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Andhra Pradesh New Lokayukta

Draft Bill - 2012

Dr. Jayaprakash Narayan

**THE ANDHRA PRADESH
NEW
LOKAYUKTA
DRAFT BILL, 2012**

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THE ANDHRA PRADESH LOKAYUKTA BILL, 2012

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THE ANDHRA PRADESH LOKAYUKTA BILL, 2012

A BILL

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

CHAPTER I

PRELIMINARY

1. Short title, extent, application and commencement:-

- (1) This Act may be called the Andhra Pradesh Lokayukta Act, 2012.
- (2) It extends to the whole of the state of Andhra Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint;

2. Definitions:-

- (1) In this Part unless the context otherwise requires,—
 - (a) “Anti-Corruption Bureau” means the Anti-Corruption Bureau set up by the Government of Andhra Pradesh;

- (b) “Bench” means a Bench of the Lokayukta;
- (c) “Chairperson” means the Chairperson of the Lokayukta;
- (d) “competent authority”, in relation to—
 - (i) the Chief Minister, means the Legislative Assembly;
 - (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 the Council; and
 - (B) in the case of a member of the Legislative Assembly, the Speaker of the 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 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 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 the Council; and

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

(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) “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 3;

(i) “Ombudsman” means the officers appointed by Lokayukta as per the provisions in section 17 of this Act;

(j) “Member” means a Member of the Lokayukta;

(k) “Minister” means Minister of a State Government but does not include the Chief Minister;

- (l) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
 - (m) “investigation” means an inquiry conducted under this Act by the Lokayukta;
 - (n) “prescribed” means prescribed by rules made under this Act;
 - (o) “public servant” means a person referred to in clauses (a) to (g) of subsection (1) of section 14;
 - (p) “regulations” means regulations made under this Act;
 - (q) “rules” means rules made under this Act;
 - (r) “Schedule” means a Schedule appended to this Act;
 - (s) “Special Court” means the court of a Special Judge appointed under subsection (1) of section 3 of the Prevention of Corruption Act, 1988.
- (2) The words and expressions used herein and not defined in this part but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

CHAPTER II

ESTABLISHMENT OF LOKAYUKTA

3. Establishment of Lokayukta:-

- (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 investigation and prosecution in respect of complaints made under this Act, a body to be called the “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 less than two and not exceeding four 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, Minorities 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.

4. Appointment of Chairperson and Members and on recommendation of Selection Committee:-

(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 Andhra Pradesh or a Judge of the High Court nominated by him — member;

- (e) an eminent jurist selected by a committee comprising the above Chairperson and members of the Selection Committee according to above sub-sections (1)(a) to (1)(d) — 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 may, 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 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:

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, Minorities and women:

Provided further that the 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 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.

5. Filling of vacancies of Chairperson or Members:-

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.

6. Term of office of Chairperson and Members:-

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:

Provided that he may—

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

7. Salary, allowances and other conditions of service of Chairperson and Members:-

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:

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
- (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.

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

- (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible

for—

- (i) re-appointment as the Chairperson or a Member of the Lokayukta;
- (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 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.

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

- (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.
- (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.

10. Secretary, other officers and staff of Lokayukta:-

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

- (3) 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 salaries, allowances, leave or pensions, require the approval of the Governor.

CHAPTER III

INVESTIGATION AGENCY

11. Anti-Corruption Bureau as the Investigation Agency of Lokayukta

- (1) The Anti-Corruption Bureau shall function as the investigation agency of the Lokayukta.
- (2) The State Government shall appoint the Director-General of the Bureau on the recommendation of the Committee consisting of—
- (a) the Chief Minister — Chairperson;
 - (b) the Leader of Opposition in the Legislative Assembly — Member;
 - (c) the Chief Justice of the High Court of Andhra Pradesh or a Judge of the High Court nominated by him — Member.

Provided that the Director-General before the commencement of this Act, shall continue to discharge his function and exercise powers conferred upon them until his term expires.

