

AUTHORITATIVE ENGLISH TEXT

THE HIMACHAL PRADESH LOKAYUKTA ACT, 2014

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THE HIMACHAL PRADESH LOKYUKTA ACT, 2014

(AS ASSENTED TO BY THE PRESIDENT ON 25TH MAY 2015)

AN

ACT

To consolidate and re-enact a law to provide for the appointment of Lokayukta for the State of Himachal Pradesh to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

BE it enacted by the Legislative assembly of Himachal Pradesh in the Sixty-fifth Year of the Republic of India as follows:

CHAPTER-I

1. **Short title, extent, application and commencement.**- (1) This Act may be called the Himachal Pradesh Lokayukta Act, 2014.
 - (2) It extends to the whole of the State of Himachal Pradesh.
 - (3) It shall apply to public servants in and outside the State.
 - (4) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint i.e. 30th June, 2015.
2. **Definitions.**- (1) In this Act, unless the context otherwise requires-
 - (a) “competent authority” in relation to-
 - (i) the Chief Minister, means the Legislative Assembly of Himachal Pradesh;
 - (ii) the Minister, means the Chief Minister;
 - (iii) a Member of the Himachal Pradesh Legislative Assembly other than a Minister;
 - (iv) an officer in the Department of the State of Government, means the Minister-in-Charge of the Department under which such officer is serving;
 - (v) a Chairperson, Vice-chairperson or members of any body or Board or Corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act or Parliament or any Act of State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the

Minister-in-Charge of the administrative department of such body or Board or Corporation or authority or company or society or autonomous body;

- (vi) an officer of any body or Board or Corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of parliament or any Act of the State Legislature or wholly or partly financed by the Central Government or the State Government, or controlled by it, means the head of such body or Board or Corporation or authority or company or society or autonomous body;
- (vii) Vice-chancellor or Pro-vice chancellor or the University established under any Act of the State Legislature, means the Governor of Himachal Pradesh; and
- (viii) in any other case not falling under sub-clauses (i) to (vii) above, means such department or authority as the State Government may, by notification, specify:
 - (a) Provided that if any person referred to in sub-clause (v) or sub-clause(vi) is also a member of Legislative Assembly, then the competent authority shall be the Speaker of the Legislative assembly;
 - (b) "complaint" means a complaint accompanied by an affidavit, made in such form as may be prescribed alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988 of the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983;
 - (c) "Investigation" means an investigation defined under clause (h) of Section-2 of the Code of Criminal Procedure, 1973;
 - (d) "Lokayukta" means a person appointed as such under section-4;
 - (e) "Minister" means Minister of a State Government (by whatever name called) that is to say, Minister, Minister of State, Deputy Minister and shall also include the Chief Parliamentary Secretary and Parliamentary Secretary but does not include Chief Minister;
 - (f) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
 - (g) "preliminary inquiry" means an enquiry conducted under this Act by the Lokayukta;
 - (h) "prescribed" means prescribed by rules made under this Act;
 - (i) "public servant" means a person referred to in clauses (a) to (h) of sub-section-(1) of Section-(13) of this Act;
 - (j) "regulation" means regulations made under this Act;
 - (k) "rules" means rules made under this Act; and
 - (l) "Special Court" means the court of a Special Judge appointed under sub-section-(1) of section-3 of the Prevention of Corruption Act, 1988.

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 shall have the meanings respectively assigned to them in those Acts.

CHAPTER-II

APPOINTMENT OF LOKAYUKTA

3. Eligibility for the appointment of Lokayukta- (1) The Lokayukta shall be a person who is or has been Judge of the Supreme Court or a Chief Justice of a High Court.

(2) The Lokayukta shall not be-

- (i) a Member of Parliament or a member of the Legislative Assembly of any State or Union Territory;
- (ii) a person convicted of any offence involving moral turpitude;
- (iii) a person less than forty-five years of age, on the date of assuming office as the Lokayukta;
- (iv) a member of any Panchyat or Municipality; or
- (v) a person who has been removed or dismissed from service of the State and shall not hold any office of trust or profit other than his office as Lokayukta or be affiliated 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 Lokayukta, shall, if-
 - (a) he hold any office of trust or profit, resign from such office; or
 - (b) he is carrying on any business, sever his connection with the conduct and management of such business; or
 - (c) he is practicing any profession, cease to practice such profession.

