CITIZENS FOR PUBLIC ACCOUNTABILITY

ROUND TABLE ON LOKPAL

24 April, 2011
Teen Murti Bhawan, New Delhi

REFERENCE DOCUMENTS

FDR

People Power

20 years CMS

Transparency International India
The coalitions against corruption

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The Lokpal Bill 2010

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THE LOKPAL BILL, 2010

A

BILL

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

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Lokpal Act, 2010. — Short title and commencement

	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
	2. In this Act, unless the context otherwise requires, -	Definitions.
	(a) "Chairperson" means the Chairperson of the Lokpal;	
	(b) "competent authority", in relation to—	
	(i) the Prime Minister, means the House of the People;	
	(ii) a member of the Council of Ministers, other than the Prime Minister, means the Prime Minister; and	
	(iii) a member of Parliament, other than a Minister means the Council of States in the case of a member of that Council and the House of the People in the case of a member of that House;	
49 of 1988	(c) "memorandum of complaints" means a memorandum of complaints alleging that a public functionary has committed any offence punishable under the Prevention of Corruption Act, 1988;	
	(d) "inquiry" means every inquiry conducted under this Act by the Lokpal;	
	(e) "Lokpal" means the institution established under section 3;	
	(f) "Member" means a Member of the Lokpal;	
	(g) "prescribed" means prescribed by rules made under this Act;	
	(h) "public functionary" means a person who—	

	(i) holds or has held the office of the Prime Minister, Minister, Minister of State or Deputy Minister of the Union; or (ii) is or has been a member of either House of Parliament.	
	CHAPTER II **MACHINERY FOR INQUIRIES**	
	3. (1) **As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of memorandum of complaints under this Act, an institution to be called the "Lokpal".** (2) The Lokpal shall consist of – (a) a Chairperson who is or has been a Chief Justice or a Judge of the Supreme Court; and (b) two Members who are or have been the Judges of the Supreme Court or the Chief Justices of the High Courts. (3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe before the President, or a person appointed in that behalf by the President, an oath or affirmation in the form set out in the Schedule.	Establishment of Lokpal.
	4. (1) The Chairperson and Members shall be appointed by the President by warrant under his hand and seal: (2) Every appointment under sub-section (1) shall be made after obtaining the recommendations of a Committee consisting of – (a) the Vice-President of India Chairman; (b) the Prime Minister --member; (c) the Speaker of the House of the People --member;	Appointment of Chairperson and Members.

(d) the Minister in-charge of the Ministry of Home Affairs in the Government of India --member;

(e) the Minister in-charge of the Ministry of Law and Justice in the Government of India --member;

(f) the Leader of the House other than the House in which the Prime Minister is a member of Parliament --member;

(g) the Leader of the Opposition in the House of the People -- member;

(h) the Leader of the Opposition In the Council of States -- member:

Provided that in case, there is no Leader of Opposition in the House of the People or the Council of States, the leader of the single largest group or party in opposition to the Government, as the case may be, in such House or Council shall be deemed to be a member of the Committee specified in clause (g) or clause (h), as the case may be:

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(3) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

	5. The Chairperson or a Member shall not be a member of Parliament or a member of the Legislature of any State or Union territory and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person	Chairperson and Members to be ineligible to hold other office.

	appointed as the Chairperson or a Member, as the case may be, shall, if – (a) he is a member of Parliament or of the Legislature of any State or Union territory, resign such membership; or (b) he holds any office of trust or profit, resign from such office; or (c) he is connected with any political party, sever his connection with it; or (d) he is carrying on any business , sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or (e) he is practicing any profession, cease to practise such profession.	
	6. (1) The Chairperson and every other Member shall hold office as such for a term of three 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 President, resign his office; or (b) be removed from his office in the manner provided in section 7. (2) On ceasing to hold office, the Chairperson and every other Member shall be ineligible for— (i) reappointment in the Lokpal; (ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal; and (iii) further employment to any other office of	Term of office and other conditions of service of Chairperson and Members.

