

THE UTTARAKHAND LOKAYUKTA BILL, 2011
[UTTARAKHAND BILL NO. OF 2011]

A
Bill

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

Be it enacted by Legislative Assembly of Uttarakhand in the Sixty-second year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

- Short title, commencement and extent**
- 1.** (1) This Act may be called the Uttarakhand Lokayukta Act, 2011.
(2) For the purpose of preparations, the provisions of the Act shall come into force at once and the Act shall be operationalised within 180 days of its securing assent from the Governor of Uttarakhand.
(3) It extends to the whole of the State of Uttarakhand.
- Definitions**
- 2.** In this Act, unless the context otherwise requires:-
- (a) “**Board**” means the Chairperson and the other members of the Lokayukta collectively.
- (b) “**Complaint**” means an allegation of corruption or a request by whistleblower for protection or a request for redressal of certain grievances covered under this Act.
- (c) “**Lokayukta**” means and includes,
- (i) The Board;
- (ii) Benches constituted under this Act and performing functions under this Act;
- (d) “**Lokayukta Bench**” means a Bench of two or more members of the

Lokayukta with or without the Chairperson acting together in respect of any matter in accordance with the regulations framed under the Act. Each bench shall have a member with legal background.

- (e) **“Act of corruption”** means and includes -:
- (i) anything made punishable under the Prevention of Corruption Act, 1988; which would also include any offence committed by an elected member of Uttarakhand Legislative Assembly subject to Article 194 of the Constitution of India;
 - (ii) willfully giving any undue benefit by a public servant to any person or obtaining any undue benefit by a public servant from any person in violation of any laws or rules;
 - (iii) victimization of a whistleblower or a witness;
 - (iv) non-delivery of Service even after the Second Appeal under the Uttarakhand Right to Service Act, 2011.
- (f) **“Full bench”** means a bench with five members, or all the members, whichever is less with or without the Chairperson.
- (g) **“Government”** means government of Uttarakhand.
- (h) **“Government Servant”** means a public servant, who is serving in connection with the affairs of the State of Uttarakhand and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any body whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Uttarakhand.
- (i) **“Judicial officer”** means the officers appointed under Section 23 of this Act.
- (j) **“Public authority”** means any authority or body or institution of self-governance established or constituted –

- (i) by or under the Constitution; or
 - (ii) by or under any other law made by the state legislature; or
 - (iii) by notification issued or order made by the Government, and includes any body owned, controlled or substantially financed by the Government;
- (k) **“Public servant”** means a person who has held or is holding public office and is or has been public servant within the meaning of section 2(c) of Prevention of Corruption Act, 1988 related to the state of Uttarakhand. It is clarified that public servants shall include the Chief Minister of Uttarakhand state, all Ministers in the Council of Ministers of Uttarakhand state and Members of Legislative Assembly. It is further clarified that public servants shall not include Judges of Uttarakhand High Court.
- (l) **“Whistleblower”** means any person, who provides factual information with substance about corruption in a public authority or is a witness or victim in a case of corruption before the Lokayukta or who faces the threat of
- (i) professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of appropriate perquisites, departmental proceedings, discrimination or
 - (ii) physical harm, or
 - (iii) is actually subjected to any harm;
- because of either making a complaint to the Lokayukta under this Act, or by any other legal action aimed at preventing or exposing corruption.

Overriding effect of the Act

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

CHAPTER II
ESTABLISHMENT OF LOKAYUKTA

**Establishment
of Lokayukta
Institution**

4. (1) Immediately after the commencement of this Act, the Government by a Notification shall establish an institution known as Lokayukta, who would have administrative, financial and functional independence from the Government.
- (2) Lokayukta shall inquire either suo moto or on a complaint of an act of corruption in respect of public servants and also perform other functions under this Act.
- (3) No matter, in respect of which a complaint has been made to the Lokayukta under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.
- (4) In case any matter or proceeding related to allegation of corruption has been pending under Commissions of Inquiries Act, 1952 prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter shall be continued before such authority.
- (5) The Lokayukta shall consist of a Chairperson and other members (the minimum number of members will be five and the same may be increased upto seven as per need and requirement).
- (6) The Chairperson and the members of the Lokayukta shall be appointed by the Governor as per the recommendation of a Selection Committee.
- (7) The following shall not be eligible to become Chairperson or Member of Lokayukta:
- (a) Any person, who is not a citizen of India; or

- (b) Any person, against whom charges were ever framed by any court of law for any offence involving moral turpitude; or
 - (c) Any person, who is less than forty-five years in age; or
 - (d) Any person, who was in the Government service in the state of Uttarakhand and has demitted office within the last two years (from the date of the meeting of the Selection Committee), either by way of resignation or retirement.
- (8) Half the members of Lokayukta shall have a legal background and shall be persons of impeccable integrity and outstanding ability.

