

## **THE JAN LOKPAL BILL 2011**

### **STATEMENT OF OBJECTS AND REASONS**

In his foreword to the UN Convention Against Corruption, the then Secretary General of the United Nations, Mr. Kofi Annan wrote, "Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and it allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries, big and small, rich and poor - but it is in the developing world that its effects are more destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining the government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and the major obstacle to poverty alleviation and development".

The preamble of this Convention which has been signed by India and has been ratified by it, states that this Convention was adopted (on 31<sup>st</sup> October 2003) because the parties adopting it were "concerned about the seriousness of the problems and the threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law".

Some of the serious effects of corruption in India were set out in 1993 itself in the N.N. Vohra Committee report, which stated that, “The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak....The various crime Syndicates/Mafia organisations have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity”.

Corruption has indeed assumed alarming proportions and it is clear that the existing anti-corruption institutions have failed to tackle the menace and it has therefore become imperative to address the problems which plague the effectiveness of existing anti-corruption institutions and laws.

Article 6 (2) of UNCAC provides that “each state party shall grant the body (anti corruption institution) or bodies referred to in paragraph 1 of this article, the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized tasks, as well as the training that such staff may require to carry out their functions should be provided”.

This bill provides for the constitution of a Lokpal Authority which will be independent of the public officials and public authorities that it will be empowered to investigate and prosecute. Such independence is sought to be provided both by way of a broad based and transparent

selection process as well as by functional autonomy. The bill, therefore, provides that the Lokpal shall have the authority to select its own staff and also ensure that such staff is adequate to handle complaints of corruption, misconduct as well as grievances. Corruption always involves misconduct and gives rise to grievances. These are inter-related. The existing vigilance machinery and the existing grievance redressal machinery also suffer from the problem of conflict of interests where vigilance officers and grievance redressal officers are unrealistically expected to exercise vigilance over their own bosses or those who exercise administrative control over them. The bill, therefore, provides that the vigilance machinery and the grievance redressal machinery also be brought under the supervisory control of an independent Lokpal.

Article 7 (4) of UNCAC provides that “each state party shall, in accordance with the fundamental principles of their local law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interests”. These are the principles on the basis of which powers of investigation and prosecution for corruption, enquiry and punishment for misconduct are required to be entrusted to an independent authority which would have no conflict of interests.

Article 8 (2) of UNCAC provides that “in particular, each state party shall endeavour to apply within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions”. In accordance with these principles, the bill provides that each public authority shall prescribe a citizen’s charter for the performance of its public functions for which it would be held accountable to the independent Lokpal authority.

Article 8 (5) of the UNCAC provides that “each state party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic laws, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter-alia, their outside activities, employment, investment, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”.

Article 8 (6) provides that “each state party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this Article”.

Article 12 dealing with the private sector obliges each state party to take measures for “promoting transparency amongst private entities, including where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; preventing the misuse of procedures regulating private entities including procedures regarding subsidies and licenses granted by public authorities for commercial activities; preventing conflicts of interests by imposing restrictions as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure”.

Article 13 of the UNCAC dealing with participation of society provides “each state party shall take appropriate measures within its means and in accordance with the fundamental principles of its domestic law

to promote the active participation of individuals and groups outside the public sector, such as civil society, non-government organizations and community based organizations in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation shall be strengthened by such measures as: enhancing the transparency of and promoting the contribution of the public to decision making processes; ensuring that the public has effective access to information”.

Article 34 of UNCAC provides that “with due regard to the rights of third parties, acquired in good faith, each state party shall take measures, in accordance with the fundamental principles of its domestic laws, to address consequences of corruption. In this context, state parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action”.

In accordance with all the above principles enunciated in the UNCAC, the powers of investigation and prosecution of public officials for corruption and disciplinary action for corruption against government officials are sought to be brought under an independent Lokpal authority. In addition, violation of the citizen’s charter which is akin to a code of conduct, would also be enquired into by the vigilance machinery under the Lokpal. Other ancillary powers such as freezing of assets acquired by public servants by corrupt means are also sought to be conferred on this authority. The integrity of the authority and the anti-corruption/vigilance machinery under its control is sought to be achieved by mandating transparency in its functioning and public participation, wherever possible. The accountability of the Lokpal itself would be to the Supreme Court, which would have the authority to

enquire into and order the removal of members of the Lokpal. The officials under the Lokpal will be accountable to independent complaints authorities apart from the Lokpal itself. Judicial review over the actions of the Lokpal by the High Courts under Article 226 and the Supreme Court under Article 32 and 136 would further ensure the accountability of the Lokpal.

Lokpal Bills have been successively introduced in Parliament for the last 42 years but aborted each time for various reasons. An effective, independent and empowered Lokpal institution is a need for which the country cannot wait any longer. This Bill seeks to achieve this objective.

## **JAN LOKPAL BILL 2011**

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A Bill to establish an independent authority to investigate offences under the Prevention of Corruption Act, 1988 to detect corruption by expeditious investigation and to prosecute offenders and to ensure timely redressal of certain types of public grievances and to provide protection to whistleblowers.

