Comparative Statement - Lokpal

CONTENTS

Issue 1 - How many members in Lokpal

The Lokpal Bill, 2010

The Lokpal consists of 1 Chairperson and 2 Members

Ref: Section 3, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

The Jan Lokpal bill recommends 1 Chairperson and 10 members

Ref: Section 3.1 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Karnataka Lokayukta Act recommends 1 Lokayukta along with 1 or more Upalokayuktas

Ref: Section 3.1 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

'Lokpal' / 'Rashtriya Lok Ayukta' recommended as a three-member body:
1. Member 1(Chairperson): from Judiciary - a serving or retired Supreme Court Judge
2. Member 2: eminent jurist
3. Member 3 (ex-officio): Central Vigilance Commissioner (CVC)

Ref: 4.3.4 of Chapter 4 of Fourth Report of the 2nd Administrative Reforms Commission (ARC)

Independent Commission Against Corruption Ordinance, Hong Kong

The ICAC has 1 Commissioner and 1 Deputy Commissioner

Ref: Section 3, 6 of the Independent Commission against Corruption Ordinance, 1974

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

1 Chief Ombudsman and 3 Parliamentary Ombudsmen

Issue 2 - Selection criteria for the Chairperson and members

The Lokpal Bill, 2010

1. Chairperson who is or has the been a Chief Justice or a Judge of the Supreme Court
2. Two Members who are or have been Judges of the Supreme Court or the Chief Justices of the High Courts.

Ref: Section 3, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Appointed members must be

1. Citizens of India
2. Never charge sheeted for any offence under IPC or PC Act or any other Act or ever penalized under CCS Conduct Rules
3. Above 40 years of age at time of appointment

At least four members of Lokpal are to have legal background. Not more than two members, including Chairman, shall be former civil servants. Members should have unimpeachable integrity and should have demonstrated their resolve to fight corruption in the past.

Ref: Section 6 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta should have held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court. The Upalokayukta should have held the office of the Judge of the High Court.

Ref: Section 3.2 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

1. A serving Supreme Court Judge OR a retired Supreme Court Judge as Member Chairperson
2. Eminent jurist as Member 2
3. Central Vigilance Commissioner as ex-officio Member 3

Membership of Lokpal to be limited to one term of three years only; members not to hold any other office after Lokpal (except the CJ of the Supreme Court of India)

Ref: 4.3.4and 4.3.15 of Chapter 4 of Fourth Report of the 2nd Administrative Reforms Commission (ARC)

Issue 3 - Composition of the collegium for selection of Lokpal

The Lokpal Bill, 2010

The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal, after obtaining the recommendations of a Committee consisting of –

1. The Vice-President of India — Chairman;
2. The Prime Minister — member;
3. The Speaker of the house of people — member;
4. The Minister in-charge of the Ministry of Home Affairs in the Government of India —
1. member;
5. The Minister in-charge of the Ministry of Law and Justice in the Government of India — member;
6. The Leader of the House other than the House in which the Prime Minister is a member
2. of Parliament — member;
7. The Leader of the Opposition in the House of the People — member;
8. The Leader of the Opposition in the Council of States — member

Ref: Section 4, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

A selection committee consisting of the following:

1. The Vice President of India
2. Speaker of Lok Sabha
3. Two senior most judges of Supreme Court
4. Two senior most Chief Justices of High Courts
5. Retired army personnel who are five star Generals
6. Chairperson of National Human Rights Commission
7. Comptroller and Auditor General of India
8. Chief Election Commissioner
9. After the first set of selection process, the outgoing members and Chairperson of Lokpal.

Ref: Section 6.5 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta and Upalokayuktas are to be appointed by the Governor on the advice of Chief Minister in consultation with the Chief Justice of the Karnataka High Court, the Chairman, Karnataka Legislative Council, the Speaker, Leader of the Opposition in the Karnataka Legislative Council and Leader of the Opposition in the Karnataka Legislative Assembly

Ref: Section 3.1, 3.2 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Selection Committee to select Member Chairperson and a Member:

1. Vice President of India
2. Prime Minister
3. Leader of the Opposition (in Lok Sabha)
4. Speaker of Lok Sabha
5. Chief Justice of India

(Member 3 is ex-officio i.e. Central Vigilance Commissioner)

Ref: 4.3.15 of Chapter 4 of Fourth Report of the 2nd Administrative Reforms Commission (ARC)

Independent Commission Against Corruption Ordinance, Hong Kong

The Commissioner and Deputy Commissioner of ICAC are appointed by the State Council of the People's Republic of China, on the recommendations of the Chief Executive of Hong Kong.