Explanation: “Legal Background” means that the person is or has been a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of a High Court or should have been an advocate in a High Court or the Supreme Court for at least twenty years.

Remaining half members of Lokayukta shall be persons of impeccable integrity having experience of not less than twenty years in public service or investigation or vigilance or anti-corruption or governance or management or finance or journalism or mass media. They shall be persons of eminence in public life with outstanding ability.

- (9) The Selection Committee shall consist of the following:-
- (i) The Chief Minister of Uttarakhand, who will be the Chairperson of the Selection Committee.
 - (ii) The Leader of the Opposition in the Legislative Assembly of Uttarakhand.
 - (iii) Two judges of the Uttarakhand High Court selected by collegium of all judges of Uttarakhand High Court.
 - (iv) One person from previous Chairpersons of Lokayukta (who is the seniormost Chairperson) appointed under Uttarakhand

Lokayukta Act, 2011.

- (v) Two members shall be selected by the other members of the Selection Committee [(i) to (iv) above] from amongst the retired Chief Justices of India, the retired judges of Supreme Court, the retired Chiefs of Army or Navy or Air Force, the retired Chief Justices of High Courts, the retired judges of High Courts, the retired Chief Election Commissioners of India, the retired Chief Central Information Commissioners, the retired Chairpersons of Union Public Service Commission, the retired Cabinet Secretaries of the Government of India and the retired Comptroller and Auditor Generals of India with reputation of impeccable integrity, who have not joined any political party after retirement and who are not holding any office under any government.
- (10) The Chairperson shall be a person of impeccable integrity and a person of eminence in public life with extra-ordinary ability. He shall also be a person with extensive and outstanding knowledge of law.
- (11) The Selection Committee shall select the Chairperson and other members of the Lokayukta from out of a short list prepared by the Search Committee.
- (12) A Search Committee shall consist of five members. The members of the Selection Committee at clauses 9(i) to 9 (v) will nominate the members of the Search Committee out of category of persons mentioned in 4(9)(v) who are the persons of eminence in public life with impeccable integrity. The term of the Search Committee, the fee and allowances, and other conditions in respect of its members shall be such as may be prescribed under the Rules.

- (13) The Search Committee before preparing the short list will invite nominations from such eminent individuals or such class of people or such organisation, whom they deem fit, for the position of Chairperson or members of the Lokayukta.
- (14) Only persons with impeccable integrity shall be eligible for being considered for nomination.
- (15) The recommendations about nominees should, inter alia, contain details of any allegations faced by that person under any law, details of his work against corruption in the past, reasons why that person is suitable for the job and any other material that the search committee may decide.
- (16) The search committee, using all possible sources shall collect as much information as possible about the background and past achievements of these persons.
- (17) Such nominations as are received shall be put on a web site for inviting information from the people in respect of nominees.
- (18) The Search Committee after taking into consideration the information received from all the sources shall prepare, preferably through consensus, a short list of four times the number of persons to be appointed as Chairperson and members of the Lokayukta.
- (19) Any nomination to which objection is raised by any two members of the Search Committee shall not be included in the short list.
- (20) Before sending the short list to the Selection Committee, the Search Committee will get the names of the short listed persons put on a public web site to enable people to send any relevant information about the short-listed persons.

- (21) The Selection Committee shall, after considering all relevant information about the short listed candidates, select the Chairperson and required number of members of Lokayukta preferably through consensus. However, a person shall not be selected if three members of the Selection Committee disapprove such names. The Selection Committee, if more than one member is to be selected, shall select the members of Lokayukta preparing the list in order of preference which will be used as inter-se seniority among the members. Members selected through an earlier selection process will be deemed to be senior to those selected later.
- (22) The Selection Committee after selecting the persons to be recommended as Chairperson or members of the Lokayukta shall ascertain their willingness to serve as Chairperson or members, as the case may be, before recommending the names to the Governor.
- (23) The Government shall fill up a vacancy of the Chairperson or a member, three months before the member or the Chairperson is due to retire. If the vacancy arises due to unforeseen reasons, it shall be filled within three months of such vacancy arising.
- (24) The Chairperson or members of Lokayukta shall not be serving member of either the Parliament or the Legislature of any State and shall not hold any office of profit (other than the office as Chairperson or member) or carry on any business or practice any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or member of Lokayukta shall-
- (i) if he holds any office of profit, resign from such office; or
 - (ii) if he is carrying on any business, sever his connection with the conduct and management of such business; or

- (iii) if he is practicing any profession, suspend practice of such profession, or
- (iv) if he is associated directly or indirectly with any other activity, which is likely to cause conflict of interest in the performance of his duties in Lokayukta, 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 Lokayukta, that person shall not be recommended by the Selection Committee as a member or Chairperson of Lokayukta.