Be it be enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

### **CHAPTER I**

#### **PRELIMINARY**

1. (1) This Act may be called the Jan Lokpal Act, 2011.  
(2) It shall come into force on 120<sup>th</sup> day of its securing assent from the President of India.
  
2. Definitions:  
In this Act, unless the context otherwise requires:-
  - (a) "Board" means the Chairman and the other members of the Lokpal Collectively.
  - (b) "Complaint" means an allegation of corruption or a request by whistleblower for protection and appropriate action.
  - (c) "Lokpal" means and includes,
    - (i) Benches constituted under this Act and performing functions under this Act;
    - (ii) Any officer or employee performing under this Act,
    - (iii) The Board in rest of the cases;

- (d) “Lokpal Bench” means a Bench of 2 or more members of the Lokpal acting together in respect of any matter in accordance with the regulations. Each bench shall have a member with legal background.
- (e) “Act of corruption” includes -:
- i) anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988; which would also include any offence committed by an elected member of a house of legislature even in respect of his speech or vote inside the house.
  - ii) willfully giving any undue benefit to any person or obtaining any benefit from any public servant in violation of any laws or rules,
  - iii) victimization of a whistleblower or a witness.
  - iv) repeated violation of citizen’s charter by any public servant.
- (f) “Full bench” means a bench with seven members with or without the Chairperson
- (g) “Government Servant” means a public servant, who is not an elected representative or a judicial officer.
- (h) “Grievance” means a claim by a person that he could not get satisfactory redressal according to a citizens’ charter despite approaching a Grievance Redressal Officer of that Department;
- (i) “Judicial officer” means the officers appointed under section 22 of this Act.
- (j) “Penalty” under this Act means punishment of dismissal, removal or reduction in rank
- (k) “Public authority” means any authority or body or institution of self-governance established or constituted -
- i) by or under the Constitution; or

- ii) by or under any other law made by the Parliament, or a state legislature
  - iii) by notification issued or order made by the Government, and includes any body owned, controlled or substantially financed by the Government;
- (l) “Public servant” shall have the same meaning as defined in section 2(c) of Prevention of Corruption Act 1988.
- (m) “Whistleblower” means any person, who provides information about corruption in a public authority or is a witness or victim in that case or who faces the threat of
- (i) professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of appropriate perquisites, departmental proceedings, discrimination or
  - (ii) physical harm, or
  - (iii) is actually subjected to any harm;
- because of either making a complaint to the Lokpal under this Act, or for filing an application under the Right to Information Act, 2005 or by any other legal; action aimed at preventing or exposing corruption or mal-governance.

3. Notwithstanding anything in any other Act or Law the provisions of this Act shall prevail and to the extent that the provisions of this Act are repugnant to any other provision in any other Act or law, the provisions in other Acts or laws shall stand amended to the extent of such repugnancy.

## **CHAPTER II**

### **ESTABLISHMENT OF LOKPAL**

4. (1) Immediately after the commencement of this Act, the Central Government by a Notification shall establish an institution known as Lokpal, who would have administrative, financial and functional independence from the government.
- (2) The Lokpal shall consist of a Chairperson and 10 other members and various officers under them at different levels to perform such functions as are assigned to them under this Act.
- (3) The Chairperson and the 10 members of the Lokpal shall be appointed by the President on the recommendation of a Selection Committee.
- (4) The following shall not be eligible to become Chairperson or Member of Lokpal:
- (a) Any person, who is not a citizen of India, or
  - (b) Any person, against whom charges were ever framed by any court of law for any offence involving moral turpitude, or
  - (c) Any person, who is less than 45 years in age, or
  - (d) Any person, who was in the service of any government and has remitted office within the last two years, either by way of resignation or retirement.
- (5) At least four members of Lokpal shall have a legal background.  
Explanation: "Legal Background" means that the person should have held a judicial office in the territory of India for at least ten years or should have been an advocate in a High Court or the Supreme Court for at least fifteen years.
- (6) The Selection Committee shall consist of the following:-
- (i) The Prime Minister of India, who will be the Chairperson of the Selection Committee.
  - (ii) The Leader of the Opposition in the Lok Sabha
  - (iii) Two judges of Supreme Court of India and two permanent Chief Justices of the High Courts selected by collegium of all Supreme Court judges

- (v) The Chief Election Commissioner of India
  - (vi) The Comptroller & Auditor General of India
  - (vii) All previous Chairpersons of Lokpal.
- (7) The Selection Committee shall select the Chairperson and the other members of the Lokpal from out of a short list prepared by the Search Committee. The Chairperson shall be a person with extensive knowledge of law.
- (8) A Search Committee shall consist of 10 members. 5 of its members shall be selected by the Selection Committee from amongst the retired Chief Justices of India, the retired Chief Election Commissioners and the retired Comptroller and Auditor Generals with impeccable reputation of integrity, who have not joined any political party after retirement and who are not holding any office under any government. The 5 members so selected shall, through consensus, co-opt another 5 members from the Civil Society in the search committee.
- (9) The Search Committee before preparing the short list will invite nominations from such eminent individuals or such class of people, whom they deem fit, for the position of Chairperson or the members of the Lokpal.
- (10) Only persons with impeccable integrity and record of public service particularly in the field of fighting corruption shall be eligible for being considered for nomination.
- (11) The recommendations about nominees should, interalia, contain details of any allegations faced by that candidate under any law, details of his work against corruption in the past, reasons why that person is suitable for the job and any other material that the search committee may decide.
- (12) The search committee, using any other means, shall collect as much information about the background and past achievements of these candidates.