4. Appointment of Lokayukta on recommendation of Selection Committee.-

- (1) The Lokayukta shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of -
- (a) the Chief MinisterChairperson
 - (b) the Speaker of Legislative AssemblyMember
 - (c) the Leader of Opposition in the Legislative Assembly Member and
 - (d) the Chief Justice of the High CourtMember

- (2) No appointment of Lokayukta shall be invalid merely by reason of any vacancy in the the Selection Committee.
- (3) the Selection Committee shall be regulate its own procedure in a transparent manner for selecting the Lokayukta.

5. Filling of vacancy of Lokayukta- The Governor shall take or cause to be taken all necessary steps for the appointment of new Lokayukta at least three months before the expiry of the term of Lokayukta, in accordance with the procedure laid down in this Act.

6. Term of office of Lokayukta- The Lokayukta shall, on the recommendations of the Selection Committee, be appointed by the Governor by warrant under his hand and shall seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Provided that he may:-

- (a) By writing under his hand addressed to the Governor, resign his office and such resignation shall be effective as soon as it is tendered; or
- (b) Be removed from his office in the manner as provided in this act.

7. Salary, allowances and other conditions of service of Lokayukta- The salary, allowances and other conditions of service of the Lokayukta shall be the same as those of the Chief Justice of the High Court;

Provided that if Lokayukta is, at the time of his appointment, in receipt of pension (other than disability) in respect of any provisions service under the Government of India or under the Government of a State, his salary in respect of service as the Lokayukta, be reduced-

- (a) By the amount of that pension; and
- (b) If he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of the portion of the pension;

Provided further that the salary, allowances and pension payable to and other conditions of the service of the Lokayukta shall not be varied to his disadvantage after his appointment.

8. Restriction on employment by Lokayukta after ceasing to held office- On ceasing hold office, the Lokayukta shall be ineligible for-

- (i) re-appointment as the Lokayukta;

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

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

(iv) contesting any election of President or Vice-President or Member of either House of Parliament or member of either house of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

9. Secretary, other officers and staff of Lokayukta- (1) There shall be a Secretary to the Lokayukta in the rank of Secretary to the Government, who shall be appointed by the Lokayukta from a panel of names sent by the State Government.

(2) There shall be a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Lokayukta from a panel of names sent by the State Government.

(3) The appointment of officers and other staff of the Lokayukta shall be made by the Lokayukta or such officer of Lokayukta as the Lokayukta may direct:

Provided that the Governor may by rule require that the appointment in respect of any post or posts a may be specified in the rule, shall be made after consultation with the Himachal Pradesh Public Service Commission.

(4) Subject to the provisions of any law made by the State Legislature, the salary, allowances and other conditions of service of Secretary and other officers and staff of Lokayukta shall be such as may be prescribed after consultation with the Lokayukta.

CHAPTER-III

INQUIRY WING

10. Inquiry Wing- (1) Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices act, 1983.

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State government shall make available such number of officers and other staff

from its departments, as may be required by the Lokayukta, for conducting preliminary inquiries under this Act.

(2) For the purpose of assisting the Lokayukta in conducting a preliminary inquiry under this act, the officers of the Inquiry Wing not below the rank of the Deputy Secretary to the Government, shall have the same powers as are upon the Inquiry wing of the Lokayukta under section-22.

CHAPTER-IV

PROSECUTION WING

- 11. Prosecution Wing-** (1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint to the Lokayukta under this Act.

Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the State government shall make available such number of officers and other staff from its departments, as may be required by the Lokayukta, for conducting prosecution under this Act.

(2) The Director of Prosecution shall, after having been so directed by the Lokayukta, file a case in accordance with the findings of investigation report, before the Special Court and take all the necessary steps in respect of prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983.

(3) The case under sub section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of Code of Criminal Procedure Act, 1973.

