

THE LOKPAL BILL, 2011

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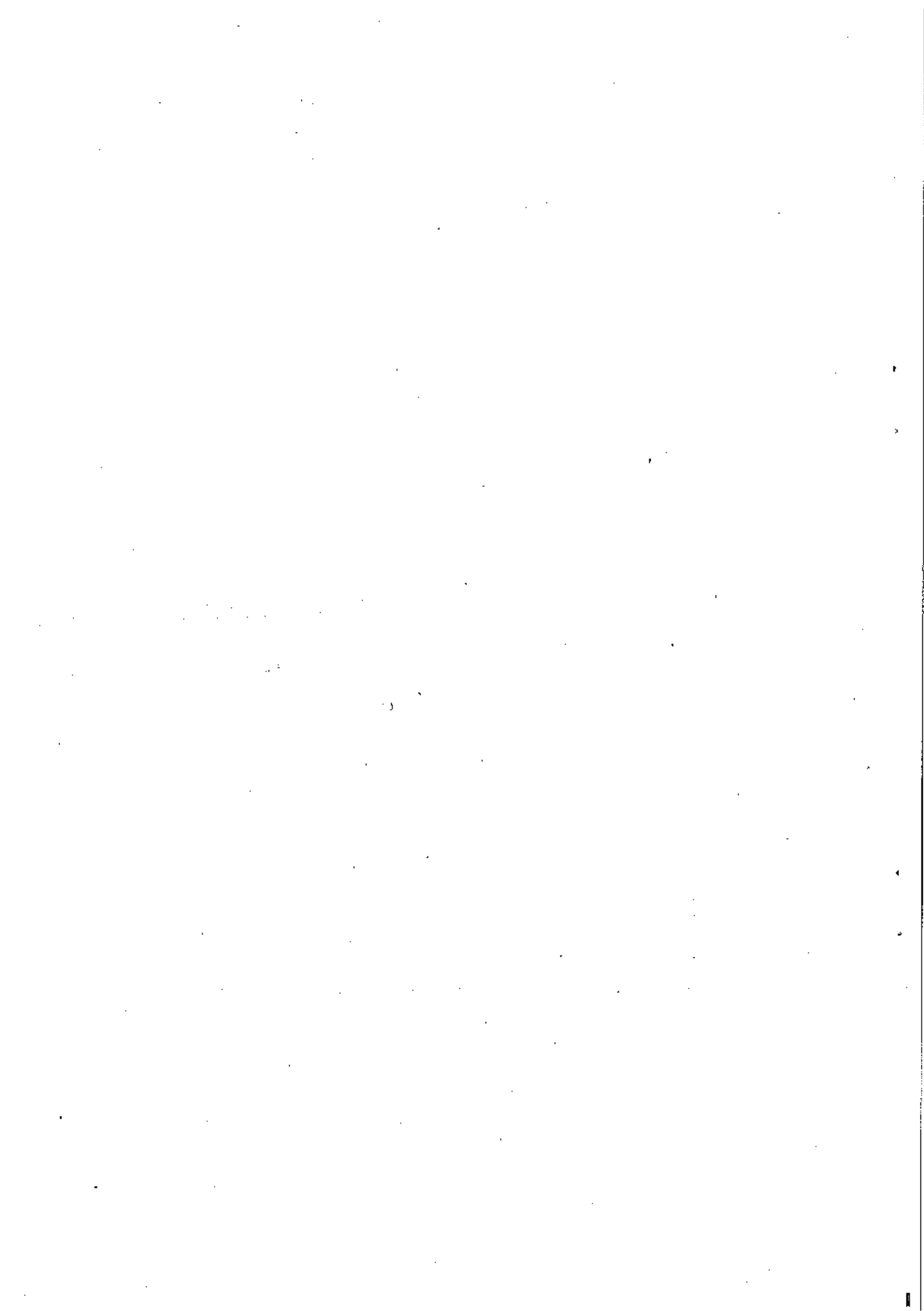
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Bill No. 39 of 2011

THE LOKPAL BILL, 2011

A

BILL

to provide for the establishment of the Institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

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

AND WHEREAS the country's commitment to clean and responsive governance has to be reflected in an effective institution to independently inquire into and prosecute acts of corruption;

NOW, THEREFORE, it is expedient to establish a strong and effective institution to contain corruption.

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Lokpal Act, 2011.
- (2) It extends to the whole of India and also applies to public servants outside India.

Short title,
extent and
commence-
ment.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

5

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

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

(c) "competent authority", in relation to

(i) a member of the Council of Ministers, means the Prime Minister;

(ii) a member of Parliament, other than a Minister, means—

10

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

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

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

15

(iv) 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 by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

20

(v) 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 by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

25

(vi) any other case not falling under sub-clauses (i) to (v) above, means the Central Government;

30

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

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

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

35

(d) "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;

49 of 1988.

