
and on
recommendation
of Selection
Committee.

65. (1) The Chairperson and Members shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of—

(a) the Chief Minister — chairperson;

(b) the Speaker of the Legislative Assembly — member;

(c) the Leader of Opposition in the Legislative Assembly — member;

(d) the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him — member;

(e) an eminent jurist nominated by the Governor — member;

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokayukta and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption

policy, public administration, vigilance, policy making, finance including insurance and banking, law, and management, or in any other matter which, in the opinion of the Selection Committee, may be useful in making selection of the Chairperson and Members of the Lokayukta:

- 5 Provided that not less than fifty per cent. of the Members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women:

 Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

- 10 (4) The Selection Committee shall regulate its own procedure for selecting the Chairperson and Members of the Lokayukta which shall be transparent.

 (5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

- 15 66. The Governor shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

- 20 67. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

 Provided that he may—

- (a) by writing under his hand addressed to the Governor, resign his office; or
25 (b) be removed from his office in the manner provided in this Act.

68. The salary, allowances and other conditions of service of—

 (i) the Chairperson shall be the same as those of the Chief Justice of the High Court;

 (ii) other Members shall be the same as those of a Judge of the High Court:

Salary, allowances and other conditions of service of Chairperson and Members.

- 30 Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

- (a) by the amount of that pension; and
35 (b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

- Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage
40 after his appointment.

69. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

Restriction on employment by Chairperson and Members after ceasing to hold office.

- (i) re-appointment as the Chairperson or a Member of the Lokayukta;
45 (ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the Governor by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. 5

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Explanation.— For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years 10 in aggregate as the Member and the Chairperson.

Member to act as Chairperson or to discharge his functions in certain circumstances.

70. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. 15

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary, other officers and staff of Lokayukta.

71. (1) There shall be a Secretary to the Lokayukta in the rank of Secretary to the State 20 Government, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(2) There shall be a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the State Government. 25

(3) The appointment of secretary and other officers and staff of the Lokayukta shall be made by the Chairperson or such Member or officer of Lokayukta as the Chairperson may direct:

Provided that the Governor may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the State 30 Public Service Commission.

(4) Subject to the provisions of any law made by the State Legislature, the conditions of service of secretary and other officers and staff of the Lokayukta shall be such as may be specified by regulations made by the Lokayukta for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to 35 salaries, allowances, leave or pensions, require the approval of the Governor.

CHAPTER III

INQUIRY WING

Inquiry Wing.

72. (1) Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose 40 of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988: 49 of 1988.

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting preliminary 45 inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of Under Secretary to that Government, shall have the same powers as are conferred upon the Lokayukta under section 88.

5

CHAPTER IV

PROSECUTION WING

73. (1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokayukta under this Act:

Appointment
of Director of
prosecution.

10 Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting prosecution under this Act.

15 (2) The Director of prosecution shall, after having been so directed by the Lokayukta, file a case in accordance with the investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988.

2 of 1974. (3) The report under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

20

CHAPTER V

EXPENSES OF LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF STATE

74. The administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of State and any fees or other moneys taken by the Lokayukta shall form part of that Fund.

Expenses of
Lokayukta to
be charged on
Consolidated
Fund of State.

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

75. (1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

Jurisdiction
of
Lokayukta
to include
Chief
Minister,
Ministers,
Members of
Legislatures,
officers and
employees
of State
Government.

(a) any person who is or has been a Chief Minister;

(b) any other person who is or has been a Minister of the State;

(c) any person who is or has been a Member of the State Legislature;

35 (d) all officers and employees of the State, from amongst the public servants defined in sub-clause (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;

49 of 1988.

(e) all officers and employees referred to in clause (d) or equivalent in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or of a State Legislature or wholly or partly financed by the State Government or controlled by it;

40

(f) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the State Government and the annual income of which exceeds such amount as the State Government may by notification specify;

45

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the State Government may by notification specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify; 42 of 2010.

Explanation.—For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses: 10

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly: 49 of 1988.

Provided further that nothing in clauses (e) and (f) and this clause shall apply to any society or association of persons or trust constituted for religious purpose. 15

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the State Legislature in respect of anything said or a vote given by him in the State Legislature or any committee thereof covered under the provisions contained in clause (2) of article 194 of the Constitution. 20

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1): 25 49 of 1988.

Provided that, no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.

(4) No matter in respect of which a complaint has been made to the Lokayukta under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952. 60 of 1952.

Explanation.—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity. 30

Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected.

76. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of the State Legislature or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority. 35 49 of 1988.

Constitution of benches of Lokayukta.

77. (1) Subject to the provisions of this Act, —

(a) the jurisdiction of the Lokayukta may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit; 40

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

5 (f) the benches of the Lokayukta shall ordinarily sit at Capital of the State and at such other places as the Lokayukta may, by regulations, specify.

(2) The Lokayukta shall notify the areas in relation to which each bench of the Lokayukta may exercise jurisdiction.

10 (3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may
15 deem fit.

78. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokayukta amongst the benches and also provide for the matters which may be dealt with by each bench.

Distribution of business amongst benches.

20 79. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Power of Chairperson to transfer cases.

25 80. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokayukta and such point or points shall be decided according to the opinion of the majority of the Members of the Lokayukta who have heard the case, including those who first heard it.

Decision to be by majority.

CHAPTER VII

30 PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

81. (1) The Lokayukta shall, on receipt of a complaint, first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exist a *prima facie* case for
35 proceeding in the matter.

Provisions relating to complaints and preliminary inquiry and investigation.