(13) Such nominations as are received shall be put on a web site for inviting comments from the people with regard to the suitability or otherwise of the nominees.

(14) The Search Committee after taking into consideration the comments/information received from the public shall prepare, preferably through consensus, the short list of 3 times the number of persons to be appointed as members of the Lokpal.

(15) Any nominations to which objections are raised by any 3 members of the Search Committee shall not be included in the short list.

(16) Before sending the short list to the Selection Committee, the Search Committee will get the names of the short listed persons put on a public web site to enable people to send any relevant information/comments about the shortlisted persons.

(17) The Selection Committee shall, after considering all relevant information about the short listed candidates, select the required number of persons preferably through consensus. However, a person shall not be selected if 3 members of the Selection Committee disapprove such names.

(18) The Selection Committee after selecting the persons to be appointed as members or Chairperson of the Lokpal shall ascertain their willingness to serve as members or Chairperson, as the case may be, before recommending the names to the President.

(19) The Government shall fill up a vacancy of the Chairperson or a member 3 months before the member or the Chairperson is due to retire. If the vacancy arises due to unforeseen reasons, it shall be filled within three months of such vacancy arising.

(20) The Officers in the Lokpal shall be appointed by the Board or any other authority designated by the Regulations whether on a permanent basis or on a temporary basis.

(21) The Chairperson or members of Lokpal shall not be serving member of either the Parliament or the Legislature of any State and shall not hold any office of profit (other than the office as Chairperson or member) or carry on any business or practice any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or member of Lokpal shall-

- (i) if he holds any office or profit, resign from such office; or
- (ii) if he is carrying on any business, sever his connection with the conduct and management of such business; or
- (iii) if he is practicing any profession, suspend practice of such profession, or
- (iv) if he is associated directly or indirectly with any other activity, which is likely to cause conflict of interest in the performance of his duties in Lokpal, he should suspend his association with that activity.

Provided that if even after the suspension, the earlier association of that person with such activity is likely to adversely affect his performance at Lokpal, that person shall not be appointed as a member or Chairperson of Lokpal.

(22) A person appointed as the Chairperson or member of Lokpal shall hold office for a term of five years from the date on which he enters upon his office or upto the age of 70 years, whichever is earlier;

Provided that ,-

- (a) the Chairperson or member of Lokpal may, by writing under his hand addressed to the President, resign from his office;
- (b) the Chairperson or member may be removed from office in the manner provided in this Act.

(23) There shall be paid to the Chairperson and each member a salary equal to that of the Chief Justice of India and that of the judge of the Supreme Court respectively;

(24) The allowances and pension payable to and other conditions of service of the Chairperson or a member shall be such as may be prescribed by the government;

Provided that the 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.

(25) The Chairperson and members of Lokpal shall not be eligible for appointment to any position in the Government of India or the government of any State or any such body which is funded by any of the Governments or for contesting elections to Parliament, State Legislature or local bodies.

5. The Lokpal shall select and appoint a Secretary to the Lokpal who will have the rank of Secretary to the Government of India. He shall be competent to authenticate all orders passed by the Lokpal.

### **CHAPTER III**

#### **POWERS AND FUNCTIONS OF THE LOKPAL AND ITS OFFICERS**

##### **Functions of Lokpal:**

6. The Lokpal shall have the following functions and powers
- a) to exercise superintendence over the investigation of offences involving any act of corruption.
  - b) to give directions to the investigating officers for the purpose of proper investigation of such offences.

- c) after completion of investigation in any case involving an allegation of an act of corruption, to impose punishment of dismissal, removal or reduction in rank against government servants after giving them reasonable opportunities of being heard.
- d) to ensure that the public grievances covered by this Act are redressed in a time bound manner
- e) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988
- f) to ensure the proper prosecution of cases before a Special Court established under the Prevention of Corruption Act, 1988.
- g) to provide by rules for the terms and conditions of service including the allowances and pension payable to the officers and staff of the Lokpal.
- h) to authorize a Bench of the Lokpal to issue letters-rogoratory in relation to any case pending investigation under this Act.
  - i) to receive complaints from whistle blowers.
  - j) to receive complaints against any officer or staff of Lokpal.
  - k) to recruit investigating officers and other officers and staff and get them trained in modern methods of scientific investigation.
  - l) to appoint judicial officers, prosecutors and senior counsels.
  - m) to acquire modern equipment necessary for proper investigation.
  - n) to attach property and assets acquired by corrupt means and to confiscate them in certain cases as provided under this Act.
  - o) to recommend cancellation or modification of a lease, license, permission, contract or agreement, if it was obtained by corrupt means and to recommend blacklisting of a firm, company, contractor or any other person, involved in an act of corruption. The public authority shall either comply with the recommendation or reject the same within a month of receipt of recommendation. In the event of rejection of its

recommendation, the Lokpal may approach appropriate High Court for seeking appropriate directions to be given to the public authority.