(e) "inquiry" means an inquiry conducted under this Act by the Lokpal;

40

(f) "Judicial Member" means a Judicial Member of the Lokpal appointed as such;

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

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

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

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

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

(l) "public servant" means a person referred to in clauses (a) to (g) of sub-section (1) of section 17;

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

10 (n) "rules" means rules made under this Act;

(o) "Schedule" means a Schedule to this Act;

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

49 of 1988. 15 (2) Words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

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

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CHAPTER II

ESTABLISHMENT OF LOKPAL

3. (1) As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of complaints made under this Act, an institution to be called the "Lokpal".

Establishment
of Lokpal.

25 (2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or a Judge of the Supreme Court; and

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

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

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

35 (b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, outstanding ability and standing 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.

40 (4) The Chairperson or a Member shall not be a member of Parliament or a member of the Legislature of any State or Union territory and shall not hold any office of trust or profit (other than the office as the Chairperson or a Member) or be connected with any political

party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if

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

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

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

(5) The Chairperson and every Member shall, before entering upon his office, make and subscribe before the President an oath or affirmation in the form set out in the First Schedule. 10

Appointment
of Chairperson
and Members
and Selection
Committee.

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

(a) the Prime Minister — chairperson;

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

(c) the Leader of Opposition in the House of the People — member; 15

(d) the Leader of Opposition in the Council of States — member;

(e) a Union Cabinet Minister to be nominated by the Prime Minister — member;

(f) one sitting Judge of the Supreme Court to be nominated by the Chief Justice of India — member;

(g) one sitting Chief Justice of a High Court to be nominated by the Chief Justice of India — member; 20

(h) one eminent Jurist to be nominated by the Central Government — member;

(i) one person of eminence in public life with wide knowledge of and experience in anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law, or management to be nominated by the Central Government — member. 25

(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, if it considers necessary for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of such 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 Lokpal. 30 35

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

(5) The term of the Search Committee referred to in sub-section (3), the fee and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed. 40

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

Filling up of vacancies of Chairperson and Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term not exceeding five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

- (a) by writing under his hand addressed to the President, resign his office; or
(b) be removed from his office in the manner provided in section 8.

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

- (i) the Chairperson shall be the same as those of the Chief Justice of India;
(ii) other Members shall be the same as those of a Judge of the Supreme Court:

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

15 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:

25 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. (1) Subject to the provisions of sub-section (3), the Chairperson or any Member shall be removed from his office by order of the President on the grounds of misbehaviour after the Supreme Court, on a reference being made to it—

Removal and suspension of Chairperson and Member of Lokpal.

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

35 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.

(2) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

40 (3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove from the office the Chairperson or any Member if the Chairperson or such

Member, as the case may be,—

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. 5

(d) 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 (1), be deemed to be guilty of misbehaviour. 10

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

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

(i) reappointment as the Chairperson or a Member of the Lokpal; 15

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

(iii) further employment to any other office of profit under the Government of India or the Government of a State; 20

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

(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. 25

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

10. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. 30

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties. 35

Secretary, other officers and staff of Lokpal.

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

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission. 40

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

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President. 45

CHAPTER III

INVESTIGATION WING

5 12. (1) Notwithstanding anything contained in any law for the time being in force, the Investigation Wing.
 49 of 1988. Lokpal shall constitute an Investigation Wing for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

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

25 of 1946. 15 (2) The Central Government may, after obtaining consent of the concerned State Government, by notification, extend the powers and jurisdiction of officers of the Investigation Wing of the Lokpal in that State and the provisions of sub-sections (2) and (3) of section 5 of the Delhi Special Police Establishment Act, 1946, shall apply as if the members of the Investigation Wing were members of the police force of that State.

13. (1) No investigation shall be made by an investigation officer of the Investigation Wing below the rank of a Deputy Superintendent of Police or by any other officer of equivalent rank. Investigation officer to have powers of police.

20 (2) The investigation officers of the Investigation Wing shall have, in relation to the investigation of such offences referred to in sub-section (1) of section 12, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of such offences under the Prevention of Corruption Act, 1988.
 49 of 1988.

25 14. (1) The Lokpal may, before holding any inquiry under this Act, by an order, require the investigation officer of its Investigation Wing to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Lokpal, within such time as may be specified by the Lokpal, to enable it to satisfy itself as to whether or not the matter requires to be inquired into by the Lokpal. Investigation officer to inquire on direction of Lokpal.

(2) The investigation officer on receipt of an order under sub-section (1) shall complete the investigation and submit his report within the time specified under that sub-section.

30 CHAPTER IV

PROSECUTION WING

35 15. (1) The Lokpal may, by notification, constitute a prosecution wing and appoint a Director of prosecution and such other officers and employees to assist the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act. Prosecution wing and appointment of Director of Prosecution.

49 of 1988. 40 (2) The Director of prosecution shall, after having been so directed by the Lokpal, file a complaint 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.

40 CHAPTER V

EXPENSES OF INSTITUTION OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

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

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

Jurisdiction of
Lokpal.

17. (1) Subject to the other provisions of this Act, the Lokpal shall inquire 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) a Prime Minister, after he has demitted the office of the Prime Minister;

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

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

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

(e) any person who is or has been a chairperson or member or officer equivalent to Group "A" officer referred to in clause (d) or equivalent or above in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it;

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

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

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

Provided that nothing in this section shall apply in relation to the Prime Minister, in whatever capacity he may be holding an office as a public functionary:

Provided further 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:

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

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

49 of 1988. (3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988:

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

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

10 *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.