Ref: Article on Independent Commission against Corruption Ordinance, Wikipedia

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

Elected by the Riksdag

Issue 4 - Jurisdiction of Lokpal

The Lokpal Bill, 2010

- Lokpal's ambit covers public functionaries – defined as all current and former MPs and Union Ministers.
- Prime Minister excluded on issues of national security, maintenance of public order, national defense and foreign relations
- Lokpal may inquire into any act or conduct of **any person other than a public functionary** in so far as it considers it necessary so to do for the purpose of its inquiry into any such allegations of corruption
- President, Vice President, Speaker and Deputy Speaker of Lok Sabha, Deputy Chairperson of Rajya Sabha excluded
- Higher Judiciary excluded
- Other Constitutional Authorities – Comptroller and Auditor General, Attorney General, Chairpersons and members of SC, ST Commissions, Election Commission, UPSC - are excluded

Ref: Section 10.1, 10.2, 28 of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Lokpal to have jurisdiction over

1. The Prime Minister;
2. Ministers;
3. Members of Parliament;
4. Judges of High Courts and Supreme Courts;
5. Government servants;
6. The Chairmen or Vice-Chairmen (by whatever name called) or members of local authorities in the control of the Central Government or a statutory body or corporation established by or under any law of the Parliament of India,
7. All those who are declared as "public servants" in section 2(c) of Prevention of Corruption Act 1988; all offences covered under the Prevention of Corruption Act, 1988.
8. Other authorities as the Central Government may, by notification, specify

Any other person benefitting from corruption/violation of law/rules are also covered along with public servants.

Ref: Section 8, 16, 18 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta has jurisdiction over:

1. Chief Minister and Ministers
2. Members of the State Legislature
3. Chairman, Vice-Chairman or members of local authorities, statutory or non-statutory body or Corporations established by or under any law of the State, including Cooperative Societies
4. All officers of the State Government
5. Any public servant with a monthly remuneration of more than rupees twenty thousand (to be revised from time to time)

Upalokayukta is given jurisdiction over the other public servants
Ref: Section 7 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

- **Prime Minister:** Lokpal / Rashtriya Lok Ayukta's ambit to exclude PM to preserve the Constitutional authority of PM and sovereignty & supremacy of Parliament
- Ambit includes all other Union Ministers, all Chief Ministers, all persons holding public office equivalent to Union Minister and MPs.
- **Higher Judiciary:** not under Lokpal
- **(Other) Constitutional Authorities:** not addressed by 2nd ARC
- **Chairpersons of both Houses:** not addressed by 2nd ARC
- **Chief Ministers:** to be covered by Lokpal (see above)
- **RBI :** not addressed by 2nd ARC

Ref: 4.3.15 of Chapter 4 of Fourth Report of the 2nd Administrative Reforms Commission (ARC)

Independent Commission Against Corruption Ordinance, Hong Kong

The ICAC has jurisdiction over

1. Any person holding an office of emolument, whether permanent or temporary, under the Government; and
1. The following persons
    - Any official of the Govt. appointed in accordance with the Basic Law
    - The Monetary Authority
    - Chairman of the Public Service Commission
    - Any member of the staff of the Commission
    - Any judicial officer holding a judicial office.

Ref: Section 2 of the Independent Commission against Corruption Ordinance, 1974

Offences by The Chief Executive also fall under the purview of the ICAC. The ICAC can refer matter involving offence suspected to have been committed by the Chief Executive to the Secretary for Justice

Ref: Section 4.2B, 5.4, 31AA of the Prevention of Bribery Ordinance, 1997

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

The Swedish Parliamentary Ombudsman
Has Jurisdiction Over:

1. State and municipal authorities,
2. Officials and other employees of these authorities,
3. Other individuals whose employment or assignment involves the exercise of public authority, insofar as this aspect of such activity is concerned,
4. Officials and those employed by public enterprises, while carrying out, on behalf of such an enterprise, activities in which through the agency of the enterprise the Government exercises decisive influence

Members of the Supreme Court and the Supreme Administrative Court

Does not have Jurisdiction Over:

1. Members of the Riksdag,
2. The Riksdag Board of Administration, the Riksdag's Election Review Board, the Riksdag's Complaints Board or the Clerk of the Chamber,
3. Members of the Governing Board of the Riksbank, members of the Executive Board of the Riksbank, except to the extent of their involvement in exercise of the powers of the Riksbank to make decisions in accordance with the Act on the Regulation of Currency and Credit (1992:1602),
4. The Government or Ministers,
5. The Chancellor of Justice, and
6. Members of policy-making municipal bodies.

An Ombudsman is not subject to the supervision of any other Ombudsman

Issue 5 - Powers of Lokpal in respect of Suo motu, complaints, investigations, search and seizures

The Lokpal Bill, 2010

Suo Motu:
The Lokpal cannot take up inquiries suo motu.
Lokpal can take up enquiries based on 'Memorandum of Complaints'.

Ref: Section 3.1, 28b of Govt. Lokpal bill, 2010

Investigations:
Lokpal may, for the purpose of dealing with any memorandum of complaints or any class of memorandum of complaints, **secure the services of any officer or employee** or investigating agency of the Central Government or a State Government with the concurrence of that Government.