p) to ensure due compliance of its orders by imposing penalties on persons failing to comply with its orders as provided under this Act.

q) to initiate suo moto appropriate action under the Act on receipt of any information from any source about any corruption.

r) to make recommendations to public authorities, in consultation with them, to make changes in their work practices to reduce the scope for corruption and whistleblower victimization. The concerned authority shall send its compliance report to Lokpal within two months specifying detailed reasons, wherever they choose to reject any of the recommendations.

s) to prepare a sentencing policy for the offences under Prevention of Corruption Act and revising it from time to time.

t) to ensure that the time limits mentioned in this Act are strictly adhered to.

u) to ensure the integrity of its functionaries and impose punishments of dismissal, removal and reduction in rank against.

v) to require any public authority to render any specific help required by the Lokpal.

w) to prepare an appropriate reward scheme to encourage complaints from within and outside the government to report acts and evidence of corruption.

Provided that the total value of such reward shall not exceed 10% of the value of the loss recovered or loss prevented.

(x) to inquire into the assets declaration statements filed by all successful candidates after any election to any seat in any House of the Parliament.

(x) Such other functions as may be necessary for the proper implementation of this Act.

## **Powers of officers under Lokpal**

7. (1) The Investigating Officers of Lokpal authorized to investigate offences under the Prevention of Corruption Act 1988 shall have all the powers which are vested in a Police Officer while investigating offences under the Code of Criminal Procedure, as well as the powers conferred on the director of enforcement under the Foreign Exchange Management Act, 1999 as well as under the Prevention of Money Laundering Act, 2002.

(2) The members of Lokpal or any officer under the Lokpal while exercising any powers under the Act shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular, in respect of the following matters :

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or other documents; and
- (f) any other matter which may be prescribed

(3) All members of the Lokpal and all officers of the Lokpal superior in rank to an Investigating Officer may exercise the same powers as may be exercised by such Investigating Officer.

(4) A Lokpal bench may punish a public servant with imprisonment up to 6 months or with fine or both, if he fails to comply with its order for ensuring their compliance

(5) If during the course of investigation into a complaint, the Lokpal feels that continuance of a government servant in that position could adversely affect the course of investigations or that the said

government servant is likely to destroy or tamper with the evidence or influence the witnesses or is likely to continue with corruption, the Lokpal may issue appropriate directions including transfer of that government servant from that position.

(6) The Lokpal may, at any stage of investigation under this Act, direct by an interim order, appropriate authorities to take such action as is necessary, to prevent the public servant from secreting the assets allegedly acquired by him by corrupt means;

(7) While investigating any offence under Prevention of Corruption Act 1988, Lokpal shall be competent to investigate any offence under any other law in the same case.

(8) If during any investigation under this act, the Lokpal is satisfied that any preventive action is necessary in public interest to prevent the ongoing incidence of corruption, it may make any recommendation to the public authority concerned to stay the implementation or enforcement of any decision or take any such action as is recommended by the Lokpal. The public authority shall either comply with the recommendation of the Lokpal or reject the same within 15 days of the recommendation thereof. In the event of rejection of its recommendation, the Lokpal may approach the appropriate High Court for seeking appropriate directions to be given to the public authority.

8. For the purposes of investigation of offences related to acts of corruption, the appropriate Bench of the Lokpal shall be deemed to be designated authority under Section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages of data or voice transmitted through telephones, internet or any other medium as covered under the Indian Telegraph Act read with Information and Technology Act 2000 and as per rules and regulations made under the Indian Telegraph Act 1885.

### **Issue of search warrants:**

9. (1) Where, in consequence of information in his possession, the Lokpal

(a) has reason to believe that any person -

(i) to whom a summon or notice under this Act, has, been or might be issued, will not or would not produce or cause to be produced any property, document or thing which will be necessary or useful for or relevant to any inquiry or other proceedings to be conducted by him;

It may by a search warrant authorize any officer not below the rank of an Inspector of Police to conduct a search or carry out an inspection in accordance therewith and in particular to, enter and search any building or place where he has reason to suspect that such property, or document, is kept;

(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, so far as may be, to searches and seizures under sub-section (1).

(3) A warrant issued under sub-section (1) shall for all purposes, be deemed to be a warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973.

## **CHAPTER IV**

### **PROCEEDINGS OF LOKPAL**

10. (1) The Lokpal may regulate the procedure for the transaction of its business or that of its officers as also allocation of its business amongst the different benches of Lokpal.

(2). No act or proceeding of the Lokpal shall be invalid merely by reason of :

- (a) any vacancy in, or any defect in the constitution of Lokpal ;
- (b) any defect in the appointment of a person acting as a member of Lokpal ; or
- (c) any irregularity not affecting the merits of the case

(3) All policy level decisions including formulation of regulations, assignment and delegation of functions and powers shall be taken by the Board in accordance with regulations.