CHAPTER-V

EXPENSES OF LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF THE STATE

- 12. Expenses of Lokayukta to be charged on Consolidated Fund of the State-**

The Administrative expenses of the Lokayukta, including all salaries, allowances and pension payable to or in respect of the Lokayukta or Secretary or other officers of the Lokayukta, shall be charged upon the Consolidated Fund of the State and any fee or other moneys taken by the Lokayukta shall form part of that Fund.

CHAPTER-VI

JURISDICTION IN RESPECT OF INQUIRY

13. Jurisdiction of Lokayukta in respect of Inquiry- (1) Subject to the other provisions of this Act, Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of following, namely:-

- (a) any person who is or has been a Chief Minister;
- (b) any person who is or has been a minister;
- (c) any person who is or has been a Member of Himachal Pradesh Legislative Assembly;
- (d) all officers and officials of State Government, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983, when serving or who has served in connection with the affairs of the State;
- (e) all officers and officials referred to in clause (d) or equivalent in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by any Act of Parliament or a State Legislature or wholly or partly financed by the State Government or controlled by it;
- (f) any person who is or has been a Chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by any Act of Parliament or a State Legislature or wholly or partly financed by the State Government or controlled by it;

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

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

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), if in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

Explanation:- For the purpose of clause (g) and (h), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses;

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of Section-2 of the Prevention of Corruption Act, 1988 and the provisions of that Act and the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983, shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of the Legislative Assembly in respect of anything said or a vote given by him in the State Legislature or any Committee thereof covered under the provisions contained in clause (2) of article 194 of the Constitution.

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub section (1), if such person is involved in the act of abetting, bribe given or bribe taking or conspiracy relating to any allegation of corruption under the provisions of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices act, 1983 against a person referred to in sub-section (1);

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

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

Explanation- For the purpose of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

14. Matter pending before any court or committee or authority for inquiry not to be affected.- In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention

of Specific Corrupt Practices Act, 1983 has been pending before any court or committee of the State Legislative assembly or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this act, such matter or proceeding shall be continued before such court, committee or authority.

CHAPTER-VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

15. Provisions relating to complaints and preliminary inquiry and investigation-

(1) The Lokayukta on receipt of a complaint, if it decided to proceed further, may order-

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency to ascertain whether there exists prima facie case for proceeding in the matter; or

(b) investigation by any agency, when there exists a prima facie case;

Provided that the Lokayukta shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants to the Inquiry Wing, constituted under this Act:

Provided further that the Inquiry Wing in respect of complaint (s) referred to it under the first proviso, after making Preliminary inquiry in respect of public servants, shall submit its report to the Lokayukta in accordance with the provisions contained in sub section (2) and (4) and shall proceed in accordance with the provisions of this act;

Provided further that before ordering an investigation under clause(b) the Lokayukta shall call for the explanation of the public servant so as to determine whether there exist a prima facie case for investigation;

Provided further that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure if any, required to be undertaken by the Inquiry Wing under this Act.

(2) During the preliminary inquiry referred to in sub section (1), the Inquiry Wing shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegation made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit with in sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) The Lokayukta shall consider every report received under sub section (2) from the Inquiry Wing or any agency, and after giving an opportunity of being heard to the public servant, decide whether there exist a prima facie case and proceed with one or more of the following actions, namely:-

- (a) investigation by any agency;
- (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority; or
- (c) closure of the proceedings against the public servant and to proceed against the complainant under section-41.

(4) Every preliminary inquiry referred to in sub section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokayukta decides to proceed to investigate into the complaint, it shall direct any agency to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order.

Provided that the Lokayukta may extend the said period by a further period not exceeding six months at a time for the reasons to be recorded in writing.

(6) The Lokayukta shall consider every report received by it from any agency and after obtaining the comments of the competent authority and the public servant-

- (a) may grant sanction of its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant; or
- (b) may direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

(7) The Lokayukta may, after taking decision under sub section (6) on the filing of the charge-sheet directs its Prosecution Wing or any investigating agency to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

(8) The Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

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

(10) The Lokayukta may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(11) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

16. Person likely to be prejudicially affected to be heard- If, at any stage of the proceeding, the Lokayukta-

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) if of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry, the Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

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

18. Power of Lokayukta to grant sanction for initiating prosecution- (1) Without prejudice to the generality of the Provisions contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, the Lokayukta shall have the power to grant sanction for prosecution under clause (a) of sub section (6) of section 15.