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

Provided that,-

- (a) the Chairperson or member of Lokayukta may, by writing under his hand addressed to the Governor, resign from his office;
 - (b) the Chairperson or member may be removed from office in the manner provided in this Act.
- (26) The Chairperson and every member shall, before entering upon his office, make and subscribe before the Governor an oath or affirmation in the form set out in the Schedule.
 - (27) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member

available, as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

- (28) There shall be paid to the Chairperson and each member a salary and allowances equal to that of the Chief Justice of High Court and that of the Judge of the High Court respectively :

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

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

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

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

- (30) The Chairperson and members of Lokayukta after demitting their office shall not be eligible for appointment to any position in the Government of India or the Government of any State or any such body which is funded by any of the Governments or for contesting elections to Parliament, State Legislature or local bodies.

- (31) The Lokayukta shall select and appoint a Secretary to the

Lokayukta who shall enjoy the status and rank of Principal Secretary in the Government of Uttarakhand.

- (32) The Officers in the Lokayukta shall be appointed by the Board or any other authority designated by the Board in accordance with Regulations whether on a permanent basis or on a temporary basis.

CHAPTER III

POWERS AND FUNCTIONS OF THE LOKAYUKTA AND ITS OFFICERS

Powers and functions of Lokayukta

5. The Lokayukta shall have the following functions and powers
- (a) to exercise superintendence over the investigation of offences involving any act of corruption;
 - (b) to give directions to the investigating officers for the purpose of proper investigation of offences involving any act of corruption;
 - (c) after completion of investigation in any case involving an act of corruption, to recommend punishment of dismissal, removal or reduction in rank against government servants after giving them full opportunities of being heard. The recommendations shall be binding to the appointing/disciplinary authority of the Government. While recommending any action, Lokayukta will duly consider distinction between bonafide action and action with malafide intention and also judgement of error with and without ill-motive;
 - (d) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988;
 - (e) to ensure proper prosecution of cases before a Special Court established under the Prevention of Corruption Act, 1988;
 - (f) to provide by regulations for the terms and conditions of service including the allowances and pension payable to the officers and staff of the Lokayukta;
 - (g) to authorize a Bench of the Lokayukta to issue letters-**rogatory** in

relation to any case pending investigation under this Act;

- (h)** to receive complaints from whistle blowers;
- (i)** to receive complaints against any officer or staff of Lokayukta.
- (j)** to recruit investigating officers and other officers and staff and get them trained in modern methods of scientific investigation.
- (k)** to appoint judicial officers, prosecutors and senior counsels.
- (l)** to acquire modern equipment necessary for proper investigation.
- (m)** to attach property and assets acquired by corrupt means and to confiscate them in certain cases as provided under this Act.
- (n)** to recommend cancellation or modification of a lease, license, permission, contract or agreement, if it was obtained by corrupt means and to recommend blacklisting of a firm, company, contractor or any other person, involved in an act of corruption. The public authority shall either comply with the recommendation or reject the same within a month of receipt of recommendation. In the event of rejection of its recommendation, the Lokayukta may approach Uttarakhand High Court for seeking appropriate directions to be given to the public authority.
- (o)** to ensure due compliance of its orders by imposing penalties on persons failing to comply with its orders as provided under this Act;
- (p)** to initiate suo moto appropriate action under the Act on receipt of any information from any source about any corruption.
- (q)** to make recommendations to public authorities, in consultation with them, to make changes in their work practices to reduce the scope for corruption and whistleblower victimization. The concerned authority shall send its compliance report to Lokayukta within two months specifying detailed reasons, wherever they choose to reject any of the recommendations.
- (r)** to ensure that the time limits mentioned in this Act are strictly adhered to.
- (s)** to ensure the integrity of its functionaries and impose punishments

of dismissal, removal and reduction in rank.

- (t) to require any public authority to render any specific help required by the Lokayukta.
- (u) to prepare an appropriate reward scheme to encourage complaints from within and outside the government to report acts and evidence of corruption. Provided that the total value of such reward shall not exceed ten percentage of the value of the loss recovered or loss prevented.
- (v) such other functions as may be provided under this Act or necessary for the proper implementation of this Act.