(4) A complaint by any person may be made in the form of a First Information Report as provided under the Code of Criminal Procedure which will not require any payment of fee or affidavit and could be sent to any office of the Lokpal and shall not be rejected merely on the basis of motive or intention of the complainant.

(5) The investigation in any case shall not be closed by the investigating officer without recording reasons for such closure.

(6) The hearings in any proceedings before the Lokpal shall be held in public except in exceptional circumstance where it is not in public interest to do so and the reasons for the same shall be recorded in writing before those proceedings are held in camera. The hearings held in public shall be video recorded and shall be made available to the public on payment of copying cost.

## **CHAPTER V**

### **ACCOUNTABILITY OF LOKPAL**

#### **Removal of Chairperson or members of Lokpal:**

11. (1). The Chairperson or any other member of the Lokpal shall only be removed from his office by the President, on the

recommendation of the Supreme Court on any of the following grounds after the Supreme Court, on the complaint of any person, held an inquiry and found that he could on such ground be removed :

- (a) that he has been guilty of misbehavior; or
  - (b) that he is unfit to continue in his office by reason of infirmity of mind or body; or
  - (c) is adjudged an insolvent; or
  - (d) engages during his term of office in any paid employment outside the duties of his office.
- (2) In any such proceeding the Supreme Court may also direct the suspension of such Chairman or member.
- (3) On receipt of recommendation from the Supreme Court, the President shall forthwith remove the Chairperson or the member, as the case may be.
- (4) Supreme Court shall, as far as possible, make its recommendations within 3 months of receipt of complaint under this section.
- (5) If the complaint is frivolous or has been made with malafide intentions, Supreme Court may impose a fine or an imprisonment upto one year or both on the complainant.

### **Appeals against the orders of Lokpal:**

12. Any orders passed by any bench of the Lokpal or any officer of the Lokpal shall be subject to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Ordinarily, High Courts shall not stay the order. However, if it does, it will have to decide the case within two months, else the stay would be deemed to have been vacated after two months and no further stay in that case could be granted.

### **Audit of Lokpal:**

13. (1) The CAG shall conduct an annual financial and performance audit of the Lokpal.

(2) A Parliamentary Committee shall do an annual appraisal of the functioning of Lokpal. The Lokpal shall submit a compliance report, mentioning detailed reasons where it does not accept the recommendations of this committee, to the Parliament. It shall be placed on the table of the two Houses of Parliament.

### **Reports of Lokpal:**

14. (1) The Chairperson of Lokpal shall present annually a consolidated report in the prescribed format on its performance to the President

(2) On receipt of the annual report, the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the Parliament.

(3) The Lokpal shall publish every month on its website the list of cases received during the previous month, list of cases disposed with brief details of each such case, outcome and action taken or proposed to be taken in that case, list of cases which are pending and minutes and records of Board meetings.

## **CHAPTER VI**

### **ACCOUNTABILITY OF OFFICERS OF LOKPAL**

#### **Independent Complaints Authority:**

15. (1) In each State, one or more complaints authority would be established by the Lokpal to entertain any complaints against any officer or staff of the Lokpal.

(2) Such complaints authority shall consist of 5 members to be selected and nominated by a Committee of 3 persons consisting of:

- i) The Chief Justice of the High Court of the State;
- ii) The Chairman of the State Lok Ayukata
- iii) The Chairman of the State Human Rights Commission

(3) The Complaints Authority shall be chaired by a retired High Court judge and shall have two retired civil servants and two members of civil society.

(4) The complaints received against any officer or staff of the Lokpal shall be inquired into by the Complaints Authority in a public hearing and shall be decided within 2 months of the receipt of the complaint. The officer or staff of the Lokpal shall be given proper opportunity to tender his defence. If the officer or member is found guilty of misbehavior or dishonest investigation or corruption, the authority may order his dismissal, removal or reduction in rank.

(5) The final orders passed by the Complaints Authority will be subject to the writ jurisdiction of the High Court under Article 226 of the Constitution.

(6) In suitable cases it would also be open to the complaints authority to direct suspension of the officer or staff of the Lokpal.

(7) Lokpal shall provide for the expenses related to the functioning of complaints authority.

(8) Complaints authority shall work in benches in accordance with regulations made under this Act.

### **Transparency within Lokpal:**

16. The Lokpal shall maintain complete transparency in its functioning and shall ensure that full records of any investigation or inquiry conducted under this Act after its conclusion is made public by being put on a public web site.

