

## **Draft Lokpal Bill, 2010**

An act to create effective anti-corruption and grievance redressal systems at centre so that effective deterrent is created against corruption and to provide effective protection to whistleblowers.

### **1. Short title and commencement:-**

(1) This Act may be called the Anti-Corruption, Grievance Redressal And Whistleblower Protection Act, 2010.

(2) It shall come into force on the one hundred and twentieth day of its enactment.

### **2. Definitions:-**In this Act, unless the context otherwise requires,–

2(1) “Action” means any action taken by a public servant in the discharge of his functions as such public servant and includes decision, recommendation or finding or in any other manner and includes willful failure or omission to act and all other expressions relating to such action shall be construed accordingly;

2(2) “Allegation” in relation to a public servant includes any affirmation that such public servant–

(a) has indulged in misconduct, if he is a government servant;

(b) has indulged in corruption

2(3) “complaint” includes any grievance or allegation or a request by whistleblower for protection and appropriate action.

2(4) “corruption” includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1988;

2(5) “Government” or “Central Government” means Government of India.

2(6) “Government Servant” means any person who is or was any time appointed to a civil service or post in connection with the affairs of the Central Government or High Courts or Supreme Court either on deputation or permanent or temporary or on contractual employment but would not include the judges.

2(7) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;

2(8) "Lokpal" means

Benches constituted under this Act and performing their functions as laid down under various provisions of this Act; or

Any officer or employee, exercising its powers and carrying out its functions and responsibilities, in the manner and to the extent, assigned to it under this Act, or under various rules, regulations or orders made under various provisions of this Act.

c. For all other purposes, the Chairperson and members acting collectively as a body;

2(9) "Mal-administration" means action taken or purporting to have been taken in the exercise of administrative function in any case where, -

2(10) "Misconduct" means misconduct as defined in CCS Conduct Rules and which has vigilance angle.

2(11) "public authority" means any authority or body or institution of self-government established or constituted—

- by or under the Constitution;
- by any other law made by Parliament;
- by notification issued or order made by the Government, and includes any body owned, controlled or substantially financed by the Government;

2(12) "Public servant" means a person who is or was at any time, -

(a) the Prime Minister;

(b) a Minister;

(c) a Member of Parliament;

(d) Judges of High Courts and Supreme Court;

(e) a Government servant;

(f) the Chairman or Vice-Chairman (by whatever name called) or a member of a local authority in the control of the Central Government or a statutory body or

corporation established by or under any law of the Parliament of India, including a co-operative society, or a Government Company within the meaning of section 617 of the Companies Act, 1956 and members of any Committee or Board, statutory or non-statutory, constituted by the Government;

(g) Such other authorities as the Central Government may, by notification, from time to time, specify;

2(13)“Vigilance angle” includes –

(a) All acts of corruption

(b) Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible/public interest is evident; failure to keep the controlling authority/superiors informed in time

(c) Failure/delay in taking action, if under law the government servant ought to do so, against subordinates on complaints of corruption or dereliction of duties or abuse of office by the subordinates

(d) Indulging in discrimination through one’s conduct, directly or indirectly.

(e) Victimizing Whistle Blowers

(f) Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.

(g)

(h) Any other matter as notified from time to time by Lokpal

2(14) Make unfair investigation or enquiry to either unduly help culprits or fabricate the innocent.

2(15)“Whistleblower” is any person who faces threat of

2(15)(1) professional harm, including but not limited to illegitimate transfers, denial of promotions, denial of appropriate perks, departmental proceedings, discrimination or

2(15)(2) physical harm or

2(15)(3) is actually subjected to such harm; because of either making a complaint to Lokpal under this Act or for filing an application under Right to Information Act.

### **3. Establishment of the institution of Lokpal and appointment of Lokpal:**

3(1) There shall be an institution known as Lokpal which shall consist of one Chairperson and ten members along with its officers and employees. The Lokpal shall be headed by its Chairperson.

3(2) The Chairperson and members of Lokpal shall be selected in such manner as laid down in this Act.

3(3) A person appointed as Chairperson or member of Lokpal shall, before entering upon his office, make and subscribe before the President, an oath or affirmation in the form as prescribed.

3(4) The Government shall appoint the Chairperson and members of the first Lokpal and set up the institution with all its logistics and assets within six months of enactment of this Act.

3(5) The Government shall fill up a vacancy of the Chairperson or a member caused due to

a) Retirement, 3 months before the member or the Chairperson retires.

b) Any other unforeseen reason, within a month of such vacancy.

### **Chairperson and Members of Lokpal**

4. The Chairperson and members of Lokpal not to have held certain offices-The Chairperson and members of Lokpal shall not be serving or former member of either the Parliament or the Legislature of any State and shall not hold any office or trust of profit (other than the office as Chairperson or member) or would have ever been connected with any political party 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 of trust 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.

(iv) If he is associated directly or indirectly with any other activity, which is likely 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.

## **5. Term of office and other conditions of service of Lokpal–**

5(1) 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; Provided further that.–

(a) the Chairperson or member of Lokpal may, by writing under his hand addressed to the President, resign his office;

(b) the Chairperson or member may be removed from office in the manner provided in this Act.