**Establishment
of Investigation
and Prosecution
Wing**

6. (1) Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Investigation Wing for the purpose of conducting investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988.
- (2) Till such time the Investigation Wing is constituted by the Lokayukta, the State Government shall make available such number of investigation officers and other staff from the State Vigilence Department and such of its Departments, as may be required by the Lokayukta for carrying out investigation under this Act.
- (3) No investigation shall be made by an investigation officer of the Investigation Wing below the rank of a Deputy Superintendent of Police or by any other officer of equivalent rank.
- (4) The Lokayukta shall constitute a prosecution wing and appoint a Director of prosecution and such other officers and employees to assist the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint under this Act. After the approval of Lokayukta, the Director of prosecution

shall file a case before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of corruption Act, 1988.

Procedure of inquiry or investigation

7. (1) The Lokayukta on receipt of a complaint or in a case initiated on his own motion, may, before proceeding to investigate such complaint or case, make such preliminary inquiry or direct any other person to make such preliminary inquiry as he deems fit for ascertaining whether there exists reasonable ground for conducting the investigation. If on such preliminary inquiry, he finds that there exists no such ground he shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.
- (2) The procedure for verification of a complaint made under subsection (1) shall be such as the Lokayukta deems appropriate in the circumstances of the case and in particular, the Lokayukta may, if he deems it necessary to do so, call for the comments of the public servant concerned.
- (3) Where the Lokayukta proposes, after making such preliminary inquiry as he deemed fit to conduct any investigation under this Act, he,-
- (a) shall forward a copy of the complaint to the public servant concerned;
 - (b) shall afford to such public servant an opportunity to offer his comments on such complaint;
 - (c) may make such order as to the safe custody of documents relevant to the investigation, as he deems fit.
- (4) The Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint, if in his opinion,-
- (a) The complaint is frivolous or vexatious or is not made in good

faith;

(b) There are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) Other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies.

(5) In any case where the Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint it shall record his reasons therefore and communicate the same to the complainant and the public servant concerned.

(6) No anonymous complaint shall be entertained. The complainant will have to disclose his identity to Lokayukta, though he may request that his identity may be kept secret.

(7) In case of Secretary to Government and above, investigation or prosecution shall be instituted only after obtaining permission of a bench of at least two members and the chairperson of Lokayukta.

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

**Powers of
Investigating
Officer**

8. (1) The Investigating Officers of Lokayukta authorized to investigate offences under the Prevention of Corruption Act, 1988 shall have all the powers which are vested in a Police Officer while investigating offences under the Code of Criminal Procedure.

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

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

- (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or other documents; and
 - (f) any other matter which may be prescribed
- (3) All members of the Lokayukta and all officers of the Lokayukta superior in rank to an Investigating Officer may exercise the same powers as may be exercised by such Investigating Officer.
 - (4) If during the course of investigation into a complaint, the Lokayukta feels that continuance of a government servant in that position could adversely affect the course of investigations or that the said government servant is likely to destroy or tamper with the evidence or influence the witnesses or is likely to continue with corruption, the Lokayukta may issue appropriate directions including transfer or suspension of that government servant from that position.
 - (5) The Lokayukta may, at any stage of investigation under this Act, direct by an interim order, appropriate authorities to take such action as is necessary, to prevent the public servant from secreting or transferring the assets allegedly acquired by him by corrupt means;
 - (6) While investigating any offence under Prevention of Corruption Act 1988, Lokayukta shall be competent to investigate any offence under any other law in the same case.

Powers of Lokayukta to make recommendation to the public authority

9. If during any investigation under this act, the Lokayukta is satisfied that any preventive action is necessary in public interest to prevent the ongoing incidence of corruption, it may make any recommendation to the public authority concerned to stay the implementation or enforcement of any decision or take any such

action as is recommended by the Lokayukta. The public authority shall either comply with the recommendation of the Lokayukta or reject the same within fifteen days of the recommendation thereof. In the event of rejection of its recommendation, the Lokayukta may approach the Uttarakhand High Court for seeking appropriate directions to be given to the public authority.

Power of Lokayukta to permit for search and entry into any building or premises

10. (1) Where, in consequence of information in his possession, the Lokayukta has reason to believe that any person –

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

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

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

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

CHAPTER IV

PROCEEDINGS OF LOKAYUKTA

Proceeding of Lokayukta

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

(2) The Benches of the Lokayukta shall sit at Dehradun.