	profit under the Government of India or the Government of a State. (3) The salary, allowances and other conditions of service of-- (i) the Chairperson shall be the same as those of the Chief Justice of India; (ii) other Members shall be the same as those of a Judge of the Supreme Court: Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of a pension (other than a disability or wound 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: Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.	
	7. The Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehavior or incapacity after an inquiry made by a Committee consisting of the Chief Justice of India and two other Judges of the Supreme Court next to the Chief Justice in seniority, in which the Chairperson or the Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.	Removal of Chairperson or Members.
	8. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death,	Member to act as Chairperson or to discharge his

	resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. (2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.	functions in certain circumstances.
	9. (1) The Lokpal shall, for the purpose of assisting it in the discharge of its functions (including verification and inquiries in respect of memorandum of complaints) under this Act, appoint a Secretary and such other officers and employees as the President may determine, from time to time, in consultation with the Lokpal. **(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any memorandum of complaints or any class of memorandum of complaints, secure—** **(i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government, or** **(ii) the services of any other person or agency.** (3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear or favour in the discharge of their functions) shall be such as the President may determine, from time to time, in consultation with the Lokpal. (4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the	Staff of Lokpal.

	exclusive administrative control and direction of the Lokpal.	
	CHAPTER III **JURISDICTION AND PROCEDURE IN RESPECT OF INQUIRIES**	
	10. (1) Subject to the other provisions of this Act, the Lokpal shall inquire into any matter involved in, or arising from, or connected with, any allegation of corruption made in a memorandum of complaints: Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister in so far as it relates to national security, maintenance of public order, national defence and foreign relations: Provided that Lokpal shall not inquire into any matter involved in, or arising from or connected with, any such allegation of corruption against any Member of either House of Parliament unless the recommendation of the Speaker of House of people or the Chairman of Council of States, as the case may be, is received by it. (2) The Lokpal may inquire into any act or conduct of any person other than a public functionary in so far as it considers it necessary so to do for the purpose of its inquiry into any such allegation of corruption: Provided that the Lokpal shall give such person a reasonable opportunity of being heard and to produce evidence in his defence. (3) No matter in respect of which a memorandum of complaints may be made under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.	Jurisdiction of Lokpal.
60 of 1952		
	11. (1) The Lokpal shall not inquire into any matter concerning any person if the Chairperson or any Member has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief	Matters not subject to jurisdiction of Lokpal.

	Justice of India and decide the dispute in conformity with such opinion. (2) The Lokpal shall not inquire into any memorandum of complaints if the memorandum of complaints is made after the expiry of five years from the date on which the offence mentioned in such memorandum of complaints is alleged to have been committed.	
	12. (1) Any person other than a public servant may make a memorandum of complaints under this Act to the Lokpal. Provided that memorandum of complaints in case of Prime Minister shall be made to the Speaker of the House of People and the Lokpal shall consider only such memorandum of complaints as are referred to it by the Speaker of the House of People: Provided further that memorandum of complaints in case of Minister, Minister of State, or Deputy Minister of the union and Member of either House of Parliament shall be made to the Speaker of House of People or the Chairman of Council of States, as the case may be, and Lokpal shall consider only such memorandum of complaints as are referred to it by the Speaker of the House of People or the Chairman of Council of States as the case may be: Explanation.- For the purposes of this sub-section, "public servant" means – (a) any person who is a member of a defence service or of a civil service of the Union or a State or of an all India service or holds any post connected with defence or any civil post under the Union or a State; (b) any person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company, as defined in section 617 of the Companies Act, 1956; (c) any person in the service of any other	Memorandum of complaints. 1 of 1956.

	institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly by the Central Government or a State Government. (2) The memorandum of complaints shall be in the prescribed form and shall set forth particulars of the offence alleged and shall be accompanied by such fees as may be prescribed, if any, an affidavit in support of such particulars and a certificate of deposit furnished under sub-section (3) or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit. (3) The complainant shall deposit such sum of money in such manner and with such authority or agency as may be prescribed and the certificate for such deposit shall be furnished in the prescribed form. (4) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Lokpal by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal is satisfied that it is necessary so to do, be treated as a memorandum of complaints made in accordance with the provisions of this section. (5) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in-charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal without delay.	
	13. (1) If the Lokpal is satisfied, after considering a memorandum of complaints and after making such verification as it deems appropriate that – (a) the memorandum of complaints is not made within a period of five years as specified in sub-section (2) of section 11; or	Preliminary scrutiny of memorandum of complaints by Lokpal.