(2) During the preliminary inquiry referred to in sub section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned
40 public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists
45 a *prima facie* case, and make recommendations to proceed with one or more of the following actions, namely:—

(a) investigation by its Investigation Wing or any investigating agency;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint. 5

(5) In case the Lokayukta decides to proceed to investigate into the complaint, it shall either direct any investigation agency (including any special agency) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order: ,

Provided that the Lokayukta may extend the said period by a further period of six 10 months for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including any special agency) shall, in respect of cases referred 2 of 1974. to it by the Lokayukta, submit the investigation report to the Lokayukta.

(7) A bench consisting of not less than three Members of the Lokayukta shall consider 15 every report received by it under sub-section (4) from the Investigation Wing or any other agency and may, decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against 20 the concerned public servants by the competent authority.

(8) The Lokayukta may, after taking a decision under sub-section (6) on the filing of the charge-sheet, direct,—

(a) its prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by the investigation agency (including any special agency); or 25

(b) any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence .

(9) The Lokayukta may, during the preliminary inquiry or the investigation, as the case 30 may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be investigation as it deems fit.

(10) The website of the Lokayukta shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it. 35

(11) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the 40 public servant) under this Act, shall be such as may be specified by regulations.

82. If, at any stage of the proceeding, the Lokayukta—

(a) considers it necessary to inquire into the conduct of any person other than the prospective accused; or

(b) is of opinion that the reputation of any person other than an accused is likely 45 to be prejudicially affected by the preliminary inquiry,

the Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Persons likely to be prejudicially affected to be heard.

83. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Lokayukta may require any public servant or any other person to furnish information, etc.

2 of 1974. 49 of 1988. 10 84. (1) No sanction or approval of any authority shall be required by the Lokayukta for conducting investigation by any agency in respect of the cases investigated by such agency on the direction of the Lokayukta, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or investigation by any agency into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

Previous sanction not necessary for investigation and initiating prosecution by Lokayukta in certain cases.

2 of 1974. 49 of 1988. 15 (2) A Special Court may, notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, on filing of a charge sheet on completion of investigation, by the Lokayukta or any officer authorised by it in this behalf, take cognizance of offence committed by any public servant.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

20 (4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

49 of 1988. 25 85. (1) Where, after the conclusion of the preliminary inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) of sub-section (1) of section 75, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature.

30 (2) The Legislative Assembly of the State in the case of Chief Minister, the Chief Minister, in the case of the Minister, the Speaker in the case of a Member of the Legislative Assembly, and the Chairman of the Legislative Council of the State, where it exists, in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the Legislative Assembly or the Legislative Council, as the case may be, while it is in session, and if the Legislative Assembly or the Legislative Council, is not in session, within a period of one week from the 35 reassembly of the said Assembly or as the case may be the Council.

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Lokayukta, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokayukta.

Explanation.— In computing the period of ninety days referred to in this sub-section, any period during which the State Legislature is not in session, shall be excluded.

CHAPTER VIII

POWERS OF LOKAYUKTA

Supervisory
powers of
Lokayukta.

86. The Lokayukta shall, notwithstanding anything contained in any other law for the time being in force, have the powers of superintendence and direction, over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under this Act. 5

Search and
seizure.

87. (1) If the Lokayukta has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency to whom the investigation has been given to search for and to seize such documents. 10

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any preliminary inquiry or investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such preliminary inquiry or investigation: 15

Provided that where any document is required to be returned, the Lokayukta or the authorised officer may return the same after retaining copies of such document duly authenticated. 20

Lokayukta to
have powers of
civil court in
certain cases.

88. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:— 5 of 1908.

(i) summoning and enforcing the attendance of any person and examining him on oath; 25

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

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

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and 30

(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. 35 45 of 1860.

Power of
Lokayukta to
utilise services
of officers of
State
Government.

89. (1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Lokayukta, 40

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

5 90. (1) Where the Lokayukta or any investigation officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional
attachment of
assets.

(a) any person is in possession of any proceeds of corruption;

10 (b) such person is accused of having committed an offence relating to corruption;
and

43 of 1961. 15 (c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokayukta shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

(2) The Lokayukta shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court
20 may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

25 (4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

30 91. (1) The Lokayukta, when it provisionally attaches any property under sub-section (1) of section 90 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation
of attachment
of assets.

35 (2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

40 (3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

49 of 1988. 45 (4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

51 of 1993. 50 *Explanation.*—For the purposes of this sub-section, the expressions "bank", "debt" and "financial institution" shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

92. (1) Without prejudice to the provisions of sections 90 and 91, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. 5

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money 10 so confiscated with the interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption.

93. (1) Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that—

(a) the continuance of the public servant referred to in clause (d) or clause (e) of 15 sub-section (1) of section 75 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(b) the public servant referred to in clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokayukta may recommend to the State Government for transfer or suspension of 20 such public servant from the post held by him till such period as may be specified in the order.

(2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons. 25

Power of Lokayukta to give directions to prevent destruction of records during preliminary inquiry.

94. The Lokayukta may, in discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or 30 record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Lokayukta to function as appellate authority for appeals arising out of any other law.

95. The Lokayukta shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public 35 services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

Power to delegate.

96. The Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members 40 or officers or employees as may be specified in the order.

Application of certain provisions relating to Lokpal to apply to Lokayukta.

97. The provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except section 59) shall apply to a Lokayukta and shall have effect, subject to the following modifications, namely:—

(a) references to "President" shall be construed as references to "Governor of 45 the State";

(b) references to the "Central Government" shall be construed as references to "State Government";

(c) references to "each House of Parliament" or "Parliament", shall be construed as references to "Legislature of the State";

5 (d) references to "Lokpal" shall be construed as references to "Lokayukta";

(e) references to "Comptroller and Auditor-General of India" shall be construed as references to "Accountant General of the State";

(f) references to "Chief Justice of India" shall be construed as references to "Chief Justice of the High Court of the State".

THE SCHEDULE

[See section 58]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

5

(60 OF 1952)

Amendment
of section 3.