(2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while action or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokayukta.

(3) Nothing contained in sub-section (1) & (2) shall apply in respect of the person holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The Provisions contained in sub-section (1), (2) & (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub clause (c) of clause (3) of article 320 of the Constitution.

- 19. Action on investigation against public servant being Chief Minister, Ministers or Members of Legislative Assembly.-** Where, after the conclusion of investigation, the finding of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section-13, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

CHAPTER-VIII

POWERS OF LOKAYUKTA

- 20. Supervisory powers of Lokayukta-** (1) The Lokayukta shall have the powers of superintendence over and to give direction in respect of the matters referred by the Lokayukta for preliminary inquiry or investigation under this act.

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokayukta shall not exercise powers in such a manner so as to require any agency to whom investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Inquiry Wing shall send a statement at such intervals as the Lokayukta may direct, to the Lokayukta in respect of action taken on complaints referred to it under the second proviso to sub-section (1) of section (15) and on receipt of such statement, the Lokayukta may issue guidelines for effective and expeditious disposal of such cases.

(3) Any officer of Inquiry and Investigation Wing, investigating a case referred to it by the Lokayukta, shall not be transferred without the approval of the Lokayukta.

(4) The Prosecution Wing may, with the consent of the Lokayukta, appoint a panel of advocates, other than the Government Advocates, for conducting cases referred to it by the Lokayukta.

(5) The State Government may from time to time make available such funds as may be required by the Lokayukta for conducting effective inquiries or investigations into complaints or cases.

21. Search and Seizure- (1) If the Lokayukta has reason to believe that any document which, in his opinion, shall be useful for, or relevant, to any investigation under this Act, are secreted in any place, it may authorize any agency to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorized, it may so retain or direct such authorized officer to retain such document till the completion of such investigation:

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

22. Lokayukta to have powers of Civil court in certain cases- (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Criminal Procedure, 1908, while trying a suit in respect of the following matters, namely:-

- (i) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidences on affidavits;
- (iv) requisitioning any public record or copy thereof from any court or office;
- (v) issuing commissions for the examination of witnesses or documents;

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta: and

- (vi) such other matters as may be prescribed:

(2) Any proceedings before the Lokayukta shall be deemed to be a judicial proceeding without the meaning of section 193 of the Indian Penal Code.

23. Powers of Lokayukta to utilize services of officers of the State Government-

(1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilize the services of any officer or organization or investigating agency of the State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining such inquiry or investigation, any officer or organization or agency whose services are utilized under sub-section (1) may, subject to the superintendence and direction of the Lokayukta-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The officer or organization or agency whose services are utilized under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

24. Provisional attachment of assets- (1) Where the Lokayukta or any officer authorized by it in this behalf, has reason to believe, the reason for such beliefs has to be recorded in writing on the basis of material in his possession, that-

- (a) any person is in possession of any proceeds of corruption;
- (b) such person is accused of having committed an offence relating to corruption; and
- (c) such proceeds of corruption are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of corruption, the Lokayukta or the authorized officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income Tax Act, 1961 and the Lokayukta and the officer shall be deemed to be an officer under sub-rule (c) of rule 1 of that schedule.

(2) The Lokayukta or the officer authorized in this behalf shall, immediately after attachment under sub-section (1), forward a copy of order, along with the material in his possession, referred to in that sub-section, to the Special Court in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to be effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

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

25. Confirmation of attachment of assets- (1) The Lokayukta, when it provisionally attaches any property under sub section (1) of section-24 shall, within a period of 30 days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 shall be confiscated and vest in the State Government free from any encumbrance or lease hold interest, excluding any debt due to any bank or financial institution.