Ref: Section 9.2, Chapter II of Govt. Lokpal bill, 2010

Search:
The Lokpal can authorize any officer subordinate to it, or any officer of an investigating agency to search for and to seize documents that the Lokpal believes are shall be useful or relevant to any inquiry under this Act.

Seizure:
Lokpal can seize and retain documents till the completion of inquiry.
Ref: Section 16.1 and 16.2, Chapter III of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Suo-Motu:
Lokpal, if in his recorded opinion deems any action to be subject of a grievance or an allegation, can investigate such action suo-motu.

Ref: Section 16 of Jan Lokpal Bill version 2.1

Investigations:
The Chairperson, members of Lokpal and the officers in investigation wing of Lokpal will be deemed to be police officers. The Lokpal will be deemed competent to investigate any offence under any other law in the same case.

Ref: Section 12 of Jan Lokpal Bill version 2.1

For the purpose of any investigation under the Code of Civil Procedure (including the preliminary inquiry), the Lokpal shall have all the powers of a civil court while trying a suit.

Ref: Section 10.2 of Jan Lokpal Bill version 2.1

Search:
Lokpal, may by a search warrant, authorize any Police officer not below the rank of an Inspector of Police to conduct a search or carry out an inspection

Ref: Section 9 of Jan Lokpal Bill version 2.1

Seizure:
The Lokpal can seize any such property, document, money, bullion, jewellery or other valuable article or thing found as a result of investigative search.

The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply here.
Ref: Section 9 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Suo Motu Investigation:
Lokayukata is to act on complaints, allegations and grievances against public servants. (Additionally, Section 9(3)(a) of The Karnataka Lokayukta Act, 1984 refers to The Lokayukta/ Upalokayukta initiating an investigation suo motu.)

Search and Seizure:
The Lokayukta can, by a search warrant authorize a Police officer not below the rank of an Inspector of Police to conduct a search operation. The Code of Criminal Procedure, 1973, shall apply to searches and seizures conducted

Ref: Section 10 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)
Uniform model for Lokpal and Lok Ayuktas envisaged by ARC including supervision and monitoring of investigation agencies by them through Vigilance Commissions that are a part of the Lokpal / Lok Ayuktas; suo motu investigative powers, powers to search and seize are implicit.

Ref: Chapter 4 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

Suo-Motu:
The duty of the Commissioner is to investigate any conduct of a prescribed officer which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the Chief Executive.

Ref: Section 12(c) of the Independent Commission against Corruption Ordinance, 1974

Investigations:
It shall be the duty of the Commissioner, on behalf of the Chief Executive, to receive and consider complaints alleging corrupt practices and investigate such of those complaints as he/she considers practicable.

Ref: Section 12(a) of the Independent Commission against Corruption Ordinance, 1974

The Commissioner or an investigating officer may, for the purpose of an investigation relating to an offence suspected to have been committed by any person, make an ex-parte application to the Court of First Instance in chambers for an order for investigation.

Ref: Section 14 of the Prevention of Bribery Ordinance, 1997

Search and Seizure:
An officer of the ICAC may-

- search any person if he reasonably suspects that such person is guilty of any offence
- seize and detain anything which such officer has reason to believe to be or to contain evidence of any offence

Ref: Section 10C of the Independent Commission against Corruption Ordinance, 1974

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

Suo Motu/Complaints:
An Ombudsman may authorize some other person to administer an inquiry which he has decided to initiate and to institute and prosecute legal proceedings he has decided on, unless these measures concern a member of the Supreme Court or the Supreme Administrative Court.

Ref: Section 22, The Act with Instructions for the Parliamentary Ombudsmen - Sweden

Issue 6 - Nature of complaints to be entertained

The Lokpal Bill, 2010

Lokpal shall inquire into corruption

- Based on Memorandum of Complaints against public functionaries (Members of Parliament and Union Ministers) following the recommendations/reference of the Speaker of Lok Sabha or the Chairman of Rajya Sabha
- Allegations of corruption against any other person

Memorandum of Complaints cannot be made by a public servant (Union, State Government employees etc.)

Ref: Section 10.2, 12 Chapter III of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Lokpal shall be responsible for receiving:

1. Complaints where there are allegations of acts of omission or commission punishable under the Prevention of Corruption Act
2. Complaints where there are allegations of misconduct by a government servant,
3. Grievances
4. Complaints from whistleblowers
5. Complaints against the staff of Lokpal

Ref: Section 8.1 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta may investigate any action taken by or with the approval of

1. Chief Minister
2. Minister
3. Member of State Legislature
4. Chairman and Vice-Chairman or member of an authority, board, or a committee, a statutory or non-statutory body or a corporation established by or under an law of the State Legislature including a society, cooperative society or a Government company within the meaning of section 617 of the Companies Act, 1956, nominated by the State Government;
5. Any public servant with a monthly remuneration of more than rupees twenty thousand (to be revised from time to time)

Upalokayukta is given jurisdiction over the other public servants

Ref: Section 7 of The Karnataka Lokayukta Act, 1984

Grievances:

Complaints on grievances, administrative actions, improper exercise of discretion, etc. can also be taken up.