- (3) The appointment, extension or curtailment of the tenure of officers to the posts of the level of Deputy Superintendent and above except the Director-General shall be done by a committee comprising the Chairperson of the Lokayukta, the Chief Secretary of the State Government and Director-General of Anti-Corruption Bureau.
- (4) 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 Anti-Corruption Bureau.
- (5) The Lokayukta shall, from time to time, assess the requirements of personnel, training and technical capacities of the Anti-Corruption Bureau and make appropriate recommendations to the State Government.
- (6) The recommendations made under sub-section (5) shall ordinarily be accepted and complied with, by the State Government at the earliest. In case, there is any non-compliance, the State Government shall place the matter before the State Legislature, with reasons for non-compliance.

CHAPTER IV

PROSECUTION WING

12. Appointment of Director of prosecution:-

- (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:

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.

- (2) There shall be a Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Chairperson in consultation with the Chief Justice of the High Court, from the judiciary or the State Prosecution Wing or the Bar Council of Andhra Pradesh.
- (3) 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.
- (4) The report under sub-section (3) 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 LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF STATE

13. Expenses of Lokayukta to be charged on Consolidated Fund of State:-

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.

CHAPTER VI

JURISDICTION OF LOKAYUKTA

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

(1) Subject to the other provisions of this Act, the Lokayukta shall investigate or cause an investigation 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:—

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

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

(i) in so far as it relates to public order;

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

Provided further that any such inquiry shall be held *in camera* and if the Lokayukta 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;

(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;

- (d) any person who is holding or held an elected or nominated office in all the local authorities;
- (e) 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;
- (f) 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;
- (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 State Government and the annual income of which exceeds such amount as the State Government may by notification specify;

Explanation.—For the purpose of clause (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:

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:

- (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.

- (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):

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.

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

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.

16. Decision to be by majority:-

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.

17. Appointment of Ombudsman for each district and municipal corporation:-

- (1) Lokayukta may, appoint an Ombudsman for each district and municipal corporation, for dealing with complaints related to corruption under this Act and delegate jurisdiction over certain types of corruption cases or over a range of public servants to the Ombudsmen, as it deems fit.
- (2) The Ombudsmen shall be drawn from the current or retired personnel of the judiciary or the government, or persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance and management, or in any other matter which, in the opinion of the Lokayukta, may be useful in exercising the functions delegated to Ombudsmen:

Provided that Lokayukta shall make these appointments in consultation with the High Court in respect of officers drawn from the judiciary or the Chief Secretary of the State in respect of officers drawn from the Government, as the case may be.

CHAPTER VII

PROCEDURE IN RESPECT OF INVESTIGATION

18. Provisions relating to complaints and investigation:-

- (1) The Lokayukta shall, on either *suo motu* or 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 an investigation as it deems fit for proceeding in the matter:

Provided that Lokayukta shall have the discretion to prioritise complaints based on an economic criterion of the scale of corruption or an institutional criterion of the significance of the institution in the scheme of governance or a social criterion of number of citizens negatively affected by the alleged acts of corruption or any other criterion of public interest or a combination thereof:

Provided further that Lokayukta shall record the reasons in writing whenever such discretion has been used to prioritise complaints.

- (2) In case the Lokayukta decides to proceed to investigate into the complaint, it shall direct the Anti-Corruption Bureau to carry out the investigation as expeditiously as possible and complete the investigation and submit an investigation report 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 not exceeding six months at a time for the reasons to be recorded in writing.

- (3) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, the Anti-Corruption Bureau shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

- (4) The Lokayukta shall consider every report received by it under sub-section (2) from the Anti-Corruption Bureau 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 servants by the competent authority.
- (5) The Lokayukta may, after taking a decision under sub-section (4) 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 Anti-Corruption Bureau; or
 - (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.
- (6) The Lokayukta may, during the investigation or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the investigation or, as the case may be investigation as it deems fit.
- (7) The website of the Lokayukta shall, from time to time not exceeding an interval of three months and in such manner as may be specified by regulations, display to the public, the details of each case including the date of receipt of the complaint, initiation and completion of investigation, initiation and completion of investigation and initiation of prosecution, and the summary of complaints pending before it or disposed of by it.