## **CHAPTER VII**

### **INVESTIGATION AND PROSECUTION AGAINST HIGH FUNCTIONARIES**

17. (1) No investigation or prosecution shall be initiated without obtaining permission from a 7-Member Bench of the Lokpal against any of the following persons:-

- i) The Prime Minister and any other member of the Council of Ministers
- ii) Any judge of the Supreme Court or any High Court
- iii) Any Member of the Parliament

## **CHAPTER VIII**

### **POWERS OF LOKPAL TO MAKE REGULATIONS**

18. (1) The Lokpal may by notification make regulations consistent with this Act to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1) any such regulations may provide for all or any of the following matters, namely:-

- a) the creation of different wings in the Lokpal to deal with different subjects like investigation, prosecution and grievances;
- b) the conferment of authority on officers at different levels to exercise powers under the Act and to lay down the procedure for any inquiries including those relating to complaints against its officers or members of staff ;
- c) periods within which the investigations and inquiries have to be completed

d) To provide for the taking of certain decisions by appropriate benches of the Lokpal by circulation only.

(e) Work norms for each category of officers and staff of Lokpal.

(3) The regulations framed by the Lokpal under this Section shall be laid, as soon as may be after they are issued or made, before each House of Parliament.

## **CHAPTER IX**

### **REMOVAL OF DIFFICULTIES**

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, on the recommendation of the Lokpal, by order, not inconsistent with the provisions of this Act, remove the difficulty provided that no such order shall be made after the expiry of a period of 2 years from the date of commencement of this Act.

(2) Every order made under this section shall be laid before each house of Parliament.

## **CHAPTER X**

### **TIMELY COMPLETION OF INVESTIGATION AND TRIALS FOR CORRUPTION**

20. (1) Every investigating officer shall endeavour to complete the investigation of an offence within a period of 6 months but when necessary he may obtain extension of time from a Bench of the Lokpal. In any case the period of investigation shall not extend 18 months.

(2). Every effort will be made by the special courts trying an offence under the Prevention of Corruption Act to complete the trial within a maximum period of 12 months.

(3). To achieve the objective of a speedy trial the Lokpal shall make an annual assessment of the number of special courts required for this purpose and shall make a recommendation to the Government for creating a specific number of special courts which recommendations shall be binding on the Government.

(4) The Chief Justices of High Courts will constitute such number of special benches in respective High Courts to hear cases under this Act, to ensure that an appeal in any case is decided as expeditiously as possible and not later than six months.

(5) The judges of Special Courts and the appellate benches set up by High Courts to hear cases under this Act will deal only with cases under this Act.

## **CHAPTER XI**

### **WHISTLE BLOWERS**

21. (1) Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokpal; and it shall be the duty of the Lokpal to get an inquiry made into such information and if necessary get an investigation made under the Prevention of Corruption Act.

(2). It shall be the duty of the Lokpal to provide full protection to whistle blowers from any physical harm or administrative harassment. Identity of such whistle blowers shall also be protected if the whistle blower so desires.

(3). For achieving this objective it shall be competent for the Lokpal to give suitable direction to any security agencies for providing security as well as to any other authority to ensure that no harassment is caused to such whistle blower.

(4). Orders under this section shall be passed expeditiously and in any case within a month of receipt of complaint. Immediate action will be taken in cases involving a threat of physical victimization.

(5) The investigations in complaints by whistleblowers facing physical or professional victimization shall be fast tracked and completed within three months of receipt of the same.

## **CHAPTER XII**

### **PENALTIES AND PUNISHMENTS AGAINST CORRUPT PUBLIC SERVANTS**

#### **Penalties:**

22. (1) After the completion of an investigation against any government servant the Lokpal may either initiate prosecution against such public servant or may initiate proceedings for imposition of penalty or both.

(2) Lokpal shall appoint such officers, who may be retired judges or retired civil servants or such others as may be provided, to act as judicial officers for the purpose of this section, at such terms and conditions as may be provided in regulations.

(3) A bench of judicial officers will conduct an inquiry against such government servant for imposition of penalty in which full opportunity to show cause would be given to such government servant. After conclusion of the inquiry the bench shall also determine the penalty, if any, to be awarded to that public servant. The decision of the bench

will be subject to approval by a higher authority prescribed by the Lokpal by through regulations.

(4) The recommendations so approved shall be binding on the appointing authority.

### **Punishments:**

23. (1) For any act of corruption, the punishment shall not be less than six months of rigorous imprisonment and may extend up to imprisonment for life.

(2) The Special Court may take into consideration the higher rank of an accused person to inflict a more severe punishment.

(3) If the beneficiary of an offense is a business entity, in addition to the other punishments provided for under this Act and under the Prevention of Corruption Act, a fine of up to five times the loss caused to the public shall be recovered from the accused and the recovery may be made from the assets of the business entity and from the personal assets of its Managing Directors, if the assets of the accused person are inadequate.

(4) If any company or any of its officer or Director is convicted for any offence under Prevention of Corruption Act, that company and all companies promoted by any of that company's promoters shall be blacklisted and be ineligible for undertaking any government work or contract in future.

(5) If a public servant is convicted under the Prevention of Corruption Act, such public servant shall stand removed from his office.

24. Wherever Lokpal directs imposition of financial penalty on any officer under this Act to be deducted from his salary, it shall be the duty of the Drawing and Disbursing Officer of that Department to

implement such order, failing which the said Drawing and Disbursing Officer shall make himself liable for similar penalty.