49 of 1988. 15 18. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

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

20 *Explanation.*—For the removal of doubts, it is hereby declared that continuance of such matter or proceeding before any court or committee of either House of Parliament or before any other authority, except for such matters as are protected under clause (2) of article 105 of the Constitution or are pending before a court, shall not affect the power of the Lokpal to inquire into such matter under this Act.

19. (1) Subject to the provisions of this Act, --

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

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

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

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

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

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

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

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

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

Constitution of Benches of Lokpal.

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

Distribution of business amongst Benches.

Power of
Chairperson
to transfer
cases.

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

Decision to
be by
majority.

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

CHAPTER VII

PROCEDURE IN RESPECT OF INQUIRY AND INVESTIGATION

Provisions
relating to
complaints
and inquiry
and investiga-
tion.

23. (1) The Lokpal, on receipt of a complaint, may either make a preliminary inquiry or direct its investigation Wing, to make a preliminary investigation to ascertain whether there exists a *prima facie* case for proceeding in the matter.

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

(3) Upon completion of the preliminary investigation, the investigating authority shall submit its report to the Lokpal.

(4) Before the Lokpal comes to the conclusion in the course of a preliminary inquiry and after submission of a report referred to in sub-section (3) that a *prima facie* case is made out against the public servant pursuant to such a preliminary inquiry, the Lokpal shall afford the public servant an opportunity of being heard.

(5) Where the Lokpal, after receiving the report of the investigating authority pursuant to a preliminary investigation or conclusion of the preliminary inquiries as referred to in sub-section (1) is satisfied that no *prima facie* case is made out for proceeding further in the matter, the complaint shall be closed and the decision thereon be communicated to the complainant and the public servant.

(6) Where the Lokpal is of the opinion that *prima facie* case is made out and refers the matter for investigation, upon completion of such investigation and before filing the charge sheet, the public servant against whom such investigation is being conducted shall be given an opportunity of being heard.

(7) Every inquiry conducted by the Lokpal, upon being satisfied that a *prima facie* case is made out, shall be open to the public provided that in exceptional circumstances and for reasons to be recorded in writing by the Lokpal, such inquiry may be conducted *in camera*.

(8) In case the Lokpal proceeds to inquire into the complaint under sub-section (7) it shall hold such inquiry as expeditiously as possible and complete the inquiry within a period of six months from the date of receipt of the complaint which, for reasons to be recorded in writing, may be extended by a further period of six months.

(9) The public servant against whom an inquiry is being conducted under sub-section (8) shall be given an opportunity of being heard.

(10) Where in a case the Lokpal is of the opinion and for reason to be recorded in writing that it is not in the interest of justice to either hold a preliminary inquiry or preliminary investigation, it may refer the matter for investigation.

(11) Upon completion of such investigation but before filing a charge sheet, the investigating authority shall place the records in its possession along with its *prima facie* conclusion before the Lokpal who shall before directing that a charge sheet be filed afford the public servant concerned an opportunity of being heard.

(12) If the Lokpal proposes to inquire into a complaint, it may, at any stage,—

(a) pass appropriate orders for safe custody of the documents relevant to the inquiry as it deems fit; and

(b) forward a copy of the complaint to the public servant concerned along with all relevant material relied upon and afford him an opportunity to represent his case.

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

(14) The Lokpal may withhold the records and evidence which are likely to impede the process of inquiry or conduct of a case by it or by the Special Court.

(15) Save as otherwise provided, the manner and procedure of conducting an inquiry or investigation under this Act, shall be such as may be specified by regulations.

24. In cases where, an investigation or inquiry into a complaint is proposed to be initiated by the Lokpal, every person against whom such inquiry or investigation is proposed to be conducted, shall be entitled to inspect any record in connection with the commission of any alleged offence and take an extract therefrom, as is considered necessary to defend his case.

Inspection of document and furnishing copies thereof to persons against whom complaints have been made.

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

(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 inquiry,

Persons likely to be prejudicially affected to be heard.

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

Provided that nothing in this section shall apply where the credibility of a witness is being questioned.

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

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

2 of 1974,
49 of 1988.
27. (1) No sanction or approval shall be required by the Lokpal or its Investigation Wing under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988 for the purpose of making inquiry by the Lokpal or investigation by its Investigation Wing into any complaint against any public servant or for filing of any complaint in respect thereof before the Special Court under this Act.

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

2 of 1974,
49 of 1988.
28. (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 a complaint filed by the Lokpal 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 (e) of clause (3) of article 320 of the Constitution.

Action on inquiry in relation to public servants not being Ministers or Members of Parliament.

28. (1) Where, after the conclusion of the inquiry or investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (e) or clause (d) of sub-section (1) of section 17, the Lokpal may— 5 49 of 1988.

(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; 10

(c) provide a copy of the report to the public servant or his representative.

(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 Lokpal ordinarily within six months of initiation of such disciplinary proceedings. 15 49 of 1988.

Action on inquiry against public servant being Ministers or Members of Parliament.