Ref: Section 7, 8, 9 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Lokpal / Rashtriya Lok Ayukta to deal with 'political corruption' – complaints against MPs and Union Ministers. This also includes all cases of corruption involving MPs and Ministers, having element of collusion/connivance by officials.

Corruption complaints against officials to be continued to be dealt with departmentally and by CVC and CBI. CVC is an integral, organic part of Lokpal (as ex-officio member).

Rank of officials against whom complaints are made: As along as MPs and Union Ministers are involved, all cases involving any collusion/connivance of officials are to be covered by Lokpal *(4.3.3 of said ARC Report)*. Otherwise corruption by only officials to be covered by CVC-CBI mechanism with enhanced scope of offences and penalties/ punishments *(Chapter 3 of the said ARC Report)*.

Quantum of corruption involved in respect of lower officials: petty cases of corruption against junior functionaries not envisaged by 2nd ARC to be covered by Lokpal / Lok Ayukta *(4.4.6 of said ARC Report)*.

Actions which establish 'intent' of corruption: Prevention of Corruption Act (1988) to be amended to include 'willful' abuse of office and authority amounting to corrupt acts. Acts of 'Collusive Bribery' to be separately defined in PCA (1988), involving loss to state, public or public interest, whether intended or otherwise.

Grievances: Lokpal / Lok Ayukta not envisaged by 2nd ARC to cover grievance redressal *(4.4.9 of said ARC Report)*; to be covered by citizen-centered administrative reforms and appropriate grievance redressal mechanisms *(Twelfth Report of the 2nd ARC)*.

Wasteful expenditure: Prevention of Corruption Act (1988) to be amended to include squandering of public money, wasteful expenditure (even if without direct pecuniary gain to the official) and causing loss to state exchequer or citizens. *(3.2.1.7, 3.2.1.10 and 3.2.4.3 of said ARC Report)*

Non-transparent, non-competitive procedures: not included in the ambit of the recommended Lokpal

Independent Commission Against Corruption Ordinance, Hong Kong

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage as defined in the Prevention of Bribery Ordinance, 1997 is considered to have committed an offence under this ordinance.

Ref: Section 10.5 of the Prevention of Bribery Ordinance, 1997
The nature of complaints dealt with, by the ICAC, are specified in Sections 4 through Section 11 of the

Prevention of Bribery Ordinance, 1997

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

The Ombudsmen are to ensure that that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government about objectivity and Impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

Ref: Section 3, The Act with Instructions for the Parliamentary Ombudsmen

Issue 7 - Recommendations of a general nature and monitoring e.g., Citizen's charter

The Lokpal Bill, 2010

…

Jan Lokpal Bill, 2.1

Citizen's Charters, maladministration, grievances are covered.
Ref: Section 21 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

…

2nd Administrative Reforms Commission (ARC)

Lokpal / Rashtriya Lok Ayukta not envisaged by the ARC to deal with service delivery issues including Citizen's Charters.

Independent Commission Against Corruption Ordinance, Hong Kong

Grievances are also covered.

Ref: Section 4 to 11 of The Prevention of Bribery Ordinance, 1974

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

The Ombudsmen can contribute to remedying the deficiencies in legislation. They may do so by making appropriate representations to the Riksdag or the Government.

Ref: Section 4, The Act with Instructions for the Parliamentary Ombudsmen

Issue 8 - Relationship with CVC and coordination

The Lokpal Bill, 2010

Lokpal may, for the purpose of dealing with any memorandum of complaints or any class of memorandum of complaints**, secure the services of any officer or employee or investigating agency of the Central Government**, State Government or **any other agency**

Ref: Section 9.2, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

The Central Vigilance Commission Act shall stand repealed.
All vigilance administration under the control of all Departments of Central Government shall be transferred to Lokpal

Ref: Sections 24.1 and 24.5 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Statement of Objects and Reasons states “The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will be transferred to the Lokayukta.”

Ref: The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

CVC to be a seamlessly integral, organic part of Lokpal; Chief Vigilance Commissioner is an ex-officio member of Lokpal. CVC to enjoy full functional autonomy, while working under the overall guidance and superintendence of Lokpal.

Delineation of functional jurisdictions: Lokpal / Rashtriya Lok Ayukta to deal with ‘political corruption’ – complaints against MPs and Union Ministers. This also includes all cases of corruption involving MPs and Ministers, having element of collusion/connivance by officials; in such cases the public servants too are enquired upon by Lokpal. Corruption complaints against officials to be continued to be dealt with by CVC and CBI.