## **CHAPTER XIII**

### **GRIEVANCE REDRESSAL SYSTEM**

25. (1) Each public authority shall prepare a specific charter within a reasonable time not exceeding one year from the coming into force of this Act.

(2) Every citizens' charter shall enumerate the public authority's commitments to the citizens which are capable of being met within a specific time limit and shall designate the officer whose duty would be to fulfill the commitment of the public authority.

(3) If any public authority does not prepare its citizen's charter within a year, Lokpal shall notify the citizen's charter on its own after consulting the public authority and the same shall be binding on that authority.

(4) Each public authority shall make an assessment of the resources required to implement the citizen's charter and the government shall provide such resources.

(5) Each public authority shall designate an official called Public Grievance Redressal Officer in each station where the public authority has an office, to whom a complaint could be made for any violation of the citizens' charter.

(6) The Senior most officer of that public authority in that office will be designated as the Public Grievance Redressal Officer.

(7) It shall be the duty of the Grievance Redressal Officer to get the grievance redressed within a period of 30 days from the receipt of the complaint.

(8) In the event of even the Grievance Redressal Officer not getting the grievance redressed within the specific period of 30 days a complaint could be made to the Lokpal.

(9) The Lokpal after hearing the Grievance Redressal Officer would impose suitable penalty not exceeding Rs. 500/- for each day's delay but not exceeding Rs. 50,000/- to be recovered from the salaries of the Grievance Redressal Officer.

(10) Apart from levying the penalty on the Grievance Redressal Officer, the Lokpal may also in suitable cases recommend to the appropriate authority to have departmental punishment imposed on the Grievance Redressal Officer.

(11) The Lokpal will also issue a direction to an appropriate authority to get such grievances redressed within the time to be fixed by the Lokpal.

(12) Every public authority shall review and revise its Citizens Charter at least once every year through a process of public consultation to be held in the presence of a representative of Lokpal.

(13) Lokpal may direct any public authority to make such changes in their citizens' charter as are mentioned in that order and that public authority shall make such changes within a month of the receipt of such order.

Provided that such changes shall have to be approved by at least a three member bench of Lokpal.

(14) There shall be at least one officer of the Lokpal in each district to receive grievances who shall be called an Appellate Grievance Officer. However, in such places where there is more concentration of central government offices, there shall be more Appellate Grievance Officers as may be required.

(15) A social audit of each Appellate Grievance Officer shall take place every six months, in which he shall present himself before the public, present the data related to his functioning, respond to public queries

and incorporate suggestions from public in his functioning. The public hearing shall be attended by a senior officer from Lokpal.

(16) No case can be closed by Appellate Grievance Officer till the citizen's grievance is redressed or the case is rejected by the Appellate Grievance Officer.

## **CHAPTER XIV**

### **BUDGET OF LOKPAL**

26. (1) All expenses of the Lokpal shall be charged to the Consolidated fund of India.

(2) The Board shall finalise the Lokpal's budget in such a manner that it is less than  $\frac{1}{4}$  % of the total revenues of the Government of India.

(3) Lokpal shall not need any administrative or financial sanction from any government agency to incur expenditure.

## **CHAPTER XV**

### **SEIZURE AND CONFISCATION OF PROPERTY AND RECOVERY OF COMPENSATION FROM CORRUPT GOVERNMENT SERVANTS**

27. (1) After a public servant has been found guilty by the Special Court of having committed an offence under the Prevention of Corruption Act, the Court would also determine the assets and properties which have been acquired by such accused person by his corrupt acts.

(2) The Special Court will pass an order for the confiscation of all the assets and properties which it has found to have been acquired by the

corrupt acts of the convicted public servants as well as the subsequent accruals on these assets.

(3) The Special Court would also determine whether apart from the above the accused person by his corrupt acts has also caused any loss to the exchequer or any other person and determine the amount of loss so caused. The Court shall make an order levying a fine on the accused persons so convicted for the recovery of the entire loss which his corrupt acts have caused and shall also apportion this amount among the various convicted accused persons to be recovered from them as fines.

(4) During the course of investigation if the Investigating Officer finds any property or asset which appears to have been acquired by the corrupt acts of an accused person who is being investigated, it shall make an order of attachment of those assets so that they are available for confiscation at the time of the conviction of such accused persons. In case the accused person is ultimately acquitted, these attached assets and properties will be restored to him.

## **CHAPTER XVI**

### **PUBLIC SERVANTS PROPERTY STATEMENTS**

28. (1) Every public servant shall within 3 months after the commencement of this Act and thereafter before the 30<sup>th</sup> June of every year submit to the Head of that public authority in which the said public servant is functioning or to such other authority as may be prescribed, a statement of his assets and liabilities and those of the members of his family which shall include their sources of income, in the format prescribed by the Lokpal.

*Explanation : In this Section family of a public servant means the spouse and such children and parents of the public servant and such other people as are dependent on him.*

(2) The Head of each public authority shall ensure that all such statements are put on the website by 31<sup>st</sup> of August of that year.

(3) If it is found that the public servant owns some property which was not disclosed in his statement of assets, that property would be liable to be confiscated by the Lokpal.