29. (1) Where, after the conclusion of the inquiry or investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) of sub-section (1) of section 17, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority. 20 49 of 1988.

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

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Lokpal, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

Explanation.— In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded. 35

CHAPTER VIII

POWERS OF LOKPAL

Search and seizure.

30. (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation or inquiry under this Act, are secreted in any place, it may authorise any officer of the Investigation Wing, to search for and to seize such documents. 40

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation or inquiry under this Act and that it would 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 officer authorised to retain such document till the completion of such investigation or inquiry: 45

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

2 of 1974.

(3) The provisions of the Code of Criminal Procedure, 1973 relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs therein, the words "Lokpal or any officer authorised by it" were substituted.

5 of 1908.

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

Lokpal to have powers of civil court in certain cases.

(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;

15

(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 Lokpal, is not in a position to attend the proceeding before the Lokpal; and

20

(vi) such other matters as may be prescribed.

45 of 1860.

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

25

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

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

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

30

(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.

35

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

40

33. (1) Where the Lokpal 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 its or his possession, that—

Provisional attachment of assets.

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

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

45

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,

43 of 1961.

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

(2) The Lokpal 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. 5

(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. 10

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

Confirmation of attachment of assets.

34. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 33 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. 15

(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. 20

(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. 25

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relating to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution. 49 of 1988. 30

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

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

35. (1) Where the Lokpal, while making an inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that— 35

(a) the continuance of the public servant referred to in clause (c) or clause (d) of sub-section (1) of section 17 in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) the public servant referred to in clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses, 40

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

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

36. The Lokpal 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

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

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

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

Power to delegate.

CHAPTER IX

SPECIAL COURTS

49 of 1988. 20 38. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

Special Courts to be notified by Central Government.

(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.

25 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 months period, but not exceeding a total period of two years.

2 of 1974. 30 39. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by the Investigation Officer of the Lokpal that any evidence is required in connection with the 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 inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

Letter of request to a contracting State in certain cases.

(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

40 (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

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

(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 inquiry or investigation.

CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

Complaints
against
Chairperson
and Members
not to be
inquired by
Lokpal.

40. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member. 5

(2) Any complaint against the Chairperson or Member shall be made by an application by the party aggrieved, to the President.

(3) The President shall, in case there exists a *prima facie* case for bias or corruption, make a reference to the Chief Justice of India in such manner as may be prescribed for inquiring into the complaint against the Chairperson or Member. 10

(4) The President shall decide the action against the Chairperson or Member on the basis of the opinion of the Chief Justice of India and in case the President is satisfied, on the basis of the said opinion that the Chairperson or the Member is biased or has indulged in corruption, the President shall, notwithstanding anything contained in sub-section (1) of section 8, remove such Chairperson or Member and also order for initiation of prosecution in case of allegation of corruption. 15

Complaints
against
officials of
Lokpal.

41. (1) Every complaint of allegation or wrongdoing made against any officer or employee or investigation agency under or associated with the Lokpal for offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section. 20 49 of 1988.

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

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if the Lokpal is *prima facie* satisfied on the basis of evidence available, that: 25

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

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, 30

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

(4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer or employee of agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned: 35 49 of 1988.

Provided that no such order shall be passed without giving such officer or employee of the Lokpal or officer or employee of agency engaged or associated, a reasonable opportunity of being heard. 40

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988. 42. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment of loss and recovery thereof by Special Court.

10 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

15

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

Budget.

20 44. Without prejudice to the provisions of section 16, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Grants by Central Government.

25 45. (1) The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Annual statement of accounts.

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

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

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

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

Furnishing of returns, etc., to Central Government.

45 (2) The Lokpal shall prepare, once every year, in such form and at such time as may be prescribed, an annual report, giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid by the Central Government, as soon as may be after it is received, before each House of Parliament.

CHAPTER XIII

DECLARATION OF ASSETS

Declaration of
assets.

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

(2) Every 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— 5

(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. 10

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

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year. 15

(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. 20

(6) The competent authority in respect of each office or Department shall ensure that all such statements are published on the website of such office 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. 25

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

48. If any public servant wilfully or for reasons which are not justifiable, —

(a) fails 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, 30

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. 35

CHAPTER XIV

OFFENCES AND PENALTIES

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

49. (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 shall not be less than two years but which may extend to five years and with fine which shall not be less than twenty-five thousand rupees but which may extend to two lakh rupees. 40

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1). 45

(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.

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

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

50. (1) Where any offence under section 49 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

30

CHAPTER XV

MISCELLANEOUS

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

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

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

Protection of action taken in good faith by others.

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

45 of 1860.

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

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

Limitation to apply in certain cases.

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

Bar of jurisdiction.

Legal assistance.

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

Act to have overriding effect.

57. 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. 5

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

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

Amendment of certain enactments.

59. The enactments specified in the Second Schedule shall be amended in the manner specified therein. 10

Power to make rules.