In section 3, in sub-section (1), for the words "The appropriate Government may", the words, brackets and figures "Save as otherwise provided in the Lokpal and Lokayuktas Act, 2011, the appropriate Government may" shall be substituted.

PART II

10

AMENDMENT TO THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

Amendment
of section 4A.

1. In section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member." 20

(ii) sub-section (2) shall be omitted.

2. In section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:— 25

(a) the Central Vigilance Commissioner — Chairperson;

(b) Vigilance Commissioners — Members;

(c) Secretary to the Government of India in charge of the Ministry of Home — Member; 30

(d) Secretary to the Government of India in charge of the Department of Personnel — Member:

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government." 35

PART III

AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Amendment
of sections 7,
8, 9 and 12.

1. In sections 7, 8, 9 and section 12,—

(a) for the words "six months", the words "three years" shall respectively be substituted; 40

(b) for the words "five years", the words "seven years" shall respectively be substituted;

2. In section 13, in sub-section (2), —

Amendment
of section 13.

(a) for the words "one year", the words "four years" shall be substituted;

5 (b) for the words "seven years", the words "ten years" shall be substituted;

3. In section 14,—

Amendment
of section 14.

(a) for the words "two years", the words "five years" shall be substituted.

(b) for the words "seven years", the words "ten years" shall be substituted.

4. In section 15, for the words "which may extend to three years", the words "which shall not be less than two years but which may extend to five years" shall be substituted.

Amendment
of section 15.

5. In section 19, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2011" shall be inserted.

Amendment
of section 19.

PART IV

AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

15 (2 OF 1974)

In section 197, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2011" shall be inserted.

Amendment
of section 197.

PART V

AMENDMENT TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003

20 (45 OF 2003)

1. In section 2, after clause (d), the following clause shall be inserted, namely:—

Amendment
of section 2.

'(da) "Lokpal" means the Lokpal established under sub-section (1) of section 3 of the Lokpal and Lokayuktas Act, 2011;".

2. In section 8, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

Amendment
of section 8.

"(c) on a reference made by the Lokpal under proviso to sub-section (1) of section 20 of the Lokpal and Lokayuktas Act, 2011, the persons referred to in clause (d) of sub-section (1) shall also include—

30 (i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

35 Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in clause (d) of sub-section (1)."

Insertion of
new sections
8A and 8B.

3. After section 8, the following sections shall be inserted, namely:—

Action on
preliminary
inquiry in
relation to
public
servants.

"8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46 of the Lokpal and Lokayuktas Act, 2011.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

Action on
investigation
in relation to
public
servants.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under clause (a) of sub-section (1) of section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

(2) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority."

Insertion of
new section
11A.

4. After section 11, the following section shall be inserted, namely:—

Director of
Inquiry for
making
preliminary
inquiry.

"11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act."

STATEMENT OF OBJECTS AND REASONS

The need to have a legislation for Lokpal has been felt for the quite sometime. In its interim report on the "Problems of Redressal of Citizens' Grievances" submitted in 1966, the Administrative Reforms Commission, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendations of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 bill which was subsequently withdrawn after its introduction.

2. In pursuance of the efforts to constitute a mechanism for dealing with complaints on corruption against public functionaries including in high places, the Government constituted a Joint Drafting Committee on 8th April, 2011 to draft a Lokpal Bill. Divergent views emerged during deliberations in the JDC. Government introduced a revised Bill namely 'Lokpal Bill 2011' in the Lok Sabha on 4th August 2011. This Bill was referred to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8th August, 2011 for examination and report and this was followed by discussions in both the houses of Parliament and report and this was followed by discussions in both the houses on Parliament on 27th August 2011. A sense of the House was communicated to the Standing Committee on the basis of discussions in the Houses. The Department Related Parliamentary Standing Committee after extensive discussion with all the concerned Stakeholders suggested major amendments as regards the scope and content of the Bill introduced in August 2011. It also recommended that Lokpal at the centre and Lokayukta at the States be conferred constitutional status in its report of 9th December 2011. Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill 2011 pending in Lok Sabha and to introduce a thoroughly revised bill for carrying out the necessary amendments to the Constitution for the setting up of Lokpal and Lokayuktas as constitutional bodies.

3. India is committed to pursue the policy of 'Zero Tolerance against Corruption'. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on 9th May 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the Member States. The Convention, *inter alia*, envisages that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8th June 2011. As a policy of Zero tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. This setting up of these bodies will further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

4. The Lokpal and Lokayuktas Bill 2011, seeks to provide, *inter alia*, for—

(i) setting up the institution of Lokpal for the Union and Lokayuktas for the States through a single Legislation and these bodies will have a constitution status for which a Constitution (Amendment) Bill is being introduced.

(ii) Lokpal and Lokayukta will consist of a Chairperson and a maximum of eight Members, of which fifty percent shall be judicial Members;

(iii) that all categories of persons, who are eligible for selection as Member of Lokpal and Lokayukta are also eligible for section as Chairperson of the Lokpal;

(iv) that the Selection Committee for selection of Chairperson and Members of Lokpal shall consist of—

- (a) Prime Minister;
- (b) Speaker of Lok Sabha;
- (c) Leader of Opposition in the Lok Sabha;
- (d) Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;
- (e) an eminent jurist to be nominated by the President of India;

In the case of Lokayukta, it will be Chief Minister, speaker, Leader of opposition of the State Legislature, Chief Justice or the judge of High Court and an eminent jurist nominated by the Governor;

(v) fifty per cent. of members of Lokpal and Lokayuktas shall be from amongst Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women. Similar reservation is being provided in the Search Committee.

(vi) removal procedure for Lokpal and Lokayuktas and Members in the Bill instead of providing in the Constitution Amendment Bill.