(b) the memorandum of complaints is manifestly false and vexatious;

the Lokpal shall dismiss the memorandum of complaints after recording its reasons therefor and communicate the same to the complainant and to the competent authority.

(2) The procedure for verification in respect of a memorandum of complaints under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular, the Lokpal may, if it deems it necessary so to do, call for the comments of the public functionary concerned.

Procedure in respect of inquiries.

14. (1) If, after the consideration and verification under section 13 in respect of a memorandum of complaints, the Lokpal proposes to conduct any inquiry, it–

(a) shall forthwith forward a copy of the memorandum of complaints to the competent authority;

(b) may make such orders as to the safe custody of documents relevant to the inquiry as it deems fit; and

(c) shall, at such time as it considers appropriate, forward a copy of the memorandum of complaints to the public functionary concerned and afford him an opportunity to represent his case.

(2) Every inquiry shall be conducted by the Chairperson and the Members sitting jointly and the place in which such inquiry is conducted shall be deemed to be an open court to which the public generally may have access so far as the same can conveniently contain them:

Provided that in exceptional circumstances and for reasons to be recorded in writing, such inquiry may be conducted in camera.

(3) The Lokpal shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of

	receipt of the memorandum of complaints: Provided that the Lokpal may, for reasons to be recorded in writing, complete the inquiry within a further period of six months. (4) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.	
	15. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 13), the Lokpal – (a) may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document; and (b) shall have all the powers of a civil court,	Evidence.
5 of 1908	under the Code of Civil 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 evidence 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 Lokpal, is not in a position to attend the proceeding before the Lokpal; and (vi) such other matters as may be prescribed.	

45 of 1860	(2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. (3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13 under this Act. (4) The Government or any public servant shall not be entitled, in relation to any such inquiry or verification under section 13 to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings. *Explanation*:-- For the purposes of this section, "public servant" shall have the same meaning as is in section 21 of the Indian Penal Code.	
45 of 1860		
	16. (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any inquiry under this Act, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an investigating agency referred to in sub-section (2) of section 9, to search for and to seize such documents. (2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in its custody, it may so retain the said document till the completion of such inquiry: Provided that where any document is required to be returned, the Lokpal shall return the same after retaining copies of such document duly authenticated thereof. (3) The provisions of the Code of Criminal Procedure, 1973 relating to searches shall, so far as may be, apply to searches under this section subject to the modification	Search and seizure.
2 of 1974.		

that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs therein, the words "Lokpal or any officer authorised by it" were substituted.

Reports.

17. (1) After the conclusion of inquiry, the Lokpal shall determine whether all or any of the offences alleged in the memorandum of complaints have or has been proved to its satisfaction and by report in writing shall communicate its findings to the complainant, the public functionary and the competent authority.

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

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

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act and the President shall, as soon as may be after and in any case not later than ninety days from the receipt of such report, cause the same, together with an explanatory memorandum, to be laid before each House of Parliament.