5(2) There shall be paid to the Chairperson and each member every month a salary equal to that of the Chief Justice of India and that of the judge of the Supreme Court respectively;

5(3) The allowances and pension payable to and other conditions of service of the Chairperson or a member shall be such as may be prescribed;

Provided that the allowances and pension payable to and other conditions of service of the Chairperson or members shall not be varied to his disadvantage after his appointment.

5(4) The administrative expenses of the office of the Lokpal including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged on the Consolidated Fund of India.

5(5) There shall be a separate fund by the name of “Lokpal fund” in which penalties/fines imposed by the Lokpal shall be deposited and in which 10% of the loss of Public Money detected/prevented on account of investigations by Lokpal shall also be deposited by the Government. Disposal of such fund shall be completely at the discretion of the Lokpal and such fund shall be used only for enhancement/upgradation/extension of the infrastructure of Lokpal.

5(6) The Chairperson or members shall not be eligible for appointment on any position in Government of India or Government of any state or for fighting elections, if he has ever held the position of the Chairperson or a member for any period. Provided however that a member or Chairperson may be reappointed for one more term or a member may be appointed as the Chairperson, however, that any person shall not serve for more than a total of two terms.

## **6. Appointment of the Chairperson and members:**

6(1). The Chairperson and members shall be appointed by the President on the recommendation of a selection committee.

6(2). Following persons shall not be eligible to become Chairman or Member in Lokpal:

(a) Any person who was ever chargesheeted for any offence under IPC or PC Act or was ever penalized under CCS Conduct Rules.

(b) Any person who is less than 40 years in age.

6(3). At least four members of Lokpal shall have legal background.

6(4). A selection committee consisting of the following shall be set up:

- Two senior most judges of Supreme Court
- Two senior most Chief Justices of High Courts.
- All Nobel Laureates of Indian Origin
- Last three Magsaysay Award winners
- Comptroller and Auditor General of India
- Chief Election Commissioner

After the first set of selection process, the outgoing members and Chairperson of Lokpal.

6(5). The seniormost judge of Supreme Court shall act as the Chairperson of the selection committee.

6(6). The following selection process shall be followed:

- Recommendations shall be invited through open advertisements in prescribed format.

- The candidates should have unimpeachable integrity and should have demonstrated their resolve and efforts to fight against corruption in the past.
- Each person recommending shall be expected to justify the selection of his candidate giving examples from the past achievements of the candidate.
- The list of candidates along with their recommendations received in the format mentioned above shall be displayed on a website.
- Each member of the selection committee, on the basis of the above material, shall recommend such number of names as there are vacancies.
- A priority list shall be prepared with the candidate receiving recommendations from maximum number of members of selection committee at the top. The candidates recommended by same number of members shall be treated at par.
- This priority list shall be displayed on the website.
- Around three times the names as there are vacancies, shall be shortlisted from the top.
- Public feedback shall be invited on the shortlisted names by putting these names on the website.
- The selection committee may decide to use any means to collect more information about the background and past achievements of the shortlisted candidates.
- Selection committee shall invite shortlisted candidates for discussions, video recordings of which shall be made public.
- All the material obtained so far about the candidates shall be made available to each member of the selection committee in advance. The members shall make their own assessment of each candidate.
- The selection committee shall meet and discuss the material so received about each candidate. The final selections for the Chairperson and members shall be made preferably through consensus.
- Provided that if three or more members, for reasons to be recorded in writing, object to the selection of any member, he shall not be selected.

n. All meetings of selection committee shall be video recorded and shall be made public.

6(7). Selection committee shall recommend the names to the President, who shall order such appointments within a month of receipt of the same.

## **7. Removal of Chairperson or members**

7(1) The Chairperson or any member shall not be removed from his office except by an order of the President.

7(2) They can be removed on one or more of the following grounds:

- Proved misbehavior
- Professional or physical incapacity
- If he is adjudged to be insolvent
- Has been charged of an offence which involves moral turpitude
- If he engages during his term of office in any paid employment outside the duties of his office
- Has acquired such financial interests or other interests which are likely to affect prejudicially his functions as member or Chairperson.
- If he is guided by considerations extraneous to the merits of the case either to favor someone or to implicate someone through any act of omission or commission.
- If he commits any act of omission or commission which is punishable under Prevention of Corruption Act or is a misconduct.
- If a member or the Chairperson in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall be deemed to be guilty of misbehavior.

7(3) The following process shall be followed for the removal of any member or Chairperson:

(a) Any person may move an application/petition before the Supreme Court seeking removal of one or more of the members of Chairperson of Lokpal alleging one or more of the grounds for removal and providing evidence for the same.

(b) Supreme Court will hear the matter by a bench of three or more Judges on receipt of such petition and may take one or more of the following steps:

(i) order an investigation to be done by a Special Investigation Team appointed by the Supreme Court if a prima facie case is made out and if the matter cannot be judged based on affidavits of the parties.

(ii) dismiss the petition if no case is made out

(iii) if the grounds are proved, recommend to the President for removal of the said member or Chairperson

(iv) direct registration and investigation of cases with appropriate agencies if there is prima facie case of commission of an offence punishable under Prevention of Corruption Act.