Issue 9 - Role of CBI

The Lokpal Bill, 2010

Lokpal may, for the purpose of dealing with any memorandum of complaints or any class of memorandum of complaints**, secure the services of any officer or employee or investigating agency of the Central Government,** State Government or any other agency

Ref: Section 9.2, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

The anti-corruption wing of CBI shall be transferred to the Lokpal for all purposes and shall form part of Investigation Wing of Lokpal.

Ref: Sections 25.2 – 25.4 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta has a police wing under it, which assists it in investigations.
Ref: Karnataka Lokayukta Website, http://lokayukta.kar.nic.in/index.asp
Additionally, the Lokayukta, for the purpose of investigation, can utilize the services of an officer or investigating agency of the state government or Central Government (with prior concurrence) or any other person or any other agency

Ref: Section 15 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Anti-Corruption Wing (and others) of CBI to be under the monitoring and supervision of the CVC, which is an integral part of Lokpal.

Issue 10 - Should Lokpal have its own investigation machinery? If so, how to structure it?

The Lokpal Bill, 2010

Lokpal may, for the purpose of dealing with any memorandum of complaints or any class of memorandum of complaints**, secure the services of any officer or employee or investigating agency of the Central Government,** State Government or any other agency

Ref: Section 9.2, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Lokpal is to have an investigation wing that is given the powers of police officers. This investigation wing is made competent to investigate any offence under any other law related to a case.

Ref: Sections 12 of Jan Lokpal Bill version 2.1

Also see previous issue.

Ref: Sections 25.2 – 25.4 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta has a police wing under it, which assists it in investigations.

Ref: Karnataka Lokayukta Website, http://lokayukta.kar.nic.in/index.asp

Additionally, the Lokayukta, for the purpose of investigation, can utilize the services of an officer or investigating agency of the state government or Central Government (with prior concurrence) or any other person or any other agency

Ref: Section 15 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Lokpal would have overall supervisory and monitoring responsibilities over investigation (CBI) through CVC, which is an integral part of Lokpal and would have full functional autonomy (as per the provisions of CVC Act, 2003).

Ref: Chapter 4 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong

Kong

Officers of the ICAC have investigative powers.
Ref: Section 12(a) of the Independent Commission against Corruption Ordinance, 1974

The Commissioner or an investigating officer may, for the purpose of an investigation relating to an offence suspected to have been committed by any person, make an ex-parte application to the Court of First Instance in chambers for an order for investigation.

Ref: Section 14 of the Prevention of Bribery Ordinance, 1997

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

The Ombudsmen are involved only in inquiry.

Issue 11 - Powers for removal of Civil Servants

The Lokpal Bill, 2010

…

Jan Lokpal Bill, 2.1

Removal of Civil Servants:
Lokpal is empowered to conduct enquiry, to investigate and prosecute public servants and impose penalties including dismissal. Such orders made by Lokpal shall be binding on the government.

Ref: Section 8(5) of Jan Lokpal Bill version 2.1

After Lokpal has investigated a complaint and found that the complaint against a public servant, other than the Ministers, Members of Parliament and judges, is substantiated, the Lokpal shall pass orders to the effect of preventing him/her from continuing to hold the post held by him/her.

In case of public servant being a Minister or a Member of Parliament, Lokpal shall make such recommendation to the President, who shall decide either to accept such recommendation or reject it within a month of its receipt.

The above provisions do not apply to the Prime Minister.

Ref: Section 18(viii) of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Removal of Civil Servants:
If the allegation against a public servant is substantiated and he is proven guilty, the Lokayukta can pass orders that can prevent him from continuing to hold the post held by him.

This includes Government servants in the Karnataka State Civil Services.

Ref: Section 13 of The Karnataka Lokayukta Act, 1984

Relationship with UPSC:
If the public servant is a member of an All India Service as defined in section 2 of the All India Services Act, 1951, the state government shall take action to keep him under suspension in accordance with the rules or regulations applicable to his service.

Ref: Section 13 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Current, explicit constitutional 'protection' provisions to civil servants (Articles 310 and 311) amount to 'inordinate protection' of even corrupt civil servants.

Rights of a civil servant under Constitution to be made subordinate to the overall public interest and the contractual rights of the State.

Further, rule of law is an integral part of the basic structure of the Constitution. Therefore civil servants of Union and State would not need additional, explicit "protection" under Articles 310 and 311.

Appropriate legislation under Article 309 to replace above for protecting *bona fide* acts of public servants in public interests.

Ref: Chapter 3.10.24 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

Removal of Civil Servants:
Where a person has been convicted of an offence, a court may, on the application of the prosecution or on its own motion, order that the convicted person be prohibited from taking or continuing employment.