(vii) bringing Prime Minister under the purview of the Lokpal with some subject matter exclusions and specific process for handling complaints against the Prime Minister by providing that Lokpal may not hold any inquiry against the Prime Minister if allegations relate to International relations; External and internal security of the country; public order; Atomic energy and Space, and further providing that any decision of the Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a majority of 3/4th and that such proceedings be held in camera;

(viii) inclusion of all categories of employees under Lokpal/Lokayuktas who will receive complaints against Group 'A', 'B', 'C' & 'D' categories of Government servants; decide on holding of preliminary inquiry;

(ix) that Lokpal may refer complaints against specified categories of public servants to Central Vigilance Commission and that Commission shall send its report of preliminary inquiry in respect of Group 'A' and 'B' officers back to Lokpal for further decision and with respect to Group 'C' and 'D' employees, Commission shall take action in exercise of its own powers under the Central Vigilance Commission Act, 2003, subject to reporting and review mechanism by Lokpal over the Central Vigilance Commission.

(x) provision for superintendence of Lokpal over the Delhi Special Police Establishment in so far as the cases referred to them by Lokpal;

(xi) bringing under the jurisdiction of Lokpal and Lokayuktas entities/institutions receiving donations from foreign source in terms of and in the context of the Foreign Contribution Regulation Act 2010 in excess of Rs. 10 lakhs per year;

(xii) setting up of an Inquiry Wing of the Lokpal and Lokayuktas for conducting the preliminary inquiry and also an independent Prosecution Wing in the Lokpal institution;

(xiii) Providing that no prior sanction shall be required for launching prosecution in cases enquired by Lokpal and Lokayuktas or initiated on the direction and with the approval of Lokpal and Lokayuktas and, similarly, no prior approval is required for conducting investigation by the Delhi Special Police Establishment in respect of cases entrusted by Lokpal.

(xiv) as a measure of reinforcing natural justice, a provision enabling inquiring agency to seek comments from the competent authority who after obtaining the comments of the public servant will furnish comments to the inquiring agency within a prescribed timelines. A three member bench will consider the inquiry report and may decide to recommend investigation or initiate disciplinary proceeding or close the case.

(xv) the Bill seeks to amend the Delhi Special Police Establishment Act, 1940 to provide a High Power Selection Committee for selection of Director, of the Delhi Special Police Establishment.

5. The notes on clauses explain in details the provisions of the Bill.

6. The Bill seeks to achieve the aforesaid objectives.

V. NARAYANASAMY.

NEW DELHI;
The 21st December, 2011.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 407/108/2011-AVD.IV dated 21 December, 2011 from Shri V. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Lokpal and Lokayukta Bill, 2011, recommends the introduction and consideration of the Lokpal and Lokayuktas Bill, 2011 in the Lok Sabha under article 117(1) and 117(3) of the Constitution.

Notes on Clauses

Clause 1. — This clause of the Bill seeks to provide for the short title, extent, application and commencement of the proposed Lokpal and Lokayukta legislation. It provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of the proposed legislation, and any reference in any provision to the commencement of the proposed legislation shall be construed as a reference to the coming into force of that provision.

Clause 2. — This clause defines the various expressions used in the Bill which, *inter alia*, include the expressions — “Bench”, “Central Vigilance Commission”, “competent authority”, “complaint”, “investigation”, “preliminary inquiry”, “Judicial Member”, “Lokpal”, “Member”, “Minister”, “public servant”, “Special Court”, etc. The court of Special Judge appointed under sub-clause (1) of section 3 of the Prevention of Corruption Act, 1988 shall be the Special Court.

Sub-clause (3) of the aforesaid clause provides that any reference in the proposed legislation to any other Act or provision thereof which is not in force in any area to which the proposed legislation applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

Clause 3. — This clause seeks to provide for the establishment of Lokpal consisting of a Chairperson and eight Members. It also provides that fifty per cent. of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified for Members under sub-clause (3). The Judicial Member shall be a person who is or has been a Judge of the Supreme Court or who is or has been a Chief Justice of a High Court. The Members shall be the persons who are of impeccable integrity and outstanding ability and standing having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It also provides that not less than fifty per cent. of the Members of the Lokpal, shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women.

It further provides that the Chairperson or a Member of the Lokpal shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not be a person, convicted of any offence involving moral turpitude; who is less than forty-five years of age, on the date of assuming office as Chairperson or Member; who is a member of any Panchayat or Municipality; who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession. It also provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

Clause 4. — This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the Speaker of the House of the People, the Leader of Opposition in the House of the People, the Chief Justice of India or a Judge of the Supreme Court nominated by him, one eminent jurist nominated by the President. For the purpose of holding the

Chairperson and other Members of the Lokpal and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokpal. It further provides that the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

It also provides that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women. However, the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Search Committee shall regulate its own procedure in a transparent manner.

Clause 5. — This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken by the President at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

Clause 6. — This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Clause 7. — This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of India. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the Supreme Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

Clause 8. — This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokpal shall be ineligible to contest any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However, if any Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Clause 9. — This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the President may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the President may authorise the senior-most Member to discharge his functions.

Clause 10. — This clause seeks to provide that the Secretary, other officers and staff of the Lokpal shall be appointed by the Chairperson or the Member or officer of Lokpal as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The President may make rules that the appointment in respect of any post or posts shall be made after consultation with the Union Public Service Commission.

Clause 11. — This clause provides for setting up of an Inquiry Wing of the Lokpal headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Investigation Wing is constituted by the Lokpal, the Central Government will make available the services of its investigation officers and other staff required by the Lokpal. It also provides that for the purposes of assisting the Lokpal in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary to the Government of India, shall have the same powers as are conferred upon the Lokpal under clause 27.