(c) The Supreme Court shall not dismiss such petitions in liminae.

(d) If the Supreme Court concludes that the petition has been made with mischievous or malafide motives, the Court may order imposition of fine or imprisonment upto one year against the complainant.

(e) On receipt of a recommendation from the Supreme Court under this section, the President shall order removal of said members within a month of receipt of the same.

## **Powers and Functions of Lokpal**

### **8. Functions of Lokpal:**

8(1) Lokpal shall be responsible for receiving:

(a) Complaints where there are allegations of such acts of omission or commission which are punishable under Prevention of Corruption Act

(b) Complaints where there are allegations of misconduct by a government servant

(c) Grievances

(d) Complaints from whistleblowers

8(2) Lokpal, after getting such enquiries and investigations done as it deems fit, may take one or more of the following actions:

a. Close the case if prima facie, the complaint is not made out or

b. Initiate prosecution against public servants as well as those private entities which are party to the act

c. Order imposition of appropriate penalties under CCS Conduct Rules Provided that if an officer is finally convicted under Prevention of Corruption Act, major penalty of dismissal shall be imposed on such government servant.

- d. Order cancellation or modification of a license or lease or permission or contract or agreement, which was the subject matter of investigation.
- e. Blacklist the concerned firm or company or contractor or any other entity involved in that act of corruption.
- f. Issue appropriate directions to appropriate authorities for redressal of grievance in such time and in such manner as is specified in the order.
- g. Invoke its powers under this Act if its orders are not duly complied with and ensure due compliance of its orders.
- h. Take necessary action to provide protection to a whistleblower as per various provisions of this Act.

8(3) Suo moto initiate appropriate action under this Act if any case, of the nature mentioned in clauses (1), (2), (3) or (4), comes to the knowledge of the Lokpal from any source.

8(4) Issue such directions, as are necessary, from time to time, to appropriate authorities so as to make such changes in their work practices, administration or other systems so as to reduce the scope and possibility for corruption, misconduct and public grievances.

8(5) Lokpal shall be deemed to be “Disciplinary authority” or “appointing authority” for the purpose of imposing penalties under CCS Conduct Rules.

8(6) Section 19 of Prevention of Corruption Act shall be deleted.

8(7) Section 197 of CrPC shall not apply to any proceedings under this Act. All permissions, which need to be sought for initiating investigations or for initiating prosecutions under any Act shall be deemed to have been granted once Lokpal grants such permissions.

Provided that if an officer is finally convicted under Prevention of Corruption

## **9. Issue of Search Warrant, etc.-**

(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 proceeding to be conducted by him;

(ii) is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed to the authorities for the purpose of any law or rule in force which requires such disclosure to be made; or

(b) considers that the purposes of any inquiry or other proceedings to be conducted by him will be served by a general search or inspection, he may by a search warrant authorize any Police officer not below the rank of an Inspector of Police to conduct a search or carry out an inspection in accordance therewith and in particular to, –

(i) enter and search any building or place where he has reason to suspect that such property, document, money, bullion, jewellery or other valuable article or thing is kept;

(ii) search any person who is reasonably suspected of concealing about his person any article for which search should be made;

(iii) break open the lock of any door, box, locker safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i) where the keys thereof are not available.

Seize any such property, document, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any property or document or make or cause to be made; extracts or copies therefrom; or

(v) make a note or an inventory of any such property, document, money, bullion, Jewellery or other valuable article or thing.

(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.

## **10. Evidence –**

(1) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lokpal may require any public servant or any other person who, in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such document.

(2) For the purpose of any such investigation (including the preliminary inquiry) the Lokpal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 , in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person 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 documents ;

(f) ordering payment of compensatory cost in respect of a false or vexatious claim or defence;

(g) ordering cost for causing delay;

(h) Such other matters as may be prescribed.

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

11. Reports of Lokpal, etc. (1) The Chairperson of Lokpal shall present annually a consolidated report in 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 disposed with brief details of each such case, outcome and action taken or proposed to be taken in that case. It shall also publish lists of all cases received by the Lokpal during the previous month, cases disposed and cases which are pending.

## **12. Lokpal to be a deemed police officer:**

12(1) For the purposes of section 36 of Criminal Procedure Code, the Chairperson, members of Lokpal and the officers in investigation wing of Lokpal shall be deemed to be police officers.

12(2) While investigating any offence under Prevention of Corruption Act 1988, they shall be competent to investigate any offence under any other law in the same case.

## **13. Powers in case of non-compliance of orders:**

13(1) Each order of Lokpal shall clearly specify the names of the officials who are required to execute that order, the manner in which it should be executed and the time period within which that order should be complied with.

13(2) If the order is not complied with within the time or in the manner directed, Lokpal may decide to

impose a fine on the officials responsible for the non-compliance of its orders.

13(3) The Drawing and Disbursing Officer of that Department shall be directed to deduct such amount of fine as is clearly specified by the Lokpal in its order made in sub-section (2) from the salaries of the officers specified in the order. Provided that no penalty shall be imposed without giving a reasonable opportunity of being heard. Provided that if the Drawing and Disbursing Officer fails to deduct the salary as specified in the said order, he shall make himself liable for a similar penalty.