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

CHAPTER IV

MISCELLANEOUS

Expenditure on Chairperson and

18. The salaries, allowances and pensions payable

	to, or in respect of, the Chairperson and Members of the Lokpal, shall be expenditure charged on the Consolidated Fund of India.	members to be charged on the Consolidated Fund of India.
2 of 1974.	19. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal or any of its Members is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both. (2) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence referred to in sub-section (1) as they apply in relation to an offence referred to in sub-section (2) of the said section, subject to the modification that no memorandum of complaints in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.	Intentional insult or interruption to Lokpal.
2 of 1974. 2 of 1974.	20. (1) When any such offence as is described in sub-section (1) of section 19 is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, try such offender summarily, so far as may be, in accordance with the procedure specified for summary trials under the code of Criminal Procedure, 1973, and sentence him to simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. (2) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement, if any, made by the offender as well as the fining and the sentence. (3) Any person convicted on a trial held under this section may appeal to the Supreme Court. (4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.	Power of Lokpal to try certain offences.
	21. (1) The sum deposited by a complainant in	Disposal of deposit

	pursuance of the provisions of section 12 shall,-	under section 12, etc., and penalty for malafide memorandum of complaints
	(a) in a case where the memorandum of complaints is dismissed under sub-section (1) of section 13, stand forfeited to the Central Government;	
	(b) if the Lokpal, for reasons to be recorded in writing so directs, be utilized for compensating the public functionary complained against; and	
	(c) in any other case, be refunded to the complainant.	
	(2) If the Lokpal is satisfied that—	
	(a) all or any of the allegations made in a memorandum of complaints have or has been substantiated either wholly or partly; and	
	(b) having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such memorandum of complaints and all other relevant circumstances of the case the complainant deserves to be compensated or rewarded,	
	the Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Lokpal shall determine the person by whom the said compensation or reward shall be paid after giving that person a reasonable opportunity of being heard.	
	(3) Every person who makes any memorandum of complaints, which is held by the Lokpal to be false and filed with malafide intention to harass the public functionary against whom such memorandum of complaints is filed, shall be punishable as provided in sub-section (4).	
	(4) When any offence under sub-section (3) is committed, the Lokpal may take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be	

2 of 1974.	punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, 1973 and if such offender is found guilty of committing the offence, sentence him to imprisonment for a term which shall not be less than one year but which may extend to three years and also to fine which may extend to fifty thousand rupees and may also award where fine is imposed, out of the amount of the fine, to the public functionary against whom such false memorandum of complaints has been made, such amount of compensation as the Lokpal thinks fit.	
	22. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 and subject to the other provisions of this Act, any case pending before the Lokpal under sub-section (4) of section 21 shall only be transferred to another criminal court in accordance with the procedure contained in section 406 of that Code and for the purposes of that section the Lokpal shall be deemed to be a Court of Session.	Application of Act 2 of 1974.
	23. (1) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations (being an allegation in respect of which a memorandum of complaints may be made) specified in the order in respect of a public functionary and subject to the provisions of section 13, the Lokpal shall comply with such order. (2) When the Lokpal is to make any inquiry under sub-section (1), the Lokpal shall exercise the same powers and discharge the same functions as it would in the case of any inquiry made on a memorandum of complaints under this Act and the provisions of this Act (except section 21) shall apply accordingly.	Conferment of additional functions on Lokpal.
	24. If, at any stage of the inquiry, the Lokpal— (a) considers it necessary to inquire into the conduct of any person; or (b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;	Persons likely to be prejudicially affected to be heard.

	the Lokpal shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence: Provided that nothing in this section shall apply where the credit of a witness is being impeached.	
	25. (1) No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or person referred to in section 9, in respect of anything which is in good faith done or intended to be done under this Act. (2) Save as otherwise provided in this Act, no proceedings or decision of the Lokpal shall be called in question in any Court.	Protection of action taken in good faith.
	26. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any power conferred or duties imposed on it by or under this Act [except the powers under sub-section (1) of section 12, the power to dismiss a memorandum of complaints under sub-section (1) of section 13, and the powers under section 21] may also be exercised or discharged by the officers, employees and agencies referred to in section 9, as may be specified in the order.	Power to delegate.
	27. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for – (a) the manner in which the President shall obtain the opinion of the Chief Justice of India under sub-section (1) of section 11; (b) the form of memorandum of complaints under sub-section (2) of section 12 and the fees, if any, to be accompanied therewith;	Power to make rules.