- (8) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of investigation or conduct of a case by it or by the Special Court.
- (9) Save as otherwise provided, the manner and procedure of conducting an 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.

19. Persons likely to be prejudicially affected to be heard:-

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 to be prejudicially affected by the investigation,

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

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

Subject to the provisions of this Act, for the purpose of any investigation, the Lokayukta or the Anti-Corruption Bureau, 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 investigation, to furnish any such information or produce any such document.

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

- (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 investigation by the Anti-Corruption Bureau or for filing of any charge sheet or closure report on completion of investigation in respect thereof any complaint against any public servant or *suo motu* action taken by Lokayukta before the Special Court under this Act.
- (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.
- (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.

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

Where, after the conclusion of the 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) or clause (c) of sub-section (1) of section 14, 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.

23. Action on inquiry in relation to public servants not being Chief Minister, Ministers or Members of State Legislature:-

- (1) Where, after the conclusion of the 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 (d) or clause (g) of sub-section (1) of section 14, the Lokayukta may—
 - (a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority;
 - (b) recommend to the competent authority the initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;
 - (c) provide a copy of the report to the public servant or his representative.
 - (d) recommend to the competent authority/appointing authority to impose a punishment of dismissal or removal or reduction in rank on a public servant if he is satisfied that the evidence warrants such an action on grounds of commission of an offence or misconduct, or willful omission to perform a duty or gross incompetence in preventing an offence or misconduct:

Provided further that no such recommendation shall be made without giving such public servant a reasonable opportunity of being heard according to Article 311(2) of the Constitution:

Provided further that such a recommendation of Lokayukta shall be binding on the appointing authority, and such a public servant shall be awarded the punishment forthwith without further enquiry.

- 2) The competent authority shall, within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Lokayukta ordinarily within six months of initiation of such disciplinary proceedings.

CHAPTER VIII

POWERS OF LOKAYUKTA

24. Search and seizure:-

- (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.
- (2) If the Lokayukta 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:

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.

25. Lokayukta to have powers of civil court in certain cases:-

(1) Subject to the provisions of this section, for the purpose of any investigation, the Anti-Corruption Bureau 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:—

(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;

(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

(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.

26. Power of Lokayukta to utilise services of officers of State Government:-

- (1) The Lokayukta may, for the purpose of conducting any investigation, utilise the services of any officer or organisation or investigation agency of the State Government.
- (2) For the purpose of investigation 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,-
 - (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 investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

27. Provisional attachment of assets:-

- (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—
 - (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, 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 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.

28. Confirmation of attachment of assets:-

- (1) The Lokayukta, when it provisionally attaches any property under sub-section (1) of section 27 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 relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the State Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

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.

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

- (1) Without prejudice to the provisions of sections 27 and 28, 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 the interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

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

- (1) Where the Lokayukta, while making an investigation 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 (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the investigation is likely to affect such investigation 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 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.

31. Power of Lokayukta to give directions to prevent destruction of records during investigation:-

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

32. Power to delegate:-

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.

33. Power to institute a reward scheme to encourage complaints

The Lokayukta shall have the power to prepare an appropriate reward scheme to encourage complaints from within and outside the government to report acts and evidence of corruption.

CHAPTER IX

SPECIAL COURTS

34. Special Courts to be notified by State Government:-

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

35. Letter of request to a contracting State in certain cases:-

- (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokayukta 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 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; 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 appropriate Government may prescribe in this behalf.
- (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 investigation.

CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKAYUKTA

36. Removal and suspension of Chairperson and Members of Lokayukta:-

- (1) The Lokayukta 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 Governor on grounds of misbehaviour after the Supreme Court, on a reference being made to it—
 - (i) by the Governor; or
 - (ii) by the Governor on a petition being signed by at least one hundred Members of Legislature; or
 - (iii) by the Governor on receipt of a petition made by a citizen of India and where the Governor 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.