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

26. Confiscation of assets, proceeds and benefits arisen or procured by means of corruption in special circumstances-(1) Without prejudice to the provisions of section-24 and 25, where the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts (by whatever name called) have arisen or procured by means of corruption by the public servant, it may authorize the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be

paid price thereof including the money so confiscated with interest at the rate of five percent per annum thereon calculated from the date of confiscation.

- 27. Powers of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption-** (1) Where the Lokayukta while making a preliminary inquiry into allegation of corruption, is prima facie satisfied, on the basis of evidence available;
- (i) that the continuance of the public servant referred to in clause (d) of clause (e) of clause (f) of sub-section (1) of section 13 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely: or
- (ii) such public servant is likely to destroy or any way temper with the evidence or influence witnesses, then the Lokayukta may recommend to the State Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.
- (2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1) except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.
- 28. Power of Lokayukta to give directions to prevent destructions of records during preliminary inquiry-** The Lokayukta may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record-
- (a) to protect such document or record from destruction or damage; or
- (b) to prevent the public servant from altering or secreting such document or record; or
- (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.
- 29. Power to delegate-** The Lokayukta may, by general or special order in writing, and subject to such conditions as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its officers or employees as may be specified in the order.

CHAPTER-IX

SPECIAL COURT

- 30. Special Courts to be constituted by the State Government-** (1) The State Government shall constitute such number of Special Courts, as recommended by the Lokayukta to hear and decide the cases arising out of the Prevention of

Corruption Act, 1988, the Himachal Pradesh Prevention of Specific Corrupt Practices act, 1983 or under this Act.

(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefore and complete the trial within further period of not more than three months or such further period not exceeding three months each, for reasons to be recorded in writing before the end of each such three months period, but not exceeding a total period of two years.

31. Letter of request to a contracting State in certain cases.- (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of a preliminary inquiry into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokayukta authorized in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court on being satisfied that such evidence is required in connection with the preliminary inquiry or investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-

- (i) examine the facts and circumstances of the case;
- (ii) take such steps as the Special Court may specify in such letter or request; and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

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

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

CHAPTER-X

COMPLAINTS AGAINST LOKAYUKTA AND OFFICIALS OF LOKAYUKTA

32. Removal and suspension of Lokayukta- (1) The Lokayukta shall not inquire into any complaint made against him.

(2) Subject to the provisions of sub-section (4), the Lokayukta shall be removed from his office by order of the Governor on grounds of proved misbehaviour or incapacity after the High Court, on a reference being made to it by the Governor on a petition signed by atleast twenty five Members of Legislative Assembly has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Lokayukta, ought to be removed on such ground.

(3) The Governor may suspend from office the Lokayukta in respect of whom a reference has been made by the High Court under sub-section (2), on receipt of recommendations or interim order made by the High Court in this regard until the Governor has passed orders on receipt of the final report of the High Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the Governor, may, by order, remove from the office, the Lokayukta, if he-

(a) is adjudged an insolvent, or

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

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

(5) If the Lokayukta is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the State Government or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise, than as a member and in common with the other members of an incorporated company, he shall, for the purpose of sub-section (2) be deemed to be guilty of misbehaviour.

33. Complaints against officials of Lokayukta- (1) Every complaint of allegation or wrong-doing made against any officer or official or agency under or associated with the Lokayukta for an offence punishable under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 shall be dealt with in accordance with the provisions of this section.

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

(3) While making an inquiry into the complaint against any officer or employee of the Lokayukta or agency or associated with the Lokayukta, if he is prima facie satisfied on the basis of evidence available, that-

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

(b) an officer or employee of the Lokayukta or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, then the Lokayukta may, by order, suspend such officer or employee of the Lokayukta or divest such agency engaged or associated with the Lokayukta of all powers and responsibilities hereto before exercised by it.