60. (1) The Central Government may, by notification 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; 15

(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 procedure of inquiry into misbehaviour for removal of the Chairperson or any Member under sub-section (1) of section 8; 20

(d) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (1) of section 11;

(e) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of section 31; 25

(f) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of section 33;

(g) the manner of transmitting the letter of request under sub-section (2) of section 39;

(h) the manner of making reference to the Chief Justice of India under sub-section (3) of section 40; 30

(i) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under section 43;

(j) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 45; 35

(k) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of section 46;

(l) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (2) of section 46; 40

(m) the form of annual return to be filed by a public servant under sub-section (5) of section 47;

(n) 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 48;

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

5 61. (1) Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification make regulations to carry out the provisions of this Act.

Power of Lokpal to make regulations.

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

10 (a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (2) of section 11;

(b) the place of sittings of Benches of the Lokpal under clause (f) of sub-section (1) of section 19;

15 (c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (13) of section 23;

(d) the manner and procedure of conducting an inquiry or investigation under sub-section (15) of section 23;

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

20 62. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, 25 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.

Laying of rules and regulations.

30 63. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

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.

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

THE FIRST SCHEDULE

[See section 3(5)]

I, A.B., having been appointed Chairperson (or a Member) of the Lokpál, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will. 5

THE SECOND SCHEDULE

(See section 59)

AMENDMENT TO CERTAIN ENACTMENTS

PART I

5. AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952
(60 OF 1952)

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

Amendment
of section 3.

10. PART II

AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988
(49 OF 1988)

1. In section 13, in sub-section (2), for the words "seven years", the words "ten years" shall be substituted.

Amendment
of section 13.

15 2. In section 14, for the words "seven years", the words "ten years" shall be substituted.

Amendment
of section 14.

3. In section 19, in sub-section (1), after the words "except with the previous sanction", the words and figures "save as otherwise provided in the Lokpal Act, 2011" shall be inserted.

Amendment
of section 19.

PART III

20. AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973
(2 OF 1974)

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

Amendment
of section
197.

STATEMENT OF OBJECTS AND REASONS

The need to have a strong and effective institution of Lokpal has been felt for quite sometime. The Administrative Reforms Commission, in its interim report on the "Problems of Redressal of Citizens' Grievances" submitted in 1966, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre in this regard. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past, namely in the years 1968, 1971, 1977, 1985, 1989, 1996, 1998 and 2001. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 Bill which was withdrawn after its introduction.

2. A need has been felt to constitute a mechanism for dealing with complaints on corruption against public functionaries in high places. In this regard, the Central Government constituted a Joint Drafting Committee (JDC) on 8th April, 2011 to draft a Lokpal Bill.

3. Based on the deliberations and having regard to the need for establishing a strong and effective institution of Lokpal to inquire into allegations of corruption against certain public functionaries, it has been decided to enact a stand alone legislation, *inter alia*, to provide for the following matters, namely:

(i) to establish an Institution of Lokpal with a Chairperson and eight Members of which fifty per cent. shall be Judicial Members;

(ii) to set up Lokpal's own Investigation Wing and Prosecution Wing with such officers and employees as felt by it to be necessary;

(iii) the category of public functionaries against whom allegations of corruption are to be inquired into, namely:

(a) a Prime Minister, after he has demitted office;

(b) a Minister of the Union;

(c) a Member of Parliament;

(d) any Group "A" officer or equivalent;

(e) a Chairperson or member or officer equivalent to Group "A" in any body, Board, corporation, authority, company, society, trust, autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the Central Government;

(f) any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the Government or in receipt of any donations from the public and whose annual income exceeds such amount as the Central Government may by notification specify but the organisations created for religious purposes and receiving public donations would be outside the purview of the Lokpal.

(iv) 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 Lokpal;

(v) to confer on the Lokpal the power of search and seizures and certain powers of a Civil Court;

(vi) to empower the Lokpal or any investigation officer authorised by it in this behalf to attach property which, *prima facie*, has been acquired by corrupt means;

(vii) to lay down a period of limitation of seven years from the date of commission of alleged offence for filing the complaints before the Lokpal;

(viii) to confer powers of police upon Lokpal which the police officers have in connection with investigation;

(ix) to charge the expenses of Lokpal on the Consolidated Fund of India;

(x) to utilise services of officers of Central or State Government with the consent of the State Government for the purpose of conducting inquiry;

(xi) to recommend transfer or suspension of public servants connected with allegation of corruption;

(xii) to constitute sufficient number of Special Courts as may be recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 under the proposed enactment;

(xiii) 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;

(xiv) to provide for prosecution of persons who make false or frivolous or vexatious complaints.

4. The notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objects.

V. NARAYANASAMY

New Delhi;
The 1st August, 2011.

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

[Copy of letter No. 40407/44/2011-AVD. IV, dated the 1st August, 2011 from Shri V. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions to the Secretary-General, Lok Sabha]

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

Notes on clauses

Clause 1. — This clause of the Bill seeks to provide for the short title, extent and commencement of the proposed Lokpal legislation. It provides that it shall come into force on such date as the Central Government may appoint by notification in the Official Gazette and the Central Government may appoint different dates for different provisions of the proposed legislation.