Clause 12.—This clause seeks to provide that the Lokpal may constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under the proposed legislation. It further provides that the Director of prosecution after having been so directed by the Lokpal, file a case in accordance with the investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988. It further provides that the case filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

Clause 13. —This clause lays down that the administrative expenses of the Lokpal including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokpal shall be charged upon the Consolidated Fund of India. It also provides that any fees or other moneys taken by the Lokpal shall form part of the Consolidated Fund of India.

Clause 14. — This clause deals with the jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government. Sub-clause (1) seeks to provide that the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Prime Minister. However, the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister, in so far as it relates to foreign affairs, international relations, external and internal security, public order, atomic energy and space; unless a full bench of the Lokpal considers the initiation of inquiry and at least three-fourth of its Members approves such inquiry; and unless the inquiry, if any, considered necessary by the Lokpal is held in camera.

It further provides that in the case of a Minister, a Member of either House of Parliament, any Group 'A' or Group 'B' officer or equivalent or above, any Group 'C' and Group 'D' official or equivalent or above from against the public servants as defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the Union, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or wholly or partly financed or controlled by the Central Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the Central Government or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokpal shall not inquire into any matter against any member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions of clause (2) of article 105 of the Constitution.

Sub-clause (3) provides that the Lokpal may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed enactment shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* therein clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

Clause 15. — This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

Clause 16. — This clause seeks to provide that the jurisdiction of the Lokpal may be exercised by Benches thereof. A Bench of the Lokpal may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokpal shall ordinarily be at New Delhi and at such places as the Lokpal may, by regulations, specify.

Clause 17. — This clause seeks to empower the Chairperson to distribute the business of Lokpal amongst its Benches and also specify the matters which may be dealt with by each Bench.

Clause 18. — This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

Clause 19. — This clause seeks to provide that the decision of the Lokpal shall be according to the opinion of the majority of the Members of Lokpal. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

Clause 20. — This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokpal. It provides that the Lokpal may, on receipt of a complaint first decide whether to proceed in the matter or close the peruse and if the Lokpal decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, the Lokpal shall if decides to proceed further with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003. It further provides that the Central Vigilance Commission in respect of complaints referred to it, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-clauses (2) and (4) and in case of public servants belonging to Group C and D, the Commission shall proceed in accordance the provisions of the Central Vigilance Commission Act, 2003.

Sub-clause (2) provides that during the preliminary inquiry, the Inquiry Wing or any agency (including Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

Sub-clause (3) provides that a bench consisting of not less than three Members of the Lokpal shall consider every such report received from the Inquiry Wing, and decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by any investigating agency or the Delhi Special Police Establishment, as the case may be; after giving an opportunity of being heard to the public servant, with initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant under clause 46.

Sub-clause (4) seeks to provide that every preliminary inquiry referred to Lokpal shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing within a further period of ninety days from the date of receipt of the complaint and in case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency including the Delhi Special Police Establishment to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal. However, after recording the reasons the Lokpal can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokpal shall consider every report received by it from any agency (including the Delhi Special Police Establishment), decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

It also provides that the Lokpal may, after taking a decision on the filing of the charge-sheet direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal to obtain its approval at thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokpal for the purposes of superintendence.

Clause 21. — This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

Clause 22. — This clause seeks to provide that Lokpal may require any public servant or any other person to furnish information or produce documents relevant to inquiry or investigation.

Clause 23. — This clause makes provision that no sanction or approval of any authority shall be required by the Lokpal or its Investigation Wing, in respect of the cases investigated by its Investigation Wing; or any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by its Investigation Wing or any agency including the Delhi Special Police Establishment into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation. However, for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by its Investigation Wing or any agency including the Delhi Special Police Establishment no decision shall be

required by the department concerned in this regard. It is also clarified that no sanction or approval shall be required in respect of all cases falling under clause (a) or clause (b).

Clause 24. — This clause makes provision for action to be taken by the Lokpal on conclusion of investigation against public servants being Ministers or Members of Parliament. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokpal may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine or cause to be examined the report and communicate or cause to be communicated to the Lokpal within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal. However, in computing the period of ninety days, the period during which the Parliament will not be in session shall be excluded.

Clause 25. — This clause seeks to empower the Lokpal with supervisory powers. It provides that the Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 and section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters in so far as they relate to the investigation by the Delhi Special Police Establishment under the proposed legislation.

Clause 26. — This clause seeks to confer power of search and seizure of documents on the Lokpal.

Clause 27. — This clause provides that the Lokpal shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

Clause 28. — This clause seeks to make provision that the Lokpal may utilise the services of any officer or organisation or investigating agency of the Central Government or the State Government, as the case may be. It also enables the Lokpal to confer certain powers on such officers or organisation or agency.

Clause 29. — This clause makes provision for provisional attachment of assets by the Lokpal or any officer authorised by it if such assets are any proceeds of corruption.

Clause 30. — This clause makes provision for confirmation of provisional attachment of assets made by the Lokpal under clause 29 by the Special Court.

Clause 31. — This clause makes provision for Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent. per annum calculated from the date of confiscation.

Clause 32. — This clause seeks to provide that the Lokpal may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokpal shall be accepted by the Government.

Clause 33. — This clause seeks to provide that the Lokpal may give directions to prevent destruction of records during inquiry.

Clause 34. — This clause provides that the Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Clause 35. — This clause provides for constitution of Special Courts by the Central Government as recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the proposed legislation. It also provides that the Special Courts shall ensure completion of each trial within a period of one year from the date of filing the case in the court. However, in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing, before the end of each such three month period, but not exceeding a total period of two years.

Clause 36. — This clause makes provision for issue of letter of request to a court or an authority in the contracting state in certain cases.