(4) On completion of the inquiry, if the Lokayukta is satisfied that there is prima facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or any wrong-doing, he shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokayukta or such officer, employee, agency engaged or associated with the Lokayukta initiate disciplinary proceedings against the official concerned:

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

CHAPTER-XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

34. Assessment of loss and recovery thereof by Special Court- If any public servant convicted of offence under the Prevention of Corruption Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 by the Special Court, notwithstanding and without the prejudice to any law for the time being in force, it may make assessment of loss, if any, caused to the public exchequer on account of action or decisions of such public servant not taken in good faith and for which he stands convicted and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Provided that if the Special Court, for the reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

CHAPTER-XII

FINANCE, ACCOUNTS AND AUDIT

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

- 36. Grants by the State Government-** The State Government may, after due appropriation made by the Legislative Assembly by law in this behalf, make to the Lokayukta grants of such sums of money as required to be paid for the salaries and allowances payable to, the Lokayukta and the administrative expenses including the salaries and allowances and pension payable to, or in respect of officers and other employees of the Lokayukta.
- 37. Annual statement of accounts.-** (1) The Lokayukta shall maintain proper accounts and other relevant record and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Accountant General, Himachal Pradesh.
- (2) The accounts of the Lokayukta shall be audited by the Comptroller and Auditor General of India, annually.
- (3) The Comptroller and Auditor General of India or any person appointed by him in connection with the audit of the accounts of the Lokayukta under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor General of India generally has, in connection with the audit of the Government accounts and. In particular, shall have the right to demand the production of books, accounts, connected vouchers and other relevant documents and papers and to inspect the office of the Lokayukta.
- (4) The accounts of the Lokayukta, as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government shall cause the same to be laid before the Legislative Assembly.
- 38. Furnishing of returns etc. to State Government-** The Lokayukta shall furnish to the State Government, at such time and in such form and manner as may be prescribed or as the State Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokayukta, as the State Government may, from time to time require.

CHAPTER-XIII

DECLARATION OF ASSETS

- 39. Declaration of assets-** (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.
- (2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath of affirmation to enter upon his office, furnish to the competent authority the information relating to-
- (a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries; and

- (b) his liabilities and that of his spouse and his dependent children.
- (3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within thirty days of the coming into force of this Act.
- (4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.
- (5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.
- (6) The competent authority in respect of each Department shall ensure that all such statements are published on the website of such Department by 31st of August of that year.

Explanation- For the purpose of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

40. Presumption as to acquisition of assets by corrupt means in certain cases.- If any public servant wilfully or for the reasons which are not justifiable-

- (a) fails to declare his assets; or
- (b) gives misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished, then such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

CHAPTER-XIV

OFFENCES AND PENALTIES

41. Prosecution for false complaint and payment of compensation, etc. to public servant- (1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

- (2) No court, except a Special Court, shall take cognizance of an offence under sub-section (1).
- (3) No Special Court shall take cognizance of an offence under sub-section (1), except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorized by the Lokayukta.
- (4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the State Government.
- (5) In case of conviction of a person being an individual or society or association or persons or trust (whether registered or not), for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.
- (6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation- For the purpose of this sub-section, the expression "good faith" means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under section 79 of the Indian Penal Code.

42. False complaint made by society or association or person or trust-

(1) Where any offence under sub-section (1) of section 41 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to the society or association or persons or trust, for the conduct of the business or affairs or activities of society or association of persons or trust as well as such society or association or persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER-XV

MISCELLANEOUS

- 43. Reports of Lokayukta-** It shall be the duty of the Lokayukta to present annually to the Governor a report on the work done by the Lokayukta and on receipt of such report the Governor shall cause a copy thereof together a memorandum, explaining in respect of the cases, if any, where the advice of the Lokayukta was not accepted, the reason for such non-acceptance to be laid before the Legislative Assembly.
- 44. Lokayukta to function as appellate authority for appeals arising out of any other law for the time being in force-** The Lokayukta shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983.
- 45. Protection of action taken in good faith by any public servant-** No suit, prosecution or other legal proceedings under this act shall lie against any public servant in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.
- 46. Protection of action taken in good faith by others.-** No suit, prosecution or other legal proceedings shall lie against the Lokayukta or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.
- 47. Lokayukta officers and employees of Lokayukta to be public servants.-** The Lokayukta, officers, and other employees of the Lokayukta shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.
- 48. Limitation to apply in certain cases-** The Lokayukta shall not inquire or investigate into any complaint, if complaint is made after the expiry of a period of five years from the date on which the offence mentioned in such complaint is alleged to have been committed.
- 49. Bar of jurisdiction.-** No civil court shall have jurisdiction in respect of any matter which the Lokayukta is empowered by or under this Act to determine.