(4). If the public servant is found to be in possession or enjoyment of any property which is not shown in his statement of assets, it shall be presumed that it was owned by him unless he proves to the contrary.

## **CHAPTER XVII**

### **APPLICABILITY AND MODIFICATIONS OF THE PROVISIONS OF CERTAIN OTHER ACTS**

29. (1) Section 19(1) and 19(2) of the Prevention of Corruption Act shall be deleted.

(2) Section 6A of the Delhi Special Police Establishment Act shall not be applicable to the proceedings under this Act.

(3) Section 197 of Cr. PC shall not be applicable to any proceedings under this Act.

(4) The provisions of sections 105C to 105I of CrPC shall apply to offences under the Prevention of Corruption Act whether or not they are transnational in nature.

(5) Section 389(3) of CrPC shall not apply to offences under Prevention of Corruption Act.

(6) The right to file appeals under section 377 or 378 of CrPC shall be exercised by Lokpal.

(7) Under section 372 of CrPC, the power to file an appeal shall be with the complainant as well.

(8) Notwithstanding anything contained in Section 397 of CrPC, no court shall ordinarily call for records in cases related to trial of offences in Prevention of Corruption Act during any trial by a special court. Provided that if the court calls for records, the same shall be returned within a month.

(9) Any permission which is required under any law for initiating investigation or initiating prosecution under any Act shall be deemed to have been granted once the Lokpal has granted permission to initiate investigation or prosecution for any offences under the Prevention of Corruption Act.

(10) The power of the Lokpal to investigate offences under the Prevention of Corruption Act shall be with the Lokpal notwithstanding any provision in the Money Laundering Act, 2002.

(11) The jurisdiction of the special courts under the Prevention of Corruption Act, 1988 to try offences under such act shall be with the Special Court notwithstanding any provision in the Money Laundering Act, 2002.

(12) The appropriate Bench of the Lokpal shall be deemed to be the designated authority under Section 5 of the Indian Telegraph Act empowered to approve interception and monitoring of messages or data or voice transmitted through telephones, internet or any other medium as covered under the Indian Telegraph Act read with Information and Technology Act 2000 and as per rules and regulations made under the Indian Telegraph Act 1885.

(13) Section 4 (4) of Prevention of Corruption Act shall be amended as - “Notwithstanding anything contained in the Code of Criminal Procedure, 1973 a Special Judge shall hold the trial of an offence on

day-to-day basis, and shall not grant adjournment for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing”

## **CHAPTER XVIII**

### **MISCELLANEOUS PROVISIONS**

#### **Punishments for false complaints:**

30. (1) Notwithstanding anything contained in this Act, if someone makes any complaint under this Act, which lacks any basis or evidence and is held by Lokpal to be meant only to harass certain authorities, Lokpal may impose such fines on that complainant as it deems fit, but the total fine in any one case shall not exceed Rs one lakh.

Provided that no fine can be imposed without giving a reasonable opportunity of being heard to the complainant.

Provided further that merely because a case could not be proved under this Act after investigation shall not be held against a complainant for the purposes of this section.

Provided that if such complaint is against the staff or officers of Lokpal, Lokpal may sentence the complainant to three months of simple imprisonment in addition to fine.

(2) Such fines shall be recoverable as dues under Land Revenue Act.

(3) A complaint or allegation once made under this Act shall not be allowed to be withdrawn.

#### **Provisions to prevent corruption:**

31. (1) No government official shall be eligible to take up jobs, assignments, consultancies, etc. with any person, company, or organisation that he had dealt with in his official capacity.

(2) All contracts, public-private partnerships, transfer by way of sale, lease, and any form of largesse by any public authority shall be done with complete transparency and by calling for public tender/auction/bids unless it is an emergency measure or where it is not possible to do so for reasons to be recorded in writing. Any violation of this shall make the contract/largesse void. The details of all such transactions would be put up by the public authority on a public website.

(3) All contracts, agreements or MOUs known by any name related to transfer of natural resources, including land and mines to any private entity by any method like public-private partnerships, sale, lease or any form of largesse by any public authority shall be put on the website within a week of being signed.

### **Merger of anti-corruption branch of CBI into Lokpal:**

32. (1) The part of the Delhi Special Police Establishment, dealing with investigation and prosecution of offences under the Prevention of Corruption Act, 1988, shall stand transferred, alongwith its employees, assets and liabilities to the Lokpal. The Central Government shall cease to have any control over the transferred part and its personnel.

(2) Such part of Delhi Special Police Establishment, which has been transferred above, shall form part of the Investigation Wing of Lokpal.

(3) The salaries, allowances and other terms and conditions of services of the personnel transferred above shall be the same as they were immediately before the commencement of this Act.

(4) All cases which were being dealt by that part of Delhi Special Police Establishment, which has been transferred, shall stand transferred to Lokpal.

**Immunity to bribe giver in certain cases:**

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

(This draft provides only for the Lokpal for central public servants. Similar provisions for Lokayuktas in the States to deal with public servants of the State will have to be incorporated in the bill)