	(c) the manner in which and the authorities or agencies with whom deposit shall be made under sub-section (3) of section 12 and the form in which certificate shall be furnished in respect of such deposits; (d) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 15; and (e) any other matter which is to be or may be prescribed; (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of parliament, while it is in session, for a total period of thirty days which may be comprised in one sessions or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effected 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.	
	28. For the removal of doubts, it is hereby declared that nothing in this Act shall operate to confer or enable the conferring of any jurisdiction on the Lokpal to make any inquiry— (a) into any allegation of corruption against or any act or conduct of— (i) the President, the Vice-President, the Speaker of the House of the People, the Deputy Speaker of the House of the People, Deputy Chairman of the Council of States; (ii) the Chief Justice or any other Judge of the High court or the Supreme Court; (iii) the Comptroller and Auditor-General of India, the Attorney General of India, Chairman and other members of National	Removal of doubts.

	Commission for Scheduled Castes and Scheduled Tribes, the Chief Election Commissioner, other Election Commissioners, the Chairman and other Members of the Union Public Service Commission or any other authority appointed under the Constitution of India; and (b) upon its own knowledge or information.	
60 of 1952	**29.** Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of, functioning or exercise of powers by any Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 before the commencement of this Act and no memorandum of complaints shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.	Saving.
	30. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words "The appropriate Government may", the words, brackets and figures "Subject to the provisions of sub-section (3) of section 10 of the Lokpal Act, 2007, the appropriate Government may" shall be substituted.	Amendment of Act 60 of 1952.

THE SCHEDULE

(See section 3(3))

I, A.B..... ...having been appointed Chairperson (or a Member) of the Lokpal, 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.

Jan Lokpal Bill version 2.1

Jan Lokpal Bill version 2.1

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

1. Short title and commencement:- (1) This Act may be called the Jan Lokpal Act, 2010.

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

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

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

(2) "Allegation" in relation to a public servant includes any affirmation that such public servant-

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

(b) has indulged in corruption

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

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

Provided that if any person obtains any benefit from the government by violating any laws or rules, that person along with the public servants who directly or indirectly helped that person obtain those benefits, shall be deemed to have indulged in corruption.

(5) "Government" or "Central Government" means Government of India.

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

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

(8) "Lokpal" means

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

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

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

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

a. such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

b. there has been willful negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;

(9A) "Minor penalty" and Major penalty" shall mean the same as defined in CCS Conduct Rules.

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

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

a. by or under the Constitution;

b. by any other law made by Parliament;

c. by notification issued or order made by the Government, and includes any body owned, controlled or substantially financed by the Government;

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

(a) the Prime Minister;

(b) a Minister;

(c) a Member of Parliament;

(d) Judges of High Courts and Supreme Courts;

(e) a Government servant;

(f) the Chairman or Vice-Chairman (by whatever name called) or a member of a local authority in the control of the Central Government or a statutory body or corporation established by or under any law of the Parliament of India, including a co-operative society, or a Government Company within the meaning of section 617 of the Companies Act, 1956 and members of any Committee or Board, statutory or non-statutory, constituted by the Government;

(g) includes all those who are declared as "public servants" in section 2(c) of Prevention of Corruption Act 1988.

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

(13) "Vigilance angle" includes –

(a) All acts of corruption

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

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

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

(e) Victimizing Whistle Blowers

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

(g) Make or undertake an unfair investigation or enquiry either to unduly help those guilty of corruption or incriminate the innocent.

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

(14) "Whistleblower" is any person, who faces the threat of

(a) professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of appropriate perquisites, departmental proceedings, discrimination or

(b) physical harm, or

(c) is actually subjected to such harm;

because of either making a complaint to the Lokpal under this Act, or for filing an application under the Right to Information Act, 2005 or by any other legal action aimed at preventing or exposing corruption or mal-governance.

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

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

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

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

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

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

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

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

Chairperson and Members of Lokpal

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

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

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

(iii) if he is practicing any profession, suspend practice of such profession.