(3) In order to get its orders complied with, the Lokpal shall have, and exercise the same jurisdiction powers and authority in respect of contempt of itself as a High court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (Central Act 70 of 1971) shall have the effect subject to the modification that the references therein to the High Court shall be construed as including a reference to the Lokpal.

13A. Special Judges under section 4 of Prevention of Corruption Act: On an annual basis, Lokpal shall make an assessment of the number of Special Judges required under section 4 of Prevention of Corruption Act 1988 in each area and the Government shall appoint such number of Judges within three months of receipt of such recommendation. Provided that Lokpal shall recommend such number of Special Judges so that trial in each case under this Act is completed within a year.

## **Functioning of Lokpal**

### **14. Functioning of Lokpal:**

14(1) The Chairperson shall be responsible for overall administration and supervision of the institution of Lokpal.

14(2) All policy level decisions including formulation of regulations, developing internal systems for the functioning of Lokpal, assigning functions to various officials in Lokpal, delegation of powers to various functionaries in Lokpal etc shall be taken by the Chairperson and the members collectively as a body.

14(3) The Chairperson shall have an annual meeting with the Prime Minister to assess the needs of Lokpal for finances and manpower. Lokpal shall be provided resources by the Government on the basis of outcome of this meeting.

14(4) Lokpal shall function in benches of three or more members. Benches shall be constituted randomly and cases shall be assigned to them randomly by computer. Each bench shall consist of at least one member with legal background.

14(5) Such benches shall be responsible for

- (i) granting permission to close any case after a preliminary enquiry
- (ii) granting permission to either close a case after investigations or issuing orders imposing penalties under CCS Conduct Rules and/or for initiating prosecution in that case.
- (iii) Issuing orders under section 28.

14(6) Lokpal may decide to initiate investigations into any case suo moto also.

14(7) Chairperson shall chair all meetings of Lokpal.

14(8) The decision to initiate investigation or prosecution against any member of the Cabinet or any judge of High Court or Supreme Court shall be taken in a meeting of all the existing members and the Chairperson. Minutes and records of such meetings shall be made public.

### **15. Making a complaint to the Lokpal:**

15(1) Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokpal.

Provided that in case of a grievance, if the person aggrieved is dead or for any reason, unable to act for himself, the complaint may be made or if it is already made may be continued by his legal representatives or by any other person who is authorized by him in writing in this behalf.

15(2) A complaint could be on a plain paper but should contain all such details as prescribed by Lokpal.

15(3) On receipt of a complaint, the Lokpal shall decide whether it is an allegation or a grievance or a request for whistleblower protection or a mixture of two or more of these.

15(4) Every complaint shall have to be compulsorily disposed off by the Lokpal. Provided that no complaint, other than those which are anonymous, shall be closed without hearing the complainant.

#### **16. Matters which may be investigated by the Lokpal–**

Subject to the provisions of this Act, the Lokpal may investigate any action which is taken by or with the general or specific approval of a public servant where a complaint involving a grievance or an allegation is made in respect of such action.

Provided that the Lokpal may also investigate such action suo moto or if it is referred to it by the government, if such action can be or could have been in his recorded opinion, subject of a grievance or an allegation.

#### **17. Matters not subject to investigation:-**

17(1) The Lokpal shall not conduct any investigation under this

Act in case of a grievance in respect of any action–

(i) if the complainant has or had, any remedy by way of appeal, revision, review or any other

remedy before any other authority provided in any other law and he has not availed of the same.

(ii) Taken by a judicial or quasi-judicial body, unless the complainant alleges malafides

(iii) If the substance of the entire grievance is pending before any court or quasi-judicial body of competent jurisdiction.

(iv) any grievance where there is inordinate and inexplicable delay.

17(2) Nothing in this Act shall be construed as authorising the Lokpal to investigate any action which is taken by or with the approval of the Presiding Officer of either House of Parliament.

17(3) The provisions of this Act shall be in addition to the provisions of any other enactment or any rule or law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

17(4) Nothing in this section shall bar Lokpal from entertaining a complaint making an allegation of misconduct or corruption or a complaint from a whistleblower seeking protection.

## **18. Provisions relating to complaints and investigations-**

(i) (a) The Lokpal, on receipt of a complaint in the nature of an allegation or a grievance or a combination of the two, or in a case initiated on his own motion, may on perusing the documents, either decide to proceed to enquire or investigate into that complaint or decide, to make such preliminary inquiry before proceeding to enquire or investigate into such complaint or direct any other person to make such preliminary inquiry as it deems fit for ascertaining whether there exists reasonable ground for conducting the investigation. The outcome of such preliminary enquiry, and if the complaint is being closed along with reasons for the same and all material collected during preliminary enquiry, shall be communicated to the complainant.

Provided that if any case is closed, all documents related thereto shall thereafter be treated as public. Every month, a list of all such cases shall be put on the website with reasons for closing a case. All material connected with such closed cases will be provided to anyone seeking it under Right to Information Act. Provided further that if the complaint contains verifiable and specific information about misconduct or corruption, then that case shall not be rejected even if the complaint is anonymous.

Provided further that no complaint of allegation shall be rejected by questioning the motives or intention of the complainant.