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

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

Clause 3. — This clause seeks to provide for the establishment of Lokpal consisting of a Chairperson and eight Members. It also provides that fifty per cent. of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been the Chief Justice or a Judge of the Supreme Court. The Judicial Member shall be a person who is or has been, the Judge of the Supreme Court or the Chief Justice of a High Court. The Members shall be the persons who are of impeccable integrity, outstanding ability and standing having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It further provides that the Chairperson or a Member of the Lokpal shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession.

It further provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

Clause 4. — This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the Speaker of the House of the People, the Leader of Opposition in the House of the People, the Leader of Opposition in the Council of States, one Union Cabinet Minister, one sitting Judge of the Supreme Court, one sitting Judge of a High Court nominated by the Chief Justice of India, one eminent jurist and one person of eminence in public life with wide knowledge and experience in anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law or management to be nominated by the Central Government. For the purpose of selecting the Chairperson and other Members of the Lokpal and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons of standing having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokpal.

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

Clause 6. — This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the President by warrant under his hand and seal and hold office as such for a term not exceeding five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

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

Clause 8. — This clause provides for the removal and suspension of Chairperson and Members of the Lokpal. The Chairperson and Members may be removed from his office by an order of the President on the ground of misbehaviour after the Supreme Court held an inquiry in accordance with a prescribed procedure on a reference being made to it by the President *suo motu*, or on a petition of at least one hundred Members of Parliament or on a petition of a citizen referred to the Supreme Court by the President.

Sub-clause (2) provides that the Chairperson or a Member in respect of whom a reference has been made to the Supreme Court may be suspended by the President until orders on receipt of a report from the Supreme Court on the reference made to it. Sub-clause (3) provides that the Chairperson or any Member may be removed from office if he is adjudged as insolvent or if, during his term of office engages in paid employment outside his duties or if in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. Sub-clause (4) provides certain grounds in which the Chairperson or Member shall be deemed to be guilty of misbehaviour.

Clause 9. — This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It provides that the Chairperson or Member shall not be eligible for reappointment in the Lokpal or any diplomatic assignment or appointment as Administrator of Union territory or further employment to any other office of profit. It also provides that the Chairperson and Members of Lokpal shall be ineligible to contest any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years.

Clause 10. — This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the President may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy and when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the President may authorise the senior-most Member to discharge his functions.

Clause 11. — This clause seeks to provide that the secretary or other officers and staff of the Lokpal shall be appointed by the Chairperson or the Member or officer of Lokpal as the Chairperson may direct. The President may make rules that the appointment in respect of any post or posts shall be made after consultation with the Union Public Service Commission.

Clause 12. — This clause provides for setting up of an Investigation Wing of the Lokpal for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Investigation Wing is constituted by the Lokpal, the Central Government will make available the services of its investigation officers and other staff required by the Lokpal. It also provides for extension of powers and jurisdiction of officers of the Investigation Wing of the Lokpal to the States with the consent of the concerned State Government and on such extension the members of the Investigation Wing of the Lokpal will have jurisdiction and powers under certain provisions of the Delhi Special Police Establishment Act, 1946 to act as if they were members of the Police Force of the concerned State.

Clause 13. — This clause stipulates that the Investigating Officers shall be of the rank of Deputy Superintendent of Police or any other officer of equivalent rank.

Clause 14. — This clause lays down that the Lokpal may require the Investigating Officer of its Investigation Wing to make a preliminary investigation and submit a report within a specified time so as to specify itself as to whether or not the matter requires to be inquired into further by the Lokpal.

Clause 15. — This clause seeks to provide that the Lokpal may constitute a Prosecution Wing under a Director of Prosecution with such other officers and employees as required to assist him for the purpose of prosecution of public servants in relation to offences punishable under the Prevention of Corruption Act, 1988, such prosecution shall be on complaints to be made by the Lokpal before the Special Court.

Clause 16. — This clause lays down that the expenses of the Lokpal including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokpal shall be charged on the Consolidated Fund of India. It also provides that any fees or other moneys taken by the Lokpal shall form part of the Consolidated Fund of India.

Clause 17. — This clause deals with the jurisdiction of Lokpal. Sub-clause (1) seeks to provide that the Lokpal shall inquire into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of Prime Minister, after he has demitted the office of the Prime Minister, a Minister, a Member of either House of Parliament, any Group "A" officer or equivalent or above from against the public servants as defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the Union, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or wholly or partly financed or controlled by the Central Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the Central Government which are for non-religious purpose and are in receipt of public donations. However, the various offices held by the Prime Minister shall not come within the purview of this provision.

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

Sub-clause (3) provides that the Lokpal may inquire into any act or conduct of any person if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed legislation shall not be referred for inquiry under the

Commissions of Inquiry Act, 1952. The Explanation to clause 17 clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

Clause 18. — This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be. However, such continuance of proceedings will not affect the powers of the Lokpal to inquire into such matter under the proposed legislation.

Clause 19. — This clause seeks to provide that the jurisdiction of the Lokpal may be exercised by Benches thereof. A Bench of the Lokpal may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokpal shall ordinarily be at New Delhi and at such places as the Lokpal may, by regulations, specify.

Clause 20. — This clause seeks to empower the Chairperson to distribute the business of Lokpal amongst its Benches and also specify the matters which may be dealt with by each Bench.