Clause 37. — This clause makes provisions for handling of complaints against the Chairperson and Members of the Lokpal. It provides that the Lokpal shall not inquire into any complaint made against the Chairperson or any Member. The Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it, by the President, or by the President on a petition being signed by at least one hundred Members of Parliament, or by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred, has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground and the President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

It further provides that notwithstanding anything contained in sub-clause (2), the President may, by order, remove from the office the Chairperson or any Member if the Chairperson or such Member, as the case may be, is adjudged an insolvent; or engages, during his term of office, in any paid employment outside the duties of his office; or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. It also provides that if the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Clause 38. — This clause seeks to provide for the provisions for the complaints against officials of Lokpal.

Clause 39. — This clause provides that when a public servant has committed an offence under the Prevention of Corruption Act, 1988, the Special Court may make an assessment of loss, if any, caused to the public exchequer on account of actions or decisions of such public servant not taken in good faith and for which he stands convicted, and order recovery of such losses.

Clause 40. — This clause seeks to provide that the Lokpal shall prepare its budget showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for intervention.

Clause 41. — This clause provides that without prejudice to the provisions of clause 16, the Central Government may make grants of such sums of money to the Lokpal as

are required to be paid for salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Clause 42. — This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Lokpal. It also provides that the accounts of Lokpal together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of the Parliament.

Clause 43. — This clause provides that the Lokpal shall furnish to the Central Government such returns or statements and such particulars with regard to any matter under the jurisdiction of Lokpal as the Central Government may prescribe from time to time.

Clause 44. — This clause provides that the public servants shall make a declaration of their assets and liabilities in the manner as provided in this Act.

Clause 45. — This clause provides that any willful failure on the part of a public servant to declare his assets shall amount to presumption that the assets have been acquired by corrupt means.

Clause 46. — This clause provides that if any person makes false or frivolous or vexatious complaint under this Act, he shall be liable for prosecution and on conviction he may be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees. However, there would not be any punishment in case of complaints made in good faith.

Clause 47. — This clause provides that if false complaint is made by the Society or association of persons or trust, in that case every person who, at the time of commission of offence, was directly in-charge of the affairs or activities of such society etc. shall be deemed to be guilty of the offence under clause 53 and liable for punishment.

Clause 48. — This clause provides for the Lokpal to present annually a report to the President as to the work done by it and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Clause 49. — This clause seeks to empower the Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force. It provides that the Lokpal to function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for public service in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

Clause 50. — This clause provides for protection of public servant from legal proceedings etc. for the action taken in good faith.

Clause 51. — This clause provides for the protection of action taken in good faith by Lokpal, any officer, employee, agency or any person in respect of anything done or intended to be done under the proposed legislation or the rules or regulations made thereunder.

Clause 52. — This clause provides that the Chairperson, Members, officers and other employees of the Lokpal shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 53. — This clause lays down the period of limitation for filing of complaints before the Lokpal as seven years from the date of commission of the alleged offence.

Clause 54. — This clause provides that no civil court shall have jurisdiction in the matters for which Lokpal is empowered under the proposed legislation.

Clause 55. — This clause provides that legal assistance for defending a case before the Lokpal shall be provided to every person against whom complaint has been made before it, if such assistance is requested for.

Clause 56. — This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

Clause 57. — This clause provides that the provisions of the proposed legislation shall be in addition to any other law for the time being in force.

Clause 58. — This clause seeks to amend certain enactments as specified in Second Schedule to the proposed legislation.

Clause 59. — This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

Clause 60. — This clause seeks to confer power on the Lokpal to make regulations for carrying out the provisions of the proposed legislation consistent with the provisions of the proposed legislation and the rules made by the Central Government under clause 59. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made.

Clause 61. — This clause provides that every rule and every regulation made under the proposed legislation shall be laid before each House of Parliament.

Clause 62. — This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

Clause 63. — This clause defines the various expressions used in the Bill in respect of the provisions relating to the Lokayukta for States which, inter alia, include the expressions — “Bench”, “competent authority”, “Investigation”, “preliminary inquiry”, “Lokayukta”, “Member”, “Minister”, “public servant”, etc.

Clause 64. — This clause seeks to provide for the establishment of Lokayukta consisting of a Chairperson and eight Members. It also provides that fifty per cent. of the Members shall be judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of High Court or a retired Judge of the High Court or an eminent person. The judicial Member shall be a person who is or has been a Judge of the High Court. The Members shall be the persons who are of impeccable integrity, outstanding ability and having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It further provides that not less than fifty per cent. of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, and women. It further provides that the Chairperson or a Member of the Lokayukta shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not be a person convicted of any offence involving moral turpitude and shall not be a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be, a person who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession.

It further provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his

connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

It also provides that the Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of the proposed legislation, and applicable to that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with the proposed legislation.

Clause 65.— This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Chief Minister, the Speaker of the Legislative Assembly, the Leader of Opposition in the Legislative Assembly, the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him and one eminent jurist nominated by the Governor. For the purpose of holding the Chairperson and other Members of the Lokayukta and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons of standing having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokayukta. It further provides that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and women and the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokayukta.

Clause 66.— This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

Clause 67.— This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Clause 68.— This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of the High Court. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the High Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

Clause 69.— This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokayukta shall be ineligible to contest any election of Governor or Vice-Governor or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However it is clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Clause 70. — This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the Governor may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the Governor may authorise the senior-most Member to discharge his functions.

Clause 71. — This clause seeks to provide that the secretary or other officers and staff of the Lokayukta shall be appointed by the Chairperson or the Member or officer of Lokayukta as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The Governor may make rules that the appointment in respect of any post or posts shall be made after consultation with the State Public Service Commission.

Clause 72. — This clause provides for setting up of an Inquiry Wing of the Lokayukta headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government will make available the services of its inquiry officers and other staff required by the Lokayukta. It also provides that for the purposes of assisting the Lokayukta in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary to in the State Government, shall have the same powers as are conferred upon the Lokayukta under clause 88.