Ref: Section 33A of the Prevention of Bribery Ordinance, 1997

Removal of Executive:
If the Commissioner has reason to suspect that the Chief Executive has committed an offence, the Commissioner may refer the matter to the Secretary for Justice who may refer the matter to the Members of the Legislative Council for them to take action under Basic Law

Ref: Section 31AA of the Prevention of Bribery Ordinance, 1997

Relationship with UPSC:
The ICAC is independent of the Hong Kong Civil Service.

Ref: Article on Independent Commission against Corruption Ordinance, Wikipedia

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

Removal of officials:
Should the Ombudsmen consider it necessary that the official be dismissed or temporarily deprived of his office because of criminal acts or gross or repeated misconduct, the Ombudsman may report the matter to those empowered to decide on such a measure.

Ref: Section 21, The Act with Instructions for the Parliamentary Ombudsmen - Sweden

---

Issue 12 - Is a constitutional amendment needed as it might affect part XIV of the Constitution?

Jan Lokpal Bill, 2.1

…

The Karnataka Lokayukta Act, 1984

…

2nd Administrative Reforms Commission (ARC)

Rights of a civil servant under Constitution made subordinate to the overall public interest and the contractual rights of the State - **Articles 311 and 310 of Part XIV of Constitution to be repealed.**

Appropriate legislation under Article 309 to replace above for protecting bona fide acts of public servants in public interest.

Ref: Chapter 3.10.24 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

Not Applicable

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

Not Applicable

Issue 13 - Amendments required in Prevention of Corruption Act, 1988, regarding enlarging the definition of corruption

The Lokpal Bill, 2010

Increasing Punishment:
Not mentioned

Enlarging the definition of Corruption:
Not mentioned

Confiscation of properties of Public servants:
Not mentioned

Sanction of prosecution of officials:
Not mentioned

Establishment of special courts whenever Lokpal recommends:
Not mentioned

Jan Lokpal Bill, 2.1

Increasing Punishment:
The punishment shall not be less than two years of rigorous imprisonment and may extend up to life imprisonment. If the accused is an officer of the rank of Joint Secretary or above or a Minister, a member or Chairperson of the Lokpal, the punishment shall not be less than ten years of imprisonment. Provided further that if the offence is deemed a case of “Corruption” and if the beneficiary is a business entity, in addition to other punishments mentioned in this Act and under the Prevention of Corruption Act, a fine amounting to five times the loss caused to the public shall be recovered from the accused and the recovery may be done from the assets of the business entity and from the personal assets of all its Directors, if the assets of the accused are inadequate.

Ref: Section 19A of Jan Lokpal Bill version 2.1

Enlarging the definition of Corruption:
Not mentioned

Confiscation of properties of Public servants:
Properties obtained by a public servant through corrupt means can be confiscated by Lokpal.

Ref: Section 28A of Jan Lokpal Bill version 2.1

Sanction of prosecution of officials:

Sanction of prosecution of officials is not required.
Ref: Section 8 (6), 8 (7) of Jan Lokpal Bill version 2.1

Establishment of special courts whenever Lokpal recommends:
On an annual basis, the Lokpal shall make an assessment of the number of Special Judges required under section 4 of the Prevention of Corruption Act 1988 in each area and the Government shall appoint such number of Judges within three months of the receipt of such recommendation.

Ref: Section 13A of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Sanction of prosecution of officials:
Lokayukta is empowered to sanction prosecution of officials.

Ref: Section 14 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

Enlarging the definition of corruption: the following to also be classified as offences under PCA, 1988:
1. Abuse of office and authority (even if no direct pecuniary gain to the public official)
2. Obstruction of justice
3. Squandering public money/ wasteful public expenditure
4. Gross perversion of Constitution/democratic institutions
5. 'Collusive Bribery' causing loss to state, public or public interest to be made a special offence

Ref: 3.2 of the Fourth Report of the 2nd ARC

Increasing punishment: Punishment for 'collusive bribery' to be double that of other bribery cases. Also, courts to presume 'collusive bribery' in cases of loss to state or public due to an act of a public servant.

In addition to penalty in criminal cases, PCA, 1988 to be amended by adding a chapter providing for civil liability of corrupt public servants; convicted public servants liable for loss to the state and damages, both.

Ref: 3.2.4 of the Fourth Report of the 2nd ARC

Recommends confiscation of properties illegally acquired by corrupt means by enacting The Corrupt Public Servants (Forfeiture of Property) Bill, suggested by Law Commission.

Ref: 3.4.10 of the Fourth Report of the 2nd ARC

Sanction of prosecution of officials:
1. All sanctions for prosecutions (or otherwise) to be Issued within two months. In cases of refusal, reasons should be placed before the respective legislature annually.
2. Prior sanction not necessary for prosecuting public servant trapped red-handed or in cases of possessing assets disproportionate to known sources of income.
3. Where Govt. of India is the sanctioning authority, this power should be delegated to an Empowered Committee comprising Central Vigilance Commissioner and Departmental

Secretary to Govt. If the official sought to be prosecuted is the Secretary, then the Empowered Committee to be CVC and Cabinet Secretary.