(iv) If he is associated directly or indirectly with any other activity, which is likely cause conflict of interest in the performance of his duties in Lokpal, he should suspend his association with that activity.

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

5. Term of office and other conditions of service of Lokpal– (1) A person appointed as the Chairperson or member of Lokpal shall hold office for a term of five years from the date on which he enters upon his office or upto the age of 70 years, whichever is earlier;

Provided further that.-

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

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

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

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

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

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

(5) There shall be a separate fund by the name of "Lokpal fund" in which penalties/fines imposed by the Lokpal shall be deposited and in which 10% of the loss of Public Money recovered under section 19 of this Act shall also be deposited by the Government. Disposal of such fund shall be completely at the discretion of the Lokpal and such fund shall be used only for enhancement/upgradation/extension of the infrastructure of Lokpal.

(6) The Chairperson and members of Lokpal shall not be eligible for appointment to any position in Government of India or Government of any state or any such body which is funded by any of the governments or for contesting elections to Parliament, state legislatures or local bodies, if he has ever held the position of the Chairperson or a member for any period after demitting their office. A member could be appointed as a chairperson, provided that the total tenure both as member and as chairperson would not exceed five years and no member or chairperson would be eligible for reappointment or extension after completion of a five year term.

6. Appointment of the Chairperson and members:

1. The Chairperson and members shall be appointed by the President on the recommendation of a selection committee.
2. The following shall not be eligible to become Chairperson or Member of Lokpal:
   (a) Any person, who is not a citizen of India
   (b) Any person, who was ever chargesheeted for any offence under IPC or PC Act or any other Act or was ever penalized under CCS Conduct Rules.
   (c) Any person, who is less than 40 years in age.
3. At least four members of Lokpal shall have legal background. Not more than two members, including Chairman, shall be former civil servants.

   Explanation: "Legal Background" means that the person should have held a judicial office in the territory of India for at least ten years or has been an advocate in High Court or Supreme Court for at least fifteen years.
4. The members and Chairperson should have unimpeachable integrity and should have demonstrated their resolve to fight corruption in the past.
5. A selection committee consisting of the following shall be set up:
   a. The Vice President of India
   b. Speaker of Lok Sabha
   c. Two senior most judges of Supreme Court
   d. Two senior most Chief Justices of High Courts.
   e. Retired army personnel who are five star Generals.
   f. Chairperson of National Human Rights Commission
   g. Comptroller and Auditor General of India

h. Chief Election Commissioner

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

6. The Vice President shall act as the Chairperson of the selection committee.

7. The following selection process shall be followed:

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

   b. Each person recommending shall be expected to justify the selection of his candidate giving examples from the past achievements of the candidate.

   c. The list of candidates along with their recommendations received in the format mentioned above shall be displayed on a website.

   d. Each member of the selection committee, on the basis of the above material, shall recommend such number of names as there are vacancies.

   e. This list shall be displayed on the website.

   f. Public feedback shall be invited on the shortlisted names by putting these names on the website.

   g. The selection committee may decide to use any means to collect more information about the background and past achievements of the shortlisted candidates.

   h. All the material obtained so far about the candidates shall be made available to each member of the selection committee in advance. The members shall make their own assessment of each candidate.

   i. The selection committee shall meet and discuss the material so received about each candidate. The final selections for the Chairperson and members shall be made preferably through consensus.

      Provided that if three or more members, for reasons to be recorded in writing, object to the selection of any member, he shall not be selected.

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

8. The Prime Minister shall recommend the names finalized by the selection committee to the President immediately, who shall order such appointments within a month of receipt of the same.

9. If any of the members of the selection committee retires while a selection process is going on, that member will continue on the selection committee till the end of that process.