- (3) No act or proceeding of the Lokayukta shall be invalid merely by reason of:
- (a) any vacancy in, or any defect in the constitution of Lokayukta;
 - (b) any defect in the appointment of a person acting as a chairperson or a member of Lokayukta; or
 - (c) any irregularity not affecting the merits of the case
- (4) All policy level decisions including formulation of regulations, assignment, transfer of cases and delegation of functions and powers shall be taken by the Board in accordance with regulations.
- (5) The inquiry in any case shall not be closed by the investigating officer without recording reasons for such closure. For closing any case, the approval of the authority prescribed under Regulations by Lokayukta shall also be obtained.
- (6) The hearings in any proceedings before the Lokayukta shall be held in public except in exceptional circumstance where it is not in public interest to do so and the reasons for the same shall be recorded in writing before those proceedings are held in camera. The hearings held in public shall be video recorded and shall be made available to the public on payment of copying cost.

CHAPTER V

ACCOUNTABILITY OF LOKAYUKTA

**Removal of
Lokayukta
from office**

- 12.** (1) The Chairperson or any other member of the Lokayukta shall only be removed from his office by the Governor, on the recommendation of the Supreme Court on any of the following grounds after the Supreme Court, on the complaint of any person, held an inquiry and found that he could on such ground be removed:
- (a) that he has been guilty of misbehavior or misconduct ; or
 - (b) that he is unfit to continue in his office by reason of infirmity of mind or body; or
 - (c) is adjudged an insolvent; or
 - (d) engages during his term of office in any paid employment

outside the duties of his office.

- (2) In any such proceeding the Supreme Court may also direct the suspension of such Chairman or member.
- (3) On receipt of recommendation from the Supreme Court, the Governor shall forthwith remove the Chairperson or the member, as the case may be.
- (4) Supreme Court shall, as far as possible, make its recommendations within three months of receipt of complaint under this section.
- (5) If the complaint is frivolous or has been made with malafide intentions, Supreme Court may impose a fine or an imprisonment upto one year or both on the complainant.

Order by the Lokayukta subject to writ jurisdiction of High Court of Lokayukta

- 13.** Any orders passed by the Lokayukta or any officer of the Lokayukta shall be subject to the writ jurisdiction of the High Court.

Audit of Lokayukta

- 14.** (1) The Comptroller and Auditor General (CAG) shall conduct an annual financial and performance audit of the Lokayukta.
- (2) An appropriate Committee of Uttarakhand Legislative Assembly may decide to do an annual appraisal of the functioning of Lokayukta. The Lokayukta shall submit a compliance report, mentioning detailed reasons where it does not accept the recommendations of this committee, to the Governor. It shall be placed on the table of the House of Legislative Assembly of Uttarakhand.

Annual report of Lokayukta

- 15.** (1) The Chairperson of Lokayukta shall present annually a consolidated report in the prescribed format on its performance to the Governor.

- (2) On receipt of the annual report, the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before House of the Legislative Assembly of Uttarakhand.
- (3) The Lokayukta shall publish every month on its website the list of cases received during the previous month, list of cases disposed with brief details of each such case, outcome and action taken or proposed to be taken in that case, list of cases which are pending and minutes and records of Board meetings.

**Establishment
of complaints
authority**

16. (1) One or more complaints authority would be established in the Lokayukta to entertain any complaints against any officer or staff of the Lokayukta.
- (2) Such complaints authority shall have two members in all to be selected by the selection committee under section 4 of this Act in the same manner as the members of Lokayukta have been selected.
- (3) The members of the Complaints Authority shall be persons with extensive knowledge in law.
- (4) The complaints received against any officer or staff of the Lokayukta shall be inquired into by the Complaints Authority in a public hearing and shall be decided within two months of the receipt of the complaint. The officer or staff of the Lokayukta shall be given proper opportunity to tender his defence. If the officer or member is found guilty of misbehavior or dishonest investigation or corruption, the authority may order his dismissal, removal or reduction in rank.
- (5) The final orders passed by the Complaints Authority will be subject to the writ jurisdiction of the High Court.
- (6) In suitable cases it would also be open to the complaints authority to direct suspension of the officer or staff of the Lokayukta.
- (7) Complaints authority shall work in benches in accordance with regulations made under this Act.

Transparency in Lokayukta organization 17. The Lokayukta shall maintain complete transparency in its functioning and shall ensure that full records of any investigation or inquiry conducted under this Act after its conclusion is made public by being put on a public web site. The Lokayukta will also ensure effective implementation of Section 4 of the Right to Information Act, 2005 for transparency within Lokayukta except for items those covered under Section 8 of the Right to Information Act, 2005.