- 50. Legal Assistance.-** The Lokayukta shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokayukta, if such assistance is requested for.
- 51. Act to have overriding effect-** The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.
- 52. Provisions of this Act to be in addition of other laws.-** The provisions of this Act shall be in addition to and not in derogation of any other law for time being in force.
- 53. Power to punish for contempt.-** The Lokayukta 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 shall have effect subject to the modification that-
- (a) the references therein to a High Court shall be construed as including a reference to the Lokayukta;
 - (b) sub-section (1) of section 18 shall not apply to the Lokayukta; and
 - (c) in “proviso to sub-section (1) of section 19 reference to Judicial Commissioner in any Union Territory” shall be construed as including a reference to the Lokayukta.
- 54. Powers to make rules.-** (1) The State Government may, by notification in the official gazette, make rules to carry out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-
- (a) the form of complaint referred to in clause (b) of sub-section (1) of section 2.
 - (b) the post or posts in respect of which the appointment shall be made after consultation with the Himachal Pradesh Public Service Commission under the proviso to sub-section (3) of section 9 of the Act;
 - (c) the salaries, allowances and other conditions of service of Secretary and other officers and staff in consultation with the Lokayukta under sub-section (4) of section 9;
 - (d) other matters for which the Lokayukta shall have the powers of a civil court under clause (vi) of sub-section (1) of section 22;
 - (e) the manner of sending the order of attachment alongwith the material to the Special Court under sub-section (2) of section 24;

- (f) the manner of transmitting the letter of request under sub-section (2) of section 31;
- (g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokayukta under section 35;
- (h) the form for maintaining the account and other relevant records and the form of annual statement of account under sub-section (1) of section 37;
- (i) the form and manner and the time for preparing the returns including annual return and statements alongwith particulars and giving a summary of its activities during the previous year under section 38.
- (j) the form of annual return to be filed by a public servant under sub-section (5) of the section 39;
- (k) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 40; and
- (l) any other matter which is to be or may be prescribed.

55. Powers of Lokayukta to make regulations.- (1) Subject to the provisions of this Act and the rules made thereunder, the Lokayukta may, by notification in the official Gazette, make regulations to carry out the provisions of this Act.

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

- (a) the manner for displaying on the website of the Lokayukta, the status of all complaints pending or disposed or alongwith records and evidence with reference thereto under sub-section (9) of section 15;
- (b) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of section 15; and
- (c) any other matters which is required to be or may be, specified under this Act.

56. Laying of rules and regulations.- Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assemble, while it is in session, for a total period of fifteen days which may be comprised in one session or in two or more successive sessions aforesaid, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid and if the Assemble agrees in making any modification in the rule or

regulation, or if Assembly agrees that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule or regulation.

- 57. Power to remove difficulties.-** (1) If any difficulty arises in giving effect to the provisions of this act, the State Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this act, as appear to be necessary for removing difficulties:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislative Assembly.

- 58. Repeals and savings.-** On and from the date of commencement of this Act, the Himachal Pradesh Lokayukta Act, 1983 (Act No. 17 of 1983) shall stand repealed (hereinafter in this section referred to as the 'repealed act'):

Provided that the repeal shall not affect-

- (a) The appointment of Lokayukta under the repealed Act and his term of office and other conditions of service and who shall hold office as such for the remaining period of his term; or
- (b) The appointment of officers and other staff of the Lokayukta and their service conditions and they shall continue to be the officers and officials of the Lokayukta to the extent their services are considered necessary by the Lokayukta; or
- (c) Any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act; or
- (d) Any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act; or
- (e) Any inquiry, investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such inquiry, investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act has not been enforced:

Provided further that subject to preceding proviso anything done or any action taken (including any appointment or delegation made, notification, order, notice or directions issued, rules or regulations made) under the repealed act shall, in so far as it is in force immediately before coming into force of this Act is not inconsistent with the provisions of this Act be deemed to have been done, made or

taken under corresponding provisions of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.