Clause 21. — This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

Clause 22. — This clause seeks to provide that the decision of the Lokpal shall be according to the opinion of the majority of the Members of Lokpal. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

Clause 23. — This clause makes provision relating to complaint and inquiry and investigation by Lokpal. It provides that on receipt of a complaint, the Lokpal may either make preliminary inquiry or direct its Investigation Wing to make a preliminary inquiry to ascertain whether there exist a *prima facie* case for proceeding in the matter. A preliminary inquiry or preliminary investigation should ordinarily be completed within thirty days. However, this period could be extended for a further period of three months from the date of receipt of the complaint after recording the reasons for extension. It also provides that in cases where the Lokpal is of the opinion that it is not in the interest of justice to either hold preliminary inquiry or preliminary investigation it may for reasons to be recorded in writing refer the matter for investigation. Sub-clause (4) provides that the Lokpal before coming to a conclusion in the course of a preliminary inquiry that a *prima facie* case is made out against a public servant, the Lokpal shall give an opportunity to the public servant of being heard. It further provides that where the Lokpal is of the opinion that *prima facie* case is made out against the public servant, the public servant against whom such investigation is being conducted shall be given an opportunity to be heard before filing the charge sheet.

Clause 24. — This clause seeks to provide that the persons against whom any inquiry or investigation is proposed to be conducted shall be allowed to inspect any record in connection with the commission of any alleged offence which are necessary for him to defend his case and take extracts therefrom.

Clause 25. — This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

Clause 26. — This clause seeks to provide that Lokpal may require any public servant or any other person to furnish information or produce documents relevant to inquiry or investigation.

Clause 27. — This clause makes provision that no previous sanction or approval shall be required by the Lokpal or its Investigation Wing under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988.

Clause 28. — This clause makes provision for the action to be taken by the Lokpal on conclusion of inquiry or investigation in relation to public servants who are not Ministers or Members of Parliament. It further provides that on conclusion of inquiry or investigation, where it is found that there is commission of offence under the Prevention of Corruption Act, 1988 by a public servant, the Lokpal may file a case in the Special Court and send a copy of the report and its findings to the competent authority, recommend to the competent authority initiation of disciplinary proceedings and also provide a copy of the report to the public servant or his representative.

Clause 29. — This clause makes provision for action to be taken by the Lokpal on conclusion of inquiry or investigation against public servants being Ministers or Members of Parliament. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokpal may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine the report and communicate to the Lokpal within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report. However, in computing the period of ninety days, the period during which the Parliament will not be in session shall be excluded.

Clause 30. — This clause seeks to confer power of search and seizure of documents on the Lokpal.

Clause 31. — This clause provides that the Lokpal shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of Section 193 of the Indian Penal Code.

Clause 32. — This clause seeks to make provision that the Lokpal may utilize the services of any officer or investigating agency of the Central Government or the State Government, as the case may be. It also enables the Lokpal to confer certain powers on such officers.

Clause 33. — This clause makes provision for provisional attachment of assets by the Lokpal or any investigation officer authorised by it if such assets are any proceeds of corruption.

Clause 34. — This clause makes provision for confirmation of provisional attachment of assets made by the Lokpal under clause 33 by the Special Court.

Clause 35. — This clause seeks to provide that the Lokpal may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokpal shall be accepted by the Government.

Clause 36. — This clause seeks to provide that the Lokpal may give directions to prevent destruction of records during inquiry.

Clause 37. — This clause provides that the Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Clause 38. - - This clause provides for constitution of Special Courts by the Central Government as recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the proposed legislation. It also provides that the Special Courts shall ensure completion of each trial within a period of one year from the date of filing the case in the court. However, in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing, before the end of each such three months period, but not exceeding a total period of two years.

Clause 39. - - This clause makes provision for issue of letter of request to a court or an authority in the contracting State in certain cases.

Clause 40.—This clause makes provisions for handling of complaints against the Chairperson and Members of the Lokpal.

Clause 41. --- This clause provides for the provisions for dealing the complaints against officials of Lokpal.

Clause 42. — This clause provides that when a public servant has committed an offence under the Prevention of Corruption Act, 1988, the Special Court may make an assessment of loss, if any, caused to the public exchequer on account of actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such losses.

Clause 43. — This clause seeks to provide that the Lokpal shall prepare its budget showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for intervention.

Clause 44. — This clause provides that without prejudice to the provisions of clause 16, the Central Government may make grants of such sums of money to the Lokpal as are required to be paid for salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Clause 45. - This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Lokpal. It further provides that accounts of the Lokpal shall be audited by the Comptroller and Auditor General of India. It also provides that the accounts of Lokpal together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of Parliament.

Clause 46. — This clause provides that the Lokpal shall furnish to the Central Government such returns or statements and such particulars with regard to any matter under the jurisdiction of Lokpal as the Central Government may prescribe from time to time.

Clause 47. — This clause provides that the public servants shall make a declaration of their assets and liabilities in the manner as provided in this Act.

Clause 48. - - This clause provides that any wilful failure on the part of a public servant to declare his assets shall amount to presumption that the assets have been acquired by corrupt means.