CHAPTER VI

INVESTIGATION AND PROSECUTION AGAINST HIGH FUNCTIONARIES

Investigation and Prosecution against high functionaries 18. No investigation or prosecution shall be initiated without obtaining permission from the Bench of all the members with Chairperson against any of the following persons:-

- (i) The Chief Minister and any other member of the Council of Ministers.
- (ii) Any Member of Uttarakhand Legislative Assembly.

CHAPTER VII

POWERS OF LOKAYUKTA TO MAKE REGULATIONS

Powers of Lokayukta to make regulations 19. (1) The Lokayukta may by notification make regulations consistent with this Act to carry out the provisions of this Act.

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

- (a) the creation of different wings in the Lokayukta to deal with different subjects like investigation, prosecution and other matters;
- (b) the conferment of authority on officers at different levels to exercise powers under the Act and to lay down the procedure for any inquiries including those relating to complaints

- against its officers or members of staff ;
- (c) periods within which the investigations and inquiries have to be completed
 - (d) To provide for the taking of certain decisions by appropriate benches of the Lokayukta by circulation only.
 - (e) Work norms for each category of officers and staff of Lokayukta.
 - (f) Code of Conduct for Lokayukta organisation at all levels.
 - (g) Any other matter on which Lokayukta deems fit to frame the regulations.
- (3) The regulations framed by the Lokayukta under this Section shall be laid, as soon as may be after they are issued or made, before the Legislative Assembly of Uttarakhand.

CHAPTER VIII

REMOVAL OF DIFFICULTIES

**Removal of
difficulties**

- 20.** (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, on the recommendation of the Lokayukta, by order, not inconsistent with the provisions of this Act, remove the difficulty provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.
- (2) Every order made under this section shall be laid before the Legislative Assembly of Uttarakhand.

CHAPTER IX

TIMELY COMPLETION OF INVESTIGATION AND TRIALS FOR CORRUPTION

**Timely
completion of
investigation
and trials for**

- 21.** (1) Every investigating officer shall endeavour to complete the investigation of an offence within a period of six months but when necessary he may obtain extension of time from a Bench of the Lokayukta. The period of investigation as far as possible shall not

corruption

extend beyond twelve months.

- (2) Every effort will be made by the special courts trying an offence under the Prevention of Corruption Act, 1988 to complete the trial within a period of six months and if more time is required in a maximum period of twelve months.
- (3) To achieve the objective of a speedy trial the Lokayukta shall make an annual assessment of the number of special courts required for this purpose and shall make a recommendation to the Government for creating a specific number of special courts which recommendations shall be binding on the Government.
- (4) The Chief Justice of Uttarakhand High Court may constitute such number of special benches to hear cases under this Act, so as to ensure that an appeal in any case is decided as far as possible within six months.
- (5) The judges of Special Courts set up to hear cases under this Act will as far as possible deal only with cases under this Act.

CHAPTER X

WHISTLE BLOWERS

**Protection of
whistle blowers**

- 22.** (1) Any public official or any other person having information of any corruption in any public authority would be encouraged to send the information confidentially to the Lokayukta; and it shall be the duty of the Lokayukta to get an inquiry made into such information and if necessary get an investigation made under the Prevention of Corruption Act, 1988.
- (2) Lokayukta may issue necessary orders to provide protection to whistle blowers from any physical harm or administrative harassment. Identity of such whistle blowers shall also be protected if the whistle blower so desires.
 - (3) For achieving this objective it shall be competent for the Lokayukta to give suitable direction to the Government for providing security

as well as to any other authority to ensure that no harassment is caused to such whistle blower.

- (4) Orders under this section shall be passed expeditiously and in any case within fifteen days of receipt of complaint. Immediate action will be taken in cases involving a threat of physical victimization.
- (5) The investigation in complaints by whistleblowers facing physical or professional victimization shall be fast tracked and completed within three months of receipt of the same.

CHAPTER XI

PUNISHMENTS AGAINST CORRUPT PUBLIC SERVANTS

**Penalties and
punishments
against corrupt
public servants**

23. (1) After the completion of an investigation if the Lokayukta is satisfied that the offence has been committed, it may either initiate prosecution against such government servant or may initiate proceedings for imposition of punishment of dismissal, removal or reduction in rank or both.
- (2) Lokayukta shall appoint such officers, who may be retired judges or retired government servants or such others as may be deemed fit by Lokayukta, to act as judicial officers for the purpose of inquiry under this section, at such terms and conditions as may be provided in regulations.
- (3) One or more judicial officers will conduct an inquiry against such Government servant for imposition of punishment of dismissal, removal or reduction of rank in which full opportunity to show cause would be given to such government servant. The inquiry will be completed within a period of three months. After conclusion of the inquiry, judicial officer(s) shall recommend the punishment of dismissal, removal and reduction in rank if any, to be awarded to that Government servant. The final decision on the recommendation of the judicial officer(s) will be made by the

Lokayukta.