Clause 73. — This clause seeks to provide that the Lokayukta may constitute a Prosecution Wing headed by a Director of Prosecution with such other officers and employees as required to assist him for the purpose of prosecution of public servants in relation to offences punishable under the Prevention of Corruption Act, 1988, and such prosecution on the directions of the Lokayukta shall file a case in accordance with the investigation report, before the Special Court. It further provides that the report, on the directions of the Lokayukta, filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

Clause 74. — This clause lays down that the administrative expenses of the Lokayukta including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokayukta shall be charged upon the Consolidated Fund of the State. It also provides that any fees or other moneys taken by the Lokayukta shall form part of the Consolidated Fund of that State.

Clause 75. — This clause deals with the jurisdiction of Lokayukta. Sub-clause (1) seeks to provide that the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Chief Minister. It further provides that in the case of a Minister, any person who is or has been a Member of the State Legislature, all officers and employees of the State from against the public servants as defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the State, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or of a state legislature or wholly or partly financed or controlled by the State Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the State

Government or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokayukta shall not inquire into any matter against any member of the State Legislature in respect of anything said or vote given by him in the State Legislature or any Committee thereof covered under the provisions of clause (2) of article 194 of the Constitution.

Sub-clause (3) provides that the Lokayukta may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed legislation shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

Clause 76. — This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

Clause 77. — This clause seeks to provide that the jurisdiction of the Lokayukta may be exercised by Benches thereof. A Bench of the Lokayukta may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokayukta shall ordinarily be at capital of the State and at such other places as the Lokayukta may, by regulations, specify.

Clause 78. — This clause seeks to empower the Chairperson to distribute the business of Lokayukta amongst its Benches and also specify the matters which may be dealt with by each Bench.

Clause 79. — This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

Clause 80. — This clause seeks to provide that the decision of the Lokayukta shall be according to the opinion of the majority of the Members of Lokayukta. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

Clause 81. — This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokayukta. It provides that the Lokayukta may, on receipt of a complaint first decide whether to proceed in the matter or close the peruse and if the Lokayukta decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exists a prima facie case for proceeding in the matter. It further provides that during the preliminary inquiry the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the competent authority received from the public servant, within sixty days from the date of receipt of the reference and after obtaining the comments from the competent authority shall report to the Lokayukta.

It further provides that a bench consisting of not less than three Members of the Lokayukta shall consider every such report received from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by its Investigation Wing or any investigating agency; or with initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant.

It also seeks to provide that in case the Lokayukta decides to proceed to investigate into the complaint, it shall direct its Investigation Wing or any other agency to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokayukta. However, after recording the reasons the Lokayukta can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokayukta shall consider every report received by it from the Investigation Wing or any other agency may, after giving an opportunity of being heard to the public servant, decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

It also provides that the Lokayukta shall direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by its Investigation Wing; or any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence and the Lokayukta shall retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

Clause 82. — This clause seeks to provide that the persons against whom any preliminary inquiry or investigation is proposed to be conducted shall be allowed to inspect any record in connection with the commission of any alleged offence which are necessary for him to defend his case and take extracts therefrom.

Clause 83. — This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

Clause 84. — This clause makes provision that no sanction or approval of any authority shall be required by the Lokayukta or its Investigation Wing, in respect of the cases investigated by its Investigation Wing; or any agency in respect of the cases investigated by such agency on the direction of Lokayukta, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokayukta or its Inquiry Wing or investigation by its Investigation Wing into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation.

Clause 85. — This clause seeks to provide for action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokayukta may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine the report and communicate to the Lokayukta within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not

taking any action on the recommendation of the Lokayukta. However, in computing the period of ninety days, the period during which the State Legislative will not be in session shall be excluded.

Clause 86.— This clause seeks to empower the Lokayukta with supervisory powers. It provides that the Lokayukta shall, notwithstanding anything contained in any law for the time being in force, have the powers of superintendence and direction, over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under the proposed legislation.

Clause 87.— This clause seeks to confer power of search and seizure of documents on the Lokayukta.

Clause 88.— This clause provides that the Lokayukta shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokayukta shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

Clause 89.— This clause seeks to make provision that the Lokayukta may utilise the services of any officer or organisation or investigating agency of the State Government. It also enables the Lokayukta to confer certain powers on such officers or organisation or investigating agency.

Clause 90.— This clause makes provision for provisional attachment of assets by the Lokayukta or any investigation officer authorised by it if such assets are any proceeds of corruption.

Clause 91.— This clause makes provision for confirmation of provisional attachment of assets made by the Lokayukta under clause 90 by the Special Court.

Clause 92.— This clause makes provision for Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent. per annum calculated from the date of confiscation.

Clause 93.— This clause seeks to provide that the Lokayukta may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokayukta shall be accepted by the Government.

Clause 94.— This clause seeks to provide that the Lokayukta may give directions to prevent destruction of records during inquiry.

Clause 95.— This clause seeks empower the Lokayukta to function as the appellate authority in respect of appeals arising out of any other law for the time being in force providing for public service and redressal of public grievances by any public authority.

Clause 96.— This clause provides that the Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Clause 97.— This clause seeks to provide for application of certain provisions relating to Lokpal to apply to Lokayukata. It provides that the provisions contained in Chapters IX,

X, XI, XII, XIII, XIV and XV (except section 59) shall apply to a Lokayukta and shall have effect, with the modifications, relating to any references to "President" shall be construed as references to "Governor of the State"; "Central Government" as "State Government"; "each House of Parliament" or "Parliament", as "Legislature of the State"; "Lokpal" as "Lokayukta"; "Comptroller and Auditor-General of India" as "Accountant General of the State" and references to "Chief Justice of India" shall be construed as references to "Chief Justice of the High Court of the State".