- (3) The Governor 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 Governor has passed orders on receipt of the report of the Supreme Court on such reference.
- (4) Notwithstanding anything contained in sub-section (2), the Governor 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
 - (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 Governor, 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 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.

37. Complaints against officials of Lokayukta:-

- (1) Every complaint of allegation or wrongdoing made against any officer or employee of Lokayukta or Anti-Corruption Bureau for an offence punishable under the Prevention of

Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

- (2) The Lokayukta 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 Lokayukta or agency engaged or associated with the Lokayukta, if it is *prima facie* satisfied on the basis of evidence available, that—
 - (a) continuance of such officer or employee of the Lokayukta 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 Lokayukta or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokayukta may, by order, suspend such officer or employee of the Lokayukta or divest such agency engaged or associated with the Lokayukta of all powers and responsibilities hereto before exercised by it.
- (4) On the completion of the inquiry, if the Lokayukta is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of 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 Lokayukta or such officer, employee, agency engaged or associated with the Lokayukta and initiate disciplinary proceedings against the official concerned:

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

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

38. Assessment of loss and recovery thereof by Special Court:-

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:

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.

CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

39. Budget:-

The Lokayukta 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 Lokayukta and forward the same to the State Government for information.

40. Grants by State Government:-

The State Government may, after due appropriation made by Legislature by law in this behalf, make to the Lokayukta 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 Lokayukta.

41. Annual statement of accounts:-

- (1) The Lokayukta shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Accountant General.
- (2) The accounts of the Lokayukta shall be audited by the Accountant General at such intervals as may be specified by him.
- (3) The Accountant General or any person appointed by him in connection with the audit of the accounts of the Lokayukta under this Act shall have the same rights, privileges and authority in connection with such audit, as the Accountant General 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 Lokayukta.
- (4) The accounts of the Lokayukta, as certified by the Accountant General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government and the State Government shall cause the same to be laid before State Legislative Assembly.

42. Furnishing of returns, etc., to State Government:-

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

CHAPTER XIII

DECLARATION OF ASSETS

43. Declaration of assets:-

- (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 subsection (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.

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

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,

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

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

- (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.
- (2) No Court, except a Special Court, shall take cognizance of an offence under subsection (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 Lokayukta.
- (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 State 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.

46. False complaint made by society or association of persons or trust:-

- (1) Where any offence under sub-section (1) of section 45 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:

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

ESTABLISHMENT OF COMMITTEE ON INDEPENDENT INSTITUTIONS

47. Reports of Lokayukta:-

It shall be the duty of the Lokayukta to present annually to the Governor a report on the work done by the Lokayukta and on receipt of such report the Governor shall cause a copy thereof together with a memorandum explaining, in respects of the cases or recommendations of Lokayukta to the Government in any matter, if any, where the advice of the Lokayukta was not accepted, the reason for such non-acceptance to be laid before the Legislative Assembly.

48. Committee on Independent Institutions for monitoring the functioning of Lokayukta:-

- (1) As soon as practicable after the commencement of this Act, a Standing Committee of the Legislative Assembly, to be known as the Committee on Independent Institutions shall be appointed.
- (2) This committee shall be drawn from the members of Legislative Assembly who are not ministers and shall have equal representation from the government and the opposition and shall be chaired by a member from the Opposition:

Provided that no member of the Legislative Assembly, on whom Lokayukta has a pending complaint, shall form part of this committee.

- (3) This Standing Committee, as the case may be, shall monitor the functioning of Lokayukta on a regular basis.
- (4) Without prejudice to the provisions contained in sub-section (3), the functions of this committee, amongst other things, include the following, namely—:

- (a) monitoring and reviewing the powers exercised by the Lokayukta,
 - (b) reporting to the Legislative Assembly, with such comments as it thinks fit, on any matter appertaining to the Lokayukta or connected with the exercise of its functions to which, in the opinion of the Committee, the attention of the Legislative Assembly should be directed,
 - (c) examining each annual report of the Lokayukta to the Governor and reporting to the Legislative Assembly on any matter appearing in, or arising out of, any such report,
 - (d) examining trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to Legislative Assembly any change which the Committee thinks desirable to the functions, structures and procedures of the Lokayukta or to the procedures adopted by the government,
 - (e) inquiring into any question in connection with its functions which is referred to it by the Legislative Assembly, and report to the Legislative Assembly on that question:
Provided that nothing in this subsection shall authorise the Committee:
 - (a) to investigate a matter relating to particular conduct, or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
 - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.
- (5) The procedure of this Committee, shall be as determined by the Committee.