Provided further that all hearings before Lokpal shall be video recorded and shall be available to any member of the public on payment of copying costs.

(b) The procedure for preliminary enquiry of a complaint shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular, the Lokpal may, if it deems necessary to do so, call for the comments of the public servant concerned.

Provided that the preliminary enquiry should be completed and a decision taken whether to close a case or to proceed with investigations within one month of receipt of any complaint.

(ii) Where the Lokpal proposes, either directly or after making preliminary inquiry, to conduct any investigation under this Act, he.—

(a) may make such order as to the safe custody of documents relevant to the investigation, as it deems fit.

(b) at appropriate stage of investigations or in the end, it shall forward a copy of the complaint, its findings and copy of the material relied upon to the concerned public servant and the complainant,

(c) shall afford to such public servant and the complainant an opportunity to offer comments and be heard. Provided that such hearing shall be held in public, except in such rare circumstances, to be recorded in writing, will it be held in camera.

(iii) The conduct of an investigation under this Act against a Public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation.

(iv) If, during the course of preliminary inquiry or investigation under this Act, the Lokpal is prima facie satisfied that the allegation or grievance in respect of any action is likely to be sustained either wholly or partly, he may, through an interim order, direct the public servant concerned to stay the implementation or enforcement of the decision or action complained against, or to take such mandatory or preventive action, on such terms and conditions, as he may specify in his order to prevent further harm from taking place.

(v) The Lokpal, either during the course of investigations, if it is satisfied that prosecution is likely to be initiated in that case, or at the end of the investigations at the time of initiating prosecution, shall make a list of the assets of all the accused in that case and shall notify the same. In the event of final conviction, the court shall be empowered to recover loss determined under section 19 of this Act from this property and any transfer of property subsequent to the date of notification by Lokpal under this sub-section shall be treated as null and void.

(vi) If during the course of investigation or enquiry into a complaint, Lokpal feels that continuance of a public servant in that position could adversely affect the course of investigations or enquiry or that the said person is likely to impact evidence or witnesses, the Lokpal may issue appropriate orders including transfer of that public servant from that position or his suspension. Provided that such orders shall not be passed against the Prime Minister.

(vii) In case of a grievance, the Lokpal may issue interim orders to the appropriate authority recommending grant of interim relief to the complainant if he is satisfied at any stage of preliminary inquiry on investigation that the complainant has sustained injustice or undue hardship in consequence of any decision or action of a public servant.

(viii) The Lokpal may, at any stage of inquiry or investigation under this Act, direct through an interim order, appropriate authorities to take such action as is necessary, including suspension of a government servant, pending inquiry or investigation.→

(i) to safeguard wastage or damage of public property or public revenue by the administrative acts of the public servant;

(ii) to prevent further acts of misconduct by the public servant;

(iii) to prevent the public servant from secreting the assets allegedly acquired by him by corrupt means;

(ix) Where after investigation into a complaint, the Lokpal is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lokpal shall pass orders to that effect. If that public servant is a government servant, he shall be deemed to have vacated the position with effect from receipt of such order. In case of public servants other than government servants, Lokpal shall make such recommendation to the President, who shall decide either to accept such recommendation or reject it within a month of its receipt.

(x) If, after enquiry into a grievance and after affording reasonable opportunity of being heard to both the complainant and the public authority, the Lokpal is satisfied that such grievance is substantiated either wholly or partly, he shall,

Provided that any grievance shall be disposed within 15 days of its receipt. Provided further that if it relates to life and liberty of a person or if the matter is such as to warrant immediate attention and the Lokpal is so satisfied, the same shall be disposed within 48 hours.

(xi) All records and information of Lokpal shall be public and shall be provided under Right to Information Act, even at the stage of investigation or enquiry, unless release of such information would adversely affect the process of enquiry or investigation.

Provided that no information in any case shall be withheld under Right to Information Act after the completion of enquiry or investigation.

## **Recovery of Loss to the Government and punishments**

### **19. Recovery of loss to the Government:**

If a person is convicted of an offence under Prevention of Corruption Act, then the trial court will also quantify the loss caused to the government and apportion that amount to various convicts from whom this money must be recovered as arrears of land revenue.

19A. Punishments for offences: For offences mentioned in Chapter III of Prevention of Corruption Act, punishment shall not be less than five years which may extend upto life imprisonment.

## **Whistleblower protection**

### **20. Protection of Whistleblower:**

20(1) A whistleblower may write to Lokpal seeking protection from threat of physical or professional victimization or if he has been subjected to such professional or physical victimization.

20(2) On receiving such a complaint, Lokpal shall take following steps:

(a) Threat of professional victimization: Lokpal shall conduct appropriate enquiries and if it feels that there is a real threat to the person and the threat is

on account of that person having made an allegation under this Act, then the Lokpal shall pass appropriate orders, as soon as possible but in not more than a month of receipt of such complaint, directing appropriate authorities to take such steps as directed by the Lokpal.

(b) If a person complains that he has already been victimized professionally on account of making an allegation under this Act, Lokpal shall, after conducting enquiries, if he is of the opinion that the victimization is indeed because of that person's having made an allegation under this Act, pass appropriate orders, as soon as possible but in not more than a month, directing appropriate authorities to take such steps as directed by the Lokpal.