- (4) The decision in sub-section (3) shall be binding on the appointing/ disciplinary authority.

Quantum of Penalties and punishments

- 24.** (1) For any act of corruption, the punishment shall not be less than six months of rigorous imprisonment and may extend up to imprisonment of ten years. In the rarest of rare case, the punishment may extend upto imprisonment for life.
- (2) The Special Court may take into consideration the higher rank of an accused person to inflict a more severe punishment.
- (3) If the beneficiary of an offence is a business entity, in addition to the other punishments provided for under this Act and under the Prevention of Corruption Act, 1988 a fine of up to five times the loss caused to the public shall be recovered from the accused and the recovery may be made from the assets of the business entity and from the personal assets of its Managing Directors / Directors, if the assets of the accused person are inadequate.
- (4) If any company or any of its officer or Director is convicted for any offence under Prevention of Corruption Act, 1988 that company and all companies promoted by any of that company's promoters shall be blacklisted and be ineligible for undertaking any government work or contract in future.
- (5) If a public servant is convicted under the Prevention of Corruption Act, 1988 such public servant shall stand removed from his office.

Execution of imposed financial penalty

- 25.** Wherever Lokayukta directs imposition of financial penalty on any officer under this Act to be deducted from his salary, it shall be the duty of the Drawing and Disbursing Officer of that Department to implement such order, failing which the said Drawing and Disbursing Officer shall make him self liable for similar penalty.

CHAPTER XII
REDRESSAL OF GRIEVANCE IN CERTAIN CASES

**Redressal of
grievance in
certain cases**

26. (1) In the event a person not getting the grievance redressed even by the Second Appellate Authority under the Uttarakhand Right to Service Act, 2011 can make a complaint to the Lokayukta.
- (2) The Lokayukta after hearing may reject the complaint or accept it and issue a direction to an appropriate authority to get such grievances redressed within the time fixed by the Lokayukta.
- (3) The Lokayukta in such cases where complaint is accepted shall fix responsibility for non-redressal of grievance and shall also impose a penalty on Designated Officer and / or First Appellate Authority and / or Second Appellate Authority appointed under the Uttarakhand Right to Service Act, 2011 which shall not be less than ₹ 5000 and upto a maximum of ₹ 50,000 for each complaint.
- (4) Apart from levying the penalty, the Lokayukta after inquiry may also recommend to the Appointing / Disciplinary Authority the suitable punishment to be imposed on delinquent official. Such recommendation will be binding on the Appointing / Disciplinary Authority.
- (5) The Lokayukta may also order payment of suitable amount of compensation to the person whose grievance could not be redressed under the Uttarakhand Right to Service Act, 2011.
- (6) The duties of Lokayukta under this Section shall be performed by judicial officers appointed under Section 23 of this Act with the approval of the Authority prescribed by Lokayukta.

CHAPTER XIII
FINANCES OF LOKAYUKTA

**Finances of
Lokayukta**

27. (1) All expenses of the Lokayukta shall be charged to the Consolidated Fund of the state.

- (2) Lokayukta shall prepare its budget and send the same to the government. After sanction of the budget by the government, it will incur its expenditure as per financial rules of the government (or rules framed by Lokayukta) without any further administrative or financial approval from any Government agency to incur expenditure.

CHAPTER XIV

SEIZURE AND CONFISCATION OF PROPERTY AND RECOVERY OF COMPENSATION FROM CORRUPT PUBLIC SERVANTS

Seizure and confiscation of property and recovery of compensation from corrupt public servants

28. (1) After a public servant has been found guilty by the Special Court of having committed an offence under the Prevention of Corruption Act, 1988 the Court would also determine the assets and properties which have been acquired by such accused person by his corrupt acts.
- (2) The Special Court will pass an order for the confiscation of all the assets and properties which it has found to have been acquired by the corrupt acts of the convicted public servants as well as the subsequent accruals on these assets.
- (3) The Special Court would also determine whether apart from the above the accused person by his corrupt acts has also caused any loss to the exchequer or any other person and determine the amount of loss so caused. The Court shall make an order levying a fine on the accused person so convicted for the recovery of the entire loss which his corrupt acts have caused and shall also apportion this amount among the various convicted accused persons to be recovered from them as fines.
- (4) During the course of investigation if the Investigating Officer finds any property or asset which appears to have been acquired by the

corrupt acts of an accused person who is being investigated, it shall make an order of attachment of those assets so that they are available for confiscation at the time of the conviction of such accused persons. In case the accused person is ultimately acquitted, these attached assets and properties will be restored to him.