The Schedule to the proposed legislation contains the details of amendments in certain enactments which are consequential to the enactment of the proposed legislation.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for the establishment of a body to be called the Lokpal for the purpose of making inquiries in respect of complaints as may be made under the proposed legislation.

2. Sub-clause (2) of clause 3 provides for the appointment of the Lokpal consisting of a Chairperson and eight Members. Clause 7 of the Bill envisages that the salary, allowances and other conditions of service of, the Chairperson of the Lokpal shall be the same as those of the Chief Justice of India and the Members as those of the Judges of the Supreme Court. This Clause also provides that the salary payable to the Chairperson and Members shall be reduced by any pension and pension equivalent to other pensionary benefits to which the Member may be entitled to in respect of any previous service under the Government of India or under the Government of a State.

3. Clause 10 of the Bill provides for the appointment of a Secretary, Director of Inquiry and Director of Prosecution and Officers and other staff. Sub-clause (4) of the said clause provides that the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose.

4. Sub-clause (1) of clause 11 provides that the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. Sub-clause (1) of clause 12 provides that the Lokpal shall constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act. Sub-clause (1) of clause 28 empowers the Lokpal to utilise the services of any officer or investigating agency of the Central Government or any State Government for the purpose of conducting any inquiry.

5. Clause 13 of the Bill provides that the administrative expenses of the Lokpal, including the salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees and other moneys taken by the Lokpal shall form part of that fund.

6. At this stage, it is not possible to give precise details of the expenditure to be incurred on the Lokpal. It is, however, expected that the Bill, if enacted and brought into operation, would involve a non-recurring expenditure of one hundred crores of rupees and a recurring expenditure of two hundred crores of rupees in a financial year. In case it becomes necessary to construct a building to house the establishment of the Lokpal, additional expenditure of a non-recurring nature of the order four hundred crores of rupees may also be involved.

7. Part III of the Bill provides for constitution of Lokayukta in every state. Clause 74 provides that the administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of the State and any fees or other moneys taken by the Lokayukta shall form part of that Fund. The expenditure in this regard shall be borne by the respective State Governments. The expenditure in this regard may differ from state to state.

8. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 59 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (1) of the said clause specifies the various matters in respect of which the rules may be made. These matters, *inter alia*, relate to the form of complaint referred to in clause (d) of sub-section (1) of section 2; the term of Search Committee, fee and allowances payable to the members of Search Committee and the manner of selection of panel of names; procedure of inquiry into misbehaviour for removal of the Chairperson or any Member; the posts in respect of which appointments shall be made after consultation with the Union Public Service Commission; matters for which the Lokpal shall have the powers of a Civil Court; the manner of sending an order of attachment to a Special Court; the manner of transmitting the letter of request under sub-section (2) of section 36; the manner of making reference to the Chief Justice of India; the form and the time for preparing the budget; the form for maintaining accounts and other relevant records and the form of annual statement of accounts; the form and manner and time for preparing the returns and statements under sub-section (1) of section 43; the form and the time for preparing the annual report; the form of annual return to be filed by a public servant under sub-section (5) of section 44; the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45.

2. Clause 60 of the Bill empowers the Lokpal to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Lokpal may make regulations, *inter alia*, include the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as relate to salaries, allowances, leave or pensions, the place of sittings of Benches of the Lokpal, the manner for displaying the status of all complaints pending or disposed of on the website of the Lokpal, and the manner and procedure of conducting an inquiry or investigation.

3. Clause 61 of the Bill provides that the rules made by the Central Government and regulations made by the Lokpal under the proposed legislation are required to be laid before each House of Parliament, as soon as they are made.

4. Clause 97 of the Bill provides for application of certain provisions relating to Lokpal to apply to Lokayukta in the States. The aforesaid provisions, *inter alia*, confers power upon the State Government to make rules for Lokayukta in respect of the matters similar to the Lokpal and also confers powers upon the Lokayukta to make regulations in respect of the matters similar to the Lokpal.

5. The rules made by the State Government and regulations made by the Lokayukta under the proposed legislation are required to be laid before the State Legislature, as soon as they are made.

6. The matters in respect of which rules or regulations may be made under the proposed legislation are matters of procedure or detail necessary for effective administration of the provisions of the proposed legislation and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACT FROM THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

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

Appointement
of Commission.

Provided that where any such Commission has been appointed to inquire into any matter—

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

EXTRACTS FROM THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

Committee
for
appointment
of Director.

- (a) the Central Vigilance Commissioner — Chairperson;
- (b) Vigilance Commissioners — Member;
- (c) Secretary to the Government of India incharge of the Ministry of Home Affairs in the Central Government — Member.

(d) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the Delhi Special Police Establishment — Member

4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

Appointment
for posts of
Superintendent
of Police and
above,
extension and
curtailment of
their tenure.

EXTRACTS FROM THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

CHAPTER III

OFFENCES AND PENALTIES

Public servant
taking
gratification
other than
legal
remuneration
in respect of
an official
act.

7. Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.— (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Taking
gratification,
in order, by
corruption or
illegal means,
to influence
public
servant.

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

Taking
gratification,
for exercise
of personal
influence with
public
servant.

9. Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant,

whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

* * * *

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

Punishment for abetment of offences defined in section 7 or 11.

13. (1) *

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(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Criminal misconduct by a public servant.

14. Whoever habitually commits—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

Habitual committing of offence under sections 8, 9 and 12.

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

Punishment for attempt.

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CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

Previous sanction necessary for prosecution.

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

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

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

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

2 of 1974.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

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

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

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

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

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

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LOK SABHA

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BILL

to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

*(Shri V. Narayanasamy, Minister of State in the Ministry of Personnel,
Public Grievances and Pensions)*