Provided that for clause (a) Lokpal may, but for clause (b) the Lokpal shall, also issue orders imposing penalties under CCS Conduct Rules against the officer or officials who issued threats or caused victimization. Provided further that no such penalties shall be imposed without giving an opportunity of being heard to the affected officials.

(c) Threat of physical victimization: Lokpal shall conduct appropriate enquiries and if it feels that there is a real threat to the person and the threat is on account of that person having made an allegation under this Act or for having filed an RTI application to any public authority covered under this Act, then notwithstanding anything contained in any other law, the Lokpal shall pass appropriate orders, as soon as possible but in not more than a week, directing appropriate authorities, including police, to take such steps as directed by the Lokpal to provide adequate security to that person, to register criminal cases against those who are issuing threats and also to take all such steps necessary to mitigate circumstances leading to such threat.

Provided that if the threat is imminent, Lokpal may decide to act immediately, within a few hours to prevent physical assault on that person.

(d) If a person complains that he has already been physically assaulted on account of making an allegation under this Act and if Lokpal is satisfied after conducting enquiries that the person has been assaulted because of his having made an allegation under this Act or for filing an RTI application in any of the public authorities covered under this Act, then notwithstanding anything else contained in any other law, the Lokpal shall pass such orders, as soon as possible but in not more than 24 hours, directing the concerned authorities to take such steps as directed by the Lokpal to provide adequate security to that person, to register criminal cases and also to ensure that no further harm visits on that person.

(e) If the whistleblower has alleged an act punishable under Prevention of Corruption Act, then for cases under clause (c), Lokpal may and for cases under clause (d), the Lokpal shall, assign the allegations made by that person to a special team, put it on a fast track and complete investigations in that case in not more than a month.

(f) If the whistleblower has alleged an act punishable under any law other than the Prevention of Corruption Act, then for cases under clause (c), Lokpal may and for cases under clause (d), the Lokpal shall, direct the agency which has the powers to enforce that law to assign the allegations made by the whistleblower to a special team, put it on a fast track and complete investigations in that case in such time as directed by the Lokpal.

(g) Lokpal shall have the powers to issue directions to appropriate agencies in the cases covered under clause (f), monitor such investigations and if necessary, issue directions to that agency to do the investigations in the manner as directed by the Lokpal.

20(3) If any complainant requests that his identity should be kept secret, Lokpal shall ensure the same. Lokpal shall prescribe detailed procedures on how such complainants shall be dealt with.

20(4) Lokpal shall Issue orders to the Public Authorities to make necessary changes in their policies and practices to prevent recurrence of victimization.

## **Grievance Redressal Systems**

### **21. Citizens' Charters:**

21(1) Each public authority shall be responsible for ensuring the preparation and implementation of Citizens Charter, within a reasonable time, and not exceeding one year from the coming into force of this Act.

21(2) Every Citizens Charter shall enumerate the commitments of the respective public authority to the citizens, officer responsible for meeting each such commitment and the time limit with in which the commitment shall be met.

21(3) Each public authority shall designate an official called Public Grievance Redressal Officer, whom a complainant should approach for any violation of the Citizens Charter.

21(4) Every public authority shall review and revise its Citizens Charter at least once every year through a process of public consultation.

21(5) Lokpal may direct any public authority to make such changes in their citizens' charter as are mentioned in that order.

21(6) No grievance shall be accepted by Lokpal if 15 days have not elapsed after submission of complaint by the complainant with the Public Grievance redressal Officer of that Public Authority.

Provided that if Lokpal feels that considering the gravity or urgency of the grievance, it is necessary to do so, the Lokpal may decide to accept such grievance earlier also.

### **Employees and staff and authorities in Lokpal**

22. Chief Vigilance Officer:

22(1) There shall be a Chief Vigilance Officer in each public authority to be selected and appointed by Lokpal.

22(2) He shall not be from the same public authority.

22(3) He shall be a person of impeccable integrity and ability to take proactive measures against corruption.

22(4) He shall be responsible for accepting complaints against any public authority and shall transfer the complaints related to other public authorities within two days of receipt.

22(5) He shall be responsible for carrying out all such responsibilities as assigned to him from time to time by Lokpal including dealing with complaints in the manner as laid down by Lokpal from time to time. Provided that the complaints which require investigations under Prevention of Corruption Act 1988 shall be transferred to the Investigative wing of Lokpal. Provided further that the complaints, other than grievances, against officers of the level of Joint Secretary or above shall not be dealt by the Chief Vigilance Officer and shall be transferred to the Lokpal, who shall set up a committee of Chief Vigilance Officers of three other public authorities to enquire into such complaint.

### **23. Staff of Lokpal, etc.-**

23(1) There shall be such officers and employees as may be prescribed to assist the Lokpal in the discharge of their functions under this Act.

23(2) The number and categories of officers and employees shall be decided by the Lokpal in consultation with the government.

23(3) The categories, recruitment and conditions of service of the officers and employees referred in sub-section (1) including such special conditions or special pay as may be necessary for enabling them to act without fear in the discharge of their functions, shall be such as may be prescribed according to the recommendations of Lokpal.

Provided that no official, whose integrity is in doubt, shall be considered for being posted in Lokpal.