CHAPTER XVI

MISCELLANEOUS

49. Lokayukta to function as appellate authority for appeals arising out of any other law for the time being in force:-

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 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.

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

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.

51. Protection of action taken in good faith by others:-

No suit, prosecution or other legal proceedings shall lie against the Lokayukta 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.

52. Members, officers and employees of Lokayukta to be public servants:-

The Chairperson, Members, officers and other employees of the Lokayukta 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.

53. Limitation to apply in certain cases:-

The Lokayukta 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.

54. Bar of Jurisdiction:-

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

55. Legal assistance:-

The Lokayukta 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 Lokayukta, if such assistance is requested for.

56. Bar on re- appointment of public servants:-

Till two years, after the retirement or resignation, no government official shall be eligible to take up jobs, assignments, consultancies, etc. with any person, company, or organisation that he had dealt with in his official capacity.

57. Immunity to the bribe giver by the special court:-

Any bribe giver may be granted immunity from prosecution by the special court if he voluntarily gives timely information to the Lokayukta about the giving of bribe by him with entire evidence for the purpose of getting the concerned bribe taker/ public servant caught and convicted, provided he also relinquishes all the illegitimate benefits which he had received by the giving of that bribe, if any. If the information provided by such bribe giver is subsequently found to be false, the immunity could be withdrawn by the special court.

58. Act to have overriding effect:-

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.

59. Power to make rules:-

- (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (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;
 - (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 under the proviso to subsection (2) of section 10;
 - (d) other matters for which the Lokayukta shall have the powers of a civil court under clause (vi) of sub-section (1) of section 25;
 - (e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of section 27;
 - (f) the manner of transmitting the letter of request under sub-section (2) of section 35;
 - (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 Lokayukta under section 39;

- (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 41;
- (i) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of section 42;
- (j) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (5) of section 43;
- (k) the form of annual return to be filed by a public servant under sub-section (5) of section 43;
- (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 44;
- (m) any other matter which is to be or may be prescribed.

60. Power of Lokayukta to make regulations:-

- (1) Subject to the provisions of this Act and the rules made thereunder, the Lokayukta may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.
- (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:—
 - (a) the conditions of service of the secretary and other officers and staff of the Lokayukta and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor under sub-section (3) of section 10;
 - (b) the manner for displaying on the website of the Lokayukta, the details of the cases being handled and

the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (7) of section 18;

(d) the manner and procedure of conducting an investigation under sub-section (8) of section 18;

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

61. Laying of rules and regulations:-

Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before State Legislative Assembly, 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.

62. Repeal and Saving:-

(1) The Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 along with the amendments made in it from time to time is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in exercise of the powers conferred by or under the said Andhra Pradesh Lokayukta and Upa-Lokayukta Act, shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken.

62. Power to remove difficulties:-

(1) If any difficulty arises in giving effect to the provisions of this Act, the State 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 the State Legislature.

STATEMENT OF OBJECTS AND REASONS

The need to strengthen the existing Lokayukta institution in the state has been felt for quite sometime. Similar legislative efforts have been taking place in the Parliament and in the states across the country. As the existing Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 needs drastic revisions to provide for a strong and independent anti-corruption for the state, this bill is being introduced to replace the existing act.

This bill is almost similar to the Lokpal and Lokayuktas bill, 2011 passed by Lok Sabha in December 2011, except for a few modifications. Anti-Corruption Bureau has been brought under the supervision of Lokayukta. A provision for appointing Obmudsman for each district and municipal corporation has been made for an effective decentralized anti-corruption mechanism. A provision for setting up a “Committee on Independent Institutions” drawn from the Assembly, has been incorporated to monitor the broad functioning of the Lokayukta.