4. PCA, 1988 to be amended to eliminate summoning of sanctioning authorities; instead documents can be produced before courts
5. Presiding Officer of respective Houses of Legislature to be designated sanctioning authority for MPs, MLAs and MLCs.
6. Legislative immunity not to include corrupt acts committed by legislators, in the House or otherwise.
7. Prior sanction protection to apply for retired public servants also.

Ref: 3.2.3 of the Fourth Report of the 2nd ARC

Special Courts:

1. Declaring judges as Special Judges as per the provisions of the PCA, 1988; Special Judges to be dedicated to PCA cases.
2. Time limit for various stages of trial to be fixed by amending CrPC
3. Proceedings to be held on a day-to-day basis with no deviations.
4. Supreme Court and High Courts to lay down additional guidelines for speedy trials

Ref: Chapter 3.2.5 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

Increasing Punishment:

Any person guilty of an offence shall be liable on conviction

1. for possession of unexplained property, to a fine of $1000000 and to imprisonment for 10 years
2. for bribery in regards to contracts, to a fine of $500000 and to imprisonment for 10 yrs
3. for any other offence defined in the Ordinance, to a fine of $500000 and to imprisonment for 7 years

Ref: Section 2 of the Prevention of Bribery Ordinance, 1997

Enlarging the definition of Corruption:

The following have been defined as an “advantage” in the Ordinance:

- Any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description
- Any office, employment or contract
- Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part
- Any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted
- The exercise or forbearance from the exercise of any right or power or duty
- Any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs

Ref: Section 2 of the Prevention of Bribery Ordinance, 1997

- A person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- A person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence.

Ref: Section 2(2) of the Prevention of Bribery Ordinance, 1997

The ICAC has also enlarged the definition of bribery.

Ref: Section 4-11 of the Prevention of Bribery Ordinance, 1997

Sanction of prosecution of officials:
Prosecution for an offence established shall be instituted only with the consent of the Secretary for Justice.

Ref: Section 31 of the Prevention of Bribery Ordinance, 1997

Confiscation of properties of Public servants:
Where a person is convicted on indictment of an offence under non explanation of property possessed, the court may order the confiscation of any pecuniary resources or property-
(a) found at the trial to be in his control that are unexplained
(b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

Ref: Section 12AA of the Prevention of Bribery Ordinance, 1997

Bihar Special Courts Act, 2009

The Act has provided a clause for the confiscation of illegitimate assets of public servants if they fail to provide satisfactory proofs within 30 days of receiving notice.

Issue 14 - Changes in Executive Orders (e.g. Single Directive of CBI)

The Lokpal Bill, 2010

…

Jan Lokpal Bill, 2.1

Not Required

Ref: Section 8 (6) of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Lokayukta to forward a copy of the complaint to the competent authority concerned in complaints against public servants

Ref: Section 13 of The Karnataka Lokayukta Act, 1984

2nd Administrative Reforms Commission (ARC)

1. Permission to enquire/investigate officials at the level of Joint Secretary and above (under Sec.6A of the Delhi Special Police Establishment Act, 1946) required to protect honest officers and prevent excessive enquiries.
2. However, the permission required should be given by the Central Vigilance Commissioner in consultation with the concerned Secretary. In case of investigation against the Secretary, permission should be given by Cabinet Secretary and Central Vigilance Commissioner; amending DSPEA, 1946 required.
3. In the interim, powers of Union Government may be delegated to Central Vigilance Commissioner.
4. Time limit of 30 days recommended for processing permission.

Ref: 3.8 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

…

The Act with Instructions for the Parliamentary Ombudsmen - Sweden

…

Issue 15 - Appointments of independent and effective prosecutors in anti-corruption cases

The Lokpal Bill, 2010
Not Mentioned

Jan Lokpal Bill, 2.1
Refer to Previous Issue

The Karnataka Lokayukta Act, 1984
…

2nd Administrative Reforms Commission (ARC)

Strengthening Prosecution
1. Prosecution of corruption cases to be conducted by a panel of lawyers prepared by the Attorney General, in consultation with Lokpal/Rashtriya Lok Ayukta.
2. Vigilance Commissions/ Lok Ayuktas to be empowered to supervise prosecution in corruption cases.

Ref: Chapter 4.6 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

The Commissioner may authorize, not without the authorization of the Court of First Instance obtained on ex parte in Chambers, in writing any officer to conduct an inquiry or examination for the purpose of performance of his functions. He may authorize in writing any investigating officer to investigate and inspect such accounts, books or documents or other articles of or relating to the person named or otherwise identified by the Commissioner.

Ref: Section 13.1 of the Prevention of Bribery Ordinance, 1997

Issue 16 - Speedy disposal of cases by Lokpal and anti-corruption courts - should timelines be imposed?