Provided further that all officers and employees, who work in Lokpal on deputation or otherwise shall be eligible for the same terms and conditions as prescribed under this clause.

23(4) Without prejudice to the provisions of sub-section (1), the Lokpal may for the purpose of conducting investigations under this Act utilize the services of. –

(a) any officer or investigating agency of the Government; or

(b) any officer or investigating agency of the Government with the prior concurrence of that Government; or

(c) any person or any other agency.

23(5) The officers and other employees referred to in sub-section (1) shall be under the administrative and disciplinary control of the Lokpal:

23(6) Lokpal shall have the powers to choose its own officials. Lokpal may enlist officials on deputation from other government agencies for a fixed tenure or it may enlist officials on permanent basis from other government agencies or it may appoint people from outside on permanent basis or on a fixed tenure basis.

23(7) The staff and officers shall be entitled to such pay scales and other allowances, which may be different and more than the ordinary pay scales in the Central Government, as are decided by the Lokpal from time to time, in consultation with the Prime Minister, so as to attract honest and efficient people to work in Lokpal.

## **24. Repeal and savings –**

24 (1) The Central Vigilance Commission Act shall stand repealed.

24(2) Notwithstanding such repeal, any act or thing done under the said Act shall be deemed to have been done under this Act and may be continued and completed under the corresponding provisions of this Act.

24(3) All enquiries and investigations and other disciplinary proceedings pending before the Central Vigilance Commission and which have not been disposed of, shall stand transferred to and be continued by the Lokpal as if they were commenced before him under this Act.

24(4) Notwithstanding anything contained in any Act, the posts of the Secretary and other Officers and Employees of the Central Vigilance Commission are hereby abolished and they are hereby appointed as the Secretary and other officers and employees of the Lokpal. The salaries, allowances and other terms and conditions of services of the said Secretary, officers and other employees shall, until they are varied, be the same as to which they were entitled to immediately before the commencement of this Act.

24(5) All vigilance administration under the control of all Departments of Central Government, Ministries of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government shall stand transferred, alongwith its personnel, assets and liabilities to Lokpal for all purposes.

24(6) The personnel working in vigilance wings of the agencies mentioned in sub-section (5) shall be deemed to be on deputation to Lokpal for a period of five years from the date they are transferred to Lokpal. However, Lokpal may decide to repatriate any one of them anytime.

24(7) That Department from where any personnel have been transferred to Lokpal under sub-section (5), shall cease to have any control over the administration and functions of transferred personnel.

24(8) Lokpal shall rotate the personnel and create vigilance wing of each department in such a way that no personnel from the same department get posted for vigilance functions in the same department.

24(9) No person shall be employed with Lokpal against whom any vigilance enquiry or any criminal case is pending at the time of being considered.

## **25. Investigation Wing of Lokpal:**

25(1) There shall be an investigation wing at Lokpal.

25(2) Notwithstanding anything contained in section 17 of Prevention of Corruption Act, such officers of Investigation wing, upto the level as decided by Lokpal, shall have, in relation to the investigation and arrest of persons throughout India, in connection with investigation of complaints under this Act, all the powers, duties, privileges and liabilities which members of Delhi Special Police Establishment have in connection with the investigation of offences committed therein.

25(3) That part of Delhi Special Police Establishment, in so far as it relates to investigation and prosecution of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall stand transferred, alongwith its employees, assets and liabilities to Lokpal for all purposes.

25(4) That part of Delhi Special Police Establishment, which has been transferred under sub-section (3), shall form part of Investigation Wing of Lokpal.

25(5) The Central Government shall cease to have any control over the transferred part and its personnel.

25(6) The salaries, allowances and other terms and conditions of services of the personnel transferred under sub-section (3) shall be the same as to which they were entitled to immediately before the commencement of this Act.

25(7) All cases which were being dealt by that part of Delhi Special Police Establishment, which has been transferred under sub-section (3), shall stand transferred to Lokpal.

25(8) After completion of investigation in any case, the investigation wing shall present the case to an appropriate bench of Lokpal, which shall decide whether to grant permission for prosecution or not.

## **26. Complaints against officers or employees of Lokpal:**

26(1) Complaints against employees or officers of Lokpal shall be dealt with separately and as per provisions of this section.

26(2) Such complaint could relate to an allegation of an offence punishable under Prevention of Corruption Act or a misconduct or a dishonest enquiry or investigation.

26(3) As soon as such a complaint is received, the same shall be displayed on the website of Lokpal, alongwith the contents of the complaint.

26(4) Investigations into each such complaint shall be completed within a month of its receipt.

26(5) In addition to examining the allegations against the said official, the allegations shall especially be examined against sections 107, 166, 167, 177, 182, 191, 192, 196, 199, 200, 201, 202, 204, 217, 218, 219, 463, 464, 468, 469, 470, 471, 474 of Indian Penal Code.

26(6) If, during the course of investigations, the Lokpal feels that the charges are likely to be sustained, the Lokpal shall divest such officer of all his responsibilities and powers and shall place him under suspension.