The bill provides for the appointment of a Lokayukta and Ombudsmen to investigate and report on complaints relating to the conduct of public servants, namely—

- ♦ Chief Minister;

- ♦ all other Ministers and Members of the State Legislature;
- ♦ all officers of the State Government;
- ♦ Chairman, Vice Chairman of local authorities, Statutory bodies or Corporations established by or under any law of the State Legislature, including Co-operative Societies
- ♦ all officers and employees referred to in the clause above 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;
- ♦ 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.

The Andhra Pradesh Lokayukta Bill 2012, seeks to, *inter alia*, provide for the following matters, namely—

- (i) to set up the institution of Lokayukta for the state of Andhra Pradesh and Ombudsman for each district and municipal corporation, for dealing with complaints related to corruption under this bill;
- (ii) to provide for a mechanism to ensure that no sanction or approval under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, will be required in cases where prosecution is proposed by the Lokayukta;

- (iii) to confer on the Lokayukta the power of search and seizures and certain powers of a Civil Court;
- (iv) to empower the Lokayukta or any investigation officer authorised by it in this behalf to attach property which, *prima facie*, has been acquired by corrupt means;
- (v) to lay down a period of limitation of seven years from the date of commission of alleged offence for filing the complaints before the Lokayukta;
- (vi) to confer powers of police upon Lokayukta which the police officers have in connection with investigation;
- (vii) to charge the expenses of Lokayukta on the Consolidated Fund of the State;
- (viii) to utilise services of officers of State Government with the consent of the State Government for the purpose of conducting inquiry;
- (ix) to recommend transfer or suspension of public servants connected with allegation of corruption;
- (x) to constitute sufficient number of Special Courts as may be recommended by the Lokayukta to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 under the proposed enactment;
- (xi) to make every public servant to declare his assets and liabilities, and in case of default or furnishing misleading information, to presume that the public servant has acquired such assets by corrupt means;
- (xii) to provide for prosecution of persons who make false or frivolous or vexatious complaints;
- (xiii) to setup a "Committee on Independent Institutions" of the Legislature to monitor the functioning of the Lokayukta.

This Bill seeks to achieve the above objects.

About the author

Dr. Jayaprakash Narayan

Dr. Jayaprakash Narayan ('JP') is the founder of Lok Satta movement. He is a doctor by training.

After becoming an IAS officer, he served in various capacities for 16 years and gained formidable reputation as an activist civil servant and reformer. In 1996, he resigned from the IAS and joined hands with leading reformers and citizens to launch Lok Satta

Movement for reforming electoral politics, governance and key areas of public policy. Very quickly, Lok Satta became the largest grassroots movement for democratic reforms in India. A few notable achievements Lok Satta are mandatory disclosure of candidate details, political funding reform, decriminalization of politics, improvement of voter registration, strengthening anti-defection provisions, citizen's charters and safeguarding cooperatives.

He also served as a Member of the National Advisory Council (NAC) to the Prime Minister of India. His contributions at the NAC were vital in the drafting and enactment of the historic Right to Information (RTI) Act (2005), the National Rural Health Mission (NRHM) and laying the foundation for empowerment of cooperatives. He was also a Member of the 2nd Administrative Reforms Commission of India (rank of the Union Minister of State) and thereby helped create the framework for fundamental governance and administrative reforms.

In 2009, JP was elected as the Andhra Pradesh MLA for Kukatpally and is widely recognized as a 'model legislator'. As a public representative he is piloting landmark reform efforts: citizen's right to public services, robust anti-corruption institutions, empowerment of local governments, judicial reforms, agri reforms, market liberalization, educational Reforms, job creation, universal healthcare and social welfare for the disadvantaged. JP is a national figure and a popular youth icon. He is renowned as a champion and practitioner of clean politics and good governance.