Clause 49. — This clause provides that if any person makes false or frivolous or vexatious complaint under this Act, he shall be liable for prosecution and on conviction he may be punished with imprisonment for a minimum term of two years and a maximum term of five years and with fine minimum of which shall be twenty-five thousand rupees and maximum of two lakh rupees.

Clause 50. — This clause provides that if false complaint is made by the Society or association of persons or trust, in that case every person who, at the time of commission of offence, was directly in-charge of the affairs or activities of such society etc. shall be deemed to be guilty of the offence under clause 48 and liable for punishment.

Clause 51. — This clause provides for protection of public servant from legal proceedings, etc., for the action taken in good faith.

Clause 52. — This clause provides for the protection of action taken in good faith by Lokpal, any officer, employee, agency or any person in respect of anything done or intended to be done under the proposed legislation or the rules or regulations made thereunder.

Clause 53. — This clause provides that the Chairperson, Members, Officers and other employees of the Lokpal shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 54. — This clause lays down the period of limitation for filing of complaints before the Lokpal as seven years from the date of commission of the alleged offence.

Clause 55. — This clause provides that no civil court shall have jurisdiction in the matters for which Lokpal is empowered under the proposed legislation.

Clause 56. — This clause provides that legal assistance for defending a case before the Lokpal shall be provided to every person against whom complaint has been made before it, if such assistance is requested for.

Clause 57. — This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

Clause 58. — This clause provides that the provisions of the proposed legislation shall be in addition to any other law for the time being in force.

Clause 59. — This clause seeks to amend certain enactments as specified in Second Schedule to the proposed legislation.

Clause 60. — This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

Clause 61. — This clause seeks to confer power on the Lokpal to make regulations for carrying out the provisions of the proposed legislation consistent with the provisions of the proposed legislation and the rules made by the Central Government under clause 60. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made.

Clause 62. — This clause provides that every rule and every regulation made under the proposed legislation shall be laid before each House of Parliament.

Clause 63. — This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

The First Schedule to the proposed legislation lays down the form of oath or affirmation which may be taken by any person before entering upon the office of Chairperson or Member of the Lokpal.

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

FINANCIAL MEMORANDUM

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

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

3. Clause 11 of the Bill provides for the appointment of a Secretary and such other officers and employees for the Lokpal. Sub-clause (2) of the said clause provides that the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose.

4. Sub-clause (1) of clause 12 provides that the Lokpal shall constitute an Investigation Wing for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. Sub-clause (1) of clause 15 of the Bill provides that the Lokpal shall constitute a Prosecution Wing under a Director of Prosecution and such other officers and staff for the purpose of prosecution of public servants in relation to any complaint by the Lokpal. Sub-clause (1) of clause 32 empowers the Lokpal to utilise the services of any officer or investigating agency of the Central Government or any State Government for the purpose of conducting any inquiry.

5. Clause 16 of the Bill provides that the expenses of the Lokpal including the salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal shall be charged on the Consolidated Fund of India and any fees and other moneys taken by the Lokpal shall form part of that fund.

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

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 60 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (1) of the said clause specifies the various matters in respect of which the rules may be made. These matters, *inter alia*, relate to the form of complaint referred to in clause (d) of sub-section (1) of section 2; the term of Search Committee, fee and allowances payable to the members of Search Committee and the manner of selection of panel of names; procedure of inquiry into misbehaviour for removal of the Chairperson or any Member; the posts in respect of which appointments shall be made after consultation with the Union Public Service Commission; matters for which the Lokpal shall have the powers of a Civil Court; the manner of sending an order of attachment to a Special Court; the manner of transmitting the letter of request under sub-section (2) of section 39; the manner of making reference to the Chief Justice of India; the form and the time for preparing the budget; the form for maintaining accounts and other relevant records and the form of annual statement of accounts; the form and manner and time for preparing the returns and statements under sub-section (1) of section 46; the form and the time for preparing the annual report; the form of annual return to be filed by a public servant under sub-section (5) of section 47; 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 48.

2. Clause 61 of the Bill empowers the Lokpal to make, by notification, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Lokpal may make regulations, *inter alia*, include the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as relate to salaries, allowances, leave or pensions, the place of sittings of Benches of the Lokpal, the manner for displaying the status of all complaints pending or disposed of on the website of the Lokpal, and the manner and procedure of conducting an inquiry or investigation.

3. The rules and regulations made under the proposed legislation shall be required to be laid before each House of Parliament.

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

ANNEXURE

EXTRACT FROM THE COMMISSIONS OF INQUIRY ACT, 1952
(60 OF 1952)

* * * * *

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

Appointment
of
Commission.

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

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

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

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EXTRACT FROM THE PREVENTION OF CORRUPTION ACT, 1988
(49 OF 1988)

* * * * *

13. (1)*

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

Criminal
misconduct
by a public
servant.

* * * * *

14. Whoever habitually commits

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

(b) an offence punishable under section 12,

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

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

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CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

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

Previous
sanction
necessary for
prosecution.

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

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

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

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EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(2 of 1974)

* * * * *

Prosecution
of Judges and
public
servants.

197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

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to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

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

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