7. Removal of Chairperson or members-

(1) The Chairperson or any member shall not be removed from his office except by an order of the President on one or more of the following grounds:

a. Proved misbehavior

b. Professional, mental or physical incapacity

c. Insolvency

d. Being charged of an offence which involves moral turpitude

e. Engaging while holding such office, in any paid employment

f. Acquiring such financial interests or other interests, which are likely to affect his functions as member or Chairperson prejudicially.

g. Being guided by considerations extraneous to the merits of the case under his consideration with a view to favoring someone or implicating someone through any act of omission or commission.

h. Unduly influencing or attempting to influence any government functionary.

i. Committing any act of omission or commission which is punishable under Prevention of Corruption Act or is a misconduct.

j. If a member or the Chairperson in any way, concerned or interested in any contract or agreement made by or on behalf of any public authority in the Government of India or Government of any state or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall be deemed to be guilty of misbehavior.

(3) The following process shall be followed in respect of petitions for the removal of any member or Chairperson of Lokpal:

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

(b) The Supreme Court will hear the matter on receipt of such petition and may take one or more of the following steps:

(i) order an investigation by a Special Investigation Team appointed by the Supreme Court, if a prima facie case is made out and if the matter cannot be judged based on affidavits of the parties. The Special Investigation Team shall submit its report within three months.

(ii) Pending investigations by a Special Investigation Team under sub-clause (i), order withdrawal of a part or complete work from that member.

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

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

(v) direct registration and investigation of cases with appropriate agencies, if there is a prima facie case of commission of an offence punishable under the Prevention of Corruption Act or any other law.

(a) The bench shall be constituted by a panel of five seniormost judges of the Supreme Court.

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

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

(d) On receipt of a recommendation from the Supreme Court under clause (b)(iv) supra, the Prime Minister shall immediately recommend the removal of the member(s) or Chairperson of Lokpal to the President, who shall order the removal of the said member(s) or Chairperson within a month of receipt of the same.

Powers and Functions of Lokpal

8. Functions of Lokpal: (1) the Lokpal shall be responsible for receiving:

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

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

(c) Grievances

(d) Complaints from whistleblowers

(e) Complaints against the staff of Lokpal

(1A) It shall be the prime duty of Lokpal to ensure the integrity of its own staff and employees, whether temporary or otherwise. Lokpal shall be competent and empowered to take all actions to ensure that.

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

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

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

c. Recommend imposition of appropriate penalties under the relevant Conduct Rules

Provided that if a government servant is finally convicted under the Prevention of Corruption Act, the penalty of dismissal shall be recommended on such government servant.

d. Order cancellation or modification of a license or lease or permission or contract or agreement, which was the subject matter of investigation.

e. Blacklist the concerned firm or company or contractor or any other entity involved in that act of corruption.

f. Issue appropriate directions to appropriate authorities for redressal of grievance as per provisions of this Act.

g. Invoke its powers under this Act if its orders are not duly complied with and ensure due compliance of its orders.

h. Take necessary action to provide protection to a whistleblower as per various provisions of this Act.

(3) Suo moto initiate appropriate action under this Act if any case, of the nature mentioned in clauses (a), (b), (c) or (d) of sub-section (1), comes to the knowledge of the Lokpal from any source.

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

(5) Orders made by Lokpal under sub-section (2)(c) of this section shall be binding on the government and the government shall implement it within a week of receipt of that order.

(6) Section 19 of the Prevention of Corruption Act shall be deleted. Section 6A of Delhi Special Police Establishment Act shall not be applicable to the proceedings under this Act.

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

9. Issue of Search Warrant, etc.- (1) Where, in consequence of information in his possession, the Lokpal

(a) has reason to believe that any person. –

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

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

(b) considers that the purposes of any inquiry or other proceedings to be conducted by him will be served by a general search or inspection,

It may by a search warrant authorize any Police officer not below the rank of an Inspector of Police to conduct a search or carry out an inspection in accordance therewith and in particular to, -

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

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

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

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

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

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

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

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

10. Evidence -

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

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

(a) Summoning and enforcing the attendance of any person and examining him on oath;

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

(c) Receiving evidence on affidavits;

(d) Requisitioning any public record or copy thereof from any court or office ;

(e) Issuing commissions for the examination of witnesses or documents ;

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

(g) ordering cost for causing delay;

(h) Such other matters as may be prescribed.