26(7) If after completion of enquiry or investigations, Lokpal decides to prosecute that person under Prevention of Corruption Act, 1988 or holds him guilty of any misconduct or of conducting dishonest enquiry or investigations, then that person shall not work with Lokpal anymore. Lokpal shall either dismiss that person from the job, if that person is in the employment of Lokpal, or shall repatriate him, if he is on deputation.

Provided that no order under this clause shall be passed without giving reasonable opportunity of being heard to the accused person. Provided further that order under this clause shall be passed within 15 days of completion of investigations.

26(8) There shall be a separate wing in Lokpal to deal with complaints against officers or staff of Lokpal.

26(9) Lokpal shall take all steps to ensure that all enquiries and investigations on complaints against its own staff and officials are conducted in most transparent and honest manner.

## **27. Protection-**

27 (1) No suit, prosecution, or other legal proceedings shall lie against the Chairperson or members or against any officer, employee, agency or person referred to in Section 14(4) in respect of anything which is in good faith done while acting or purporting to act in the discharge of his official duties under this Act.

27(2) No proceedings of the Lokpal shall be held to be bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal

shall be liable to be challenged, reviewed, quashed or called in question in any court of ordinary Civil Jurisdiction.

## **28. Miscellaneous**

### **28. Public Servants to submit property statements-**

28(1) Every public servant, other than those mentioned in Section 2(11)(a) to (c), shall within three months after the commencement of this Act and thereafter before the 30th June of every year submit to the head of that public authority, in the form prescribed by Lokpal, a statement of his assets and liabilities and those of the members of his family. Public servants mentioned in sections 2(11)(a) to (c) shall submit their returns in a format prescribed by the Lokpal to the Lokpal with the aforesaid time lines.

28(2) The Head of each public authority shall ensure that all such statements are put on the website by 31st August of that year.

28(3) If no such statement is received by the Head of that public authority from any such public servant within the time specified in sub-section (1), the Head of that public authority shall direct the concerned public servant to do so immediately. If within next one month, the public servant concerned does not submit such statement, the Head shall stop the salary and allowances of that public servant till he submits such statement.

Explanation-In this section "family of a public servant" means the spouse and such children and parents of the public servant as are dependent on him.

28(4) The Lokpal may initiate prosecution against such public servant under Section 176 IPC.

28(5) If any public servant furnishes any statement, which is subsequently found to be incorrect, then Lokpal, in addition to taking action against the said public servant under other sections of this Act, may also impose a penalty upto a maximum of 50% of the value of the additional property subsequently detected. Lokpal shall also intimate such information to the Income Tax Department for appropriate action.

### **29. Power to delegate and assign functions:**

29(1) Lokpal shall be competent to delegate its powers and assign functions to the officials working in Lokpal.

29(2) All functions carried out and powers exercised by such officials shall be deemed to have been so done by the Lokpal. Provided that the following functions shall be performed by the benches and cannot be delegated:

- (i) Granting permission to initiate prosecution in any case.
- (ii) Order for dismissal of any government servant under CCS Conduct Rules.
- (iii) Passing orders under section 10 on complaints against officials and staff of Lokpal.
- (iv) Pass orders in cases of complaints, other than grievances, against officers of the level of Joint Secretary and above.

### **30. Time limits:**

30(1) Preliminary enquiry under sub-section (1) of section 9 of this Act should be completed within a month of receipt of complaint. Provided that the enquiry officer shall be liable for an explanation if the enquiry is not completed within this time limit.

30(2) Investigation into any allegation shall be completed within six months, and in any case, not more than one year, from the date of receipt of complaint.

### **31. Penalty for false complaint-**

31(1) Notwithstanding anything contained in this Act, if someone makes any false or frivolous complaint under this Act, Lokpal may impose such fines on that complainant as it deems fit.

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

31(2) Such fines shall be recoverable as dues under Land Revenue Act.

31A. Preventive measures: (1) Lokpal shall, at regular intervals, either study itself or cause to be studied the functioning of all public authorities falling within its jurisdiction and in consultation with respective public authority, issue such directions as it deems fit to prevent incidence of corruption in future.

31(3) Lokpal shall also be responsible for creating awareness about this Act and involving general public in curbing corruption and maladministration.

### **32. Power to make Rules –**

32 (1) The Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act. Provided that such rules shall be made only in consultation and with the approval of Lokpal.

32(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for :-

(i) the allowance and pensions payable to and other conditions of service of the Chairperson and members of Lokpal;

(ii) the powers of a Civil Court which may be exercised by the Lokpal under clause (h) of sub-section (2) of section 11;

(iii) the salary, allowances, recruitment and other conditions of service of the staff and employees of the Lokpal;

(iv) any other matter for which rules have to be made are necessary under this Act.

32(3): Any rule made under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a Statement laid before both Houses of the Parliament.

### **33. Removal of difficulties-**

Notwithstanding anything contained in this Act, the President, in consultation with Lokpal or on request of Lokpal may, by order, make such provision -

(i) for bringing the provisions of this Act into effective operation;

(ii) for continuing the enquiries and investigations pending before the Central Vigilance Commission by the Lokpal.

### **34. Power to make regulations:**

Lokpal shall have power to make its own regulations for the smooth functioning of the institution and to effectively implement various provisions of this Act.

35. This Act shall override the provisions of all other laws.