The Lokpal Bill, 2010

The Lokpal shall hold every inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of receipt of the memorandum of complaints:

Provided that the Lokpal may, for reasons to be recorded in writing, complete the inquiry within a further period of six months.

Ref: Section 14.3, Chapter III of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

Special Judges (as per the provisions of Prevention of Corruption Act 1988) can be appointed by the government based on Lokpal's assessment.

Ref: Section 13A of Jan Lokpal Bill version 2.1

The Jan Lokpal Bill has also laid down the following provisions for speedy disposal of cases

- Preliminary enquiry under possession of information regarding any act of Corruption should be completed within a month of receipt of complaint.
- Investigation into any allegation shall be completed within six months, and in any case, not more than one year, from the date of receipt of complaint.
- Trial in any case filed by Lokpal should be completed within one year. Adjournments should be granted in rarest circumstances.

Ref: Section 30 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

Not Mentioned

2nd Administrative Reforms Commission (ARC)

Speedy disposal by Special Judges (under PCA, 1988)

- Special Judges to be dedicated to PCA cases.
- Time limit for various stages of trial to be fixed by amending CrPC
- Proceedings to be held on a day-to-day basis with no deviations.
- Supreme Court and High Courts to lay down additional guidelines for speedy trials

Ref: 3.2.5 of the Fourth Report of the 2nd ARC

Independent Commission Against Corruption Ordinance, Hong Kong

A complaint may be made or an information laid in respect of an offence within 2 years from the time when the matter of such complaint or information respectively arose.

Ref: Section 13E of the Independent Commission against Corruption Ordinance, 1974

Bihar Special Courts Act, 2009

The Bihar Special Courts Act, 2009, has a provision for the constitution of special courts for the speedy trial of certain cases of offences related to corruption.

Issue 17 - Removal of members of Lokpal

The Lokpal Bill, 2010

The Chairperson or a Member of Lokpal cannot not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Committee consisting of the Chief Justice of India and two other Judges of the Supreme Court next to the Chief Justice in seniority, in which the Chairperson or the Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Ref: Section 7, Chapter II of Govt. Lokpal bill, 2010

Jan Lokpal Bill, 2.1

The Chairperson or any member shall not be removed from his office except by an order of the President on one or more of the following grounds:

1. Proved misbehavior
2. Professional, mental or physical incapacity
3. Insolvency
4. Being charged of an offence which involves moral turpitude
5. Engaging while holding such office, in any paid employment
6. Acquiring such financial interests or other interests, which are likely to affect his functions as member or Chairperson prejudicially.
7. Being guided by considerations extraneous to the merits of the case under his consideration with a view to favoring someone or implicating someone through any act of omission or commission.
8. Unduly influencing or attempting to influence any government functionary.
9. Committing any act of omission or commission which is punishable under Prevention of Corruption Act or is a misconduct.
10. If a member or the Chairperson in any way, concerned or interested in any contract or agreement made by or on behalf of any public authority in the Government of India or Government of any state or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall be deemed to be guilty of misbehavior.

Ref: Section 7 of Jan Lokpal Bill version 2.1

The Karnataka Lokayukta Act, 1984

The Lokayukta or Upalokayukta cannot be removed except by an order of the Governor passed after an address by each House of the State Legislature supported by a majority of the total membership of the House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

Procedure for investigation and enquiry against Lokayukta/Upalokayukta is prescribed on the lines of removal of Judges (Enquiry) Act, 1968.

Ref: Section 6 of The Karnataka Lokayukta Act, 1984

Independent Commission Against Corruption Ordinance, Hong Kong

The Commissioner may, if he is satisfied that it is in the interests of the Commission to do so, after consulting the Advisory Committee on Corruption, terminate the appointment of an officer.

Ref: Section 8.2 of the Independent Commission against Corruption Ordinance, 1974

The Karnataka Lokayukta Act, 1984

The Lokayukta or Upalokayukta cannot be removed except by an order of the Governor passed after an address by each House of the State Legislature supported by a majority of the total membership of the House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

Issue 18 - Can a single law provide for identical Lokayuktas in States (similar to RTI Act)

The Lokpal Bill, 2010

…

Jan Lokpal Bill, 2.1

…

2nd Administrative Reforms Commission (ARC)

Constitutional Amendment

1. Lokpal/Rashtriya Lok Ayukta at national level to be given Constitutional status
1. Constitutional amendment for mandatory establishment of Lok Ayuktas in States, with defined structure, powers and functions; details to be governed by Parliamentary law.

Ref: Chapter 4 of the Fourth Report of the 2nd ARC

The Karnataka Lokayukta Act, 1984

…

Independent Commission Against Corruption Ordinance, Hong Kong

…

The Act with Instructions for the Parliamentary Ombudsmen – Sweden

…