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

11. Reports of Lokpal, etc.

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

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

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

12. Lokpal to be a deemed police officer:

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

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

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

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

(2) If the order is not complied with within the time or in the manner directed, the Lokpal may decide to impose a fine on the officials responsible for the non-compliance of its orders.

(3) The Drawing and Disbursing Officer of that Department shall be directed to deduct such amount of fine as is clearly specified by the Lokpal in its order made in sub-section (2) from the salaries of the officers specified in the order.

Provided that no penalty shall be imposed without giving a reasonable opportunity of being heard.

Provided that if the Drawing and Disbursing Officer fails to deduct the salary as specified in the said order, he shall make himself liable for a similar penalty.

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

Functioning of Lokpal

14. Functioning of Lokpal:

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

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

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

(3A)The expenditure so decided shall be charged to Consolidated Fund of India.

(3B) Lokpal shall take all possible steps to ensure the integrity of its employees and integrity of all enquiries and investigations. For this purpose, it shall be competent to make rules, prescribe work norms and prescribe procedures for swift and effective punishment against inefficient and corrupt employees.

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

(5) Such benches shall be responsible for

(i) granting permission to initiate prosecution in cases against Joint Secretary and above.

(ii) Hearing cases of complaints against its own staff.

(iii) Such other orders as may be decided by Lokpal from time to time.

Provided that the full bench of Lokpal may lay down norms as to which category of cases will be dealt by the benches of members and which cases would be decided at the levels of Chief Vigilance officers or Vigilance Officers. The norms could be based on loss caused to the government and/or impact on public and/or the status of the accused.

(6) The Lokpal may decide to initiate investigations into any case suo motu.

(7) The decision to initiate investigation or prosecution against any member of the Cabinet shall be taken by full bench of Lokpal.

(8) Certain matters, as provided under this Act shall be dealt by the full bench of Lokpal, which shall consist of at least seven members.

(9) Minutes and records of meetings of Lokpal shall be made public.

13A. Special Judges under section 4 of Prevention of Corruption Act:

(1) On an annual basis, the Lokpal shall make an assessment of the number of Special Judges required under section 4 of the Prevention of Corruption Act 1988 in each area and the Government shall appoint such number of Judges within three months of the receipt of such recommendation.

Provided that the Lokpal shall recommend such number of Special Judges so that trial in each case under this Act is completed within a year.

(2) Before making any fresh appointments, the Government shall consult the Lokpal on the procedure to be followed in selection to ensure the integrity of the candidates selected. The Government shall implement such recommendations.

13B. Issue of Letter Rogatory: A bench of the Lokpal shall have powers to issue Letters Rogatory in any case pending with the Lokpal.

15. Making a complaint to the Lokpal:

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

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

Provided further that a citizen may make a complaint to any office of Lokpal anywhere in the country. It shall be the duty of that office of Lokpal to transfer it to appropriate officer within Lokpal.

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

(2A) After its annual report has been presented in the Parliament, the Comptroller and Auditor General of India shall forward all such cases, which constitute an allegation under this Act, to the Lokpal and Lokpal shall act on them as per provisions of this Act.

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

(4) Every complaint shall have to be compulsorily disposed of by the Lokpal.

Provided that no complaint shall be closed without giving an opportunity of hearing to the complainant.

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

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

17. Matters not subject to investigation:-

(1) The Lokpal shall not conduct any investigation under this Act in case of a grievance in respect of any action-

(i) if the complainant has or had, any remedy by way of appeal, revision, review or any other recourse before any authority provided in any other law and he has not availed of the same.

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

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

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

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

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

18. Provisions relating to complaints and investigations-

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

for the same and all material collected during preliminary enquiry, shall be communicated to the complainant.

Provided that if any case is closed, all documents related thereto shall thereafter be treated as public. Every month, a list of all such cases shall be put on the website with reasons for closing a case. All material connected with such closed cases will be provided to anyone seeking it under Right to Information Act.

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

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

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

Provided that the preliminary enquiry