CHAPTER XV

PUBLIC SERVANTS PROPERTY STATEMENTS

**Property
statements of
Public servants**

29. (1) A public servant shall within three months after the commencement of this Act and thereafter by 30th June of every year submit to the Head of that public authority in which the said public servant is functioning or to such other authority as may be prescribed, an annual statement of his assets and liabilities (pertaining to Financial Year from 1st April to 31st March) and those of the members of his family which shall include their sources of income, in respect of the categories of public servants in the format prescribed by the Lokayukta.

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

- (2) If such statement is not submitted by the public servant by 31st July of that year, payment of his pay / salary will be stopped by the Public Authority with immediate effect till the statement is filed.
- (3) The Head of each public authority or such other authority as may be prescribed shall ensure that all such annual statements are put on the website by 31st of August of that year.
- (4) If it is found that the public servant owns some property which was not disclosed in his statement of assets, that property would be liable to be confiscated by the Lokayukta.
- (5) If the public servant is found to be in possession or enjoyment of any property which is not shown in his statement of assets, it shall

be presumed that it was owned by him unless he proves to the contrary.

CHAPTER XVI

APPLICABILITY AND MODIFICATIONS OF THE PROVISIONS OF CERTAIN OTHER ACTS

**Applicability
and
modifications
of the
provisions of
certain other
Acts**

- 30.** (1) Sanctions under Sections 19(1) and 19(2) of the Prevention of Corruption Act, 1988 and under Section 197 of Code of Criminal Procedure (CrPC) shall be deemed to have been granted once they have been granted by Lokayukta.
- (2) The provisions of sections 105C to 105I of CrPC shall apply to offences under the Prevention of Corruption Act, 1988 whether or not they are transnational in nature.
- (3) Section 389(3) of CrPC shall not apply to offences under Prevention of Corruption Act, 1988.
- (4) The right to file appeals under section 377 or 378 of CrPC shall be exercised by Lokayukta.
- (5) Under section 372 of CrPC, the power to file an appeal shall be with the complainant as well.
- (6) Notwithstanding anything contained in Section 397 of CrPC, no court shall ordinarily call for records in cases related to trial of offences in Prevention of Corruption Act, 1988 during any trial by a special court :

Provided that if the court calls for records, the same shall be returned within a period of one month.

- (7) Any permission which is required under any law for initiating investigation or initiating prosecution under any Act shall be deemed to have been granted once the Lokayukta has granted permission to initiate investigation or prosecution for any offences under the Prevention of Corruption Act, 1988.

- (8) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 a Special Court shall hold the trial of an offence on day-to-day basis, and shall not grant adjournment for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.

CHAPTER XVII

MISCELLANEOUS PROVISIONS

Penalty on complainant for complaint made for harassment

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

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

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

- (2) Such fines shall be recoverable as dues of arrears of land revenue.
- (3) A complaint or allegation once made under this Act shall not be allowed to be withdrawn.

Bar on re-appointment of public servants and transparency in contracts etc.

- 32.** (1) Till two years, after the retirement or resignation, no government official shall be eligible to take up jobs, assignments, consultancies, etc. with any person, company, or organisation that he had dealt with in his official capacity.
- (2) All contracts, public-private partnerships, transfer by way of sale, lease, and any form of largesse by any public authority shall be done with complete transparency and by calling for public tender/auction/bids unless it is an emergency measure or where it is

not possible to do so for reasons to be recorded in writing. Any violation of this shall make the contract/largesse void. The details of all such transactions would be put up by the public authority on a public website.

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

Grant immunity to the bribe giver by the special court

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

Power to punish for Contempt

- 34.** The Lokayukta shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power or authority, for this purpose under the provision of the Contempt of Courts Act, 1971, which shall have effect subject to the modification that the references therein to a High Court shall be construed as including a reference to Lokayukta.

Power to make Rules

- 35.** (1) The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
- (2) Every rule made under this Act shall be laid as soon as may be after

it is made before House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Saving and
repeals**

- 36.** (1) The Uttar Pradesh Lokayukta and Up-Lokayukta Act, 1975 which was made applicable to Uttarakhand after the creation of the state is hereby repealed in so far as Uttarakhand State is concerned.
- (2) The sections from 12 to 18 of Uttarakhand Right to Service Act, 2011 shall be omitted.

SCHEDULE

[See section 4(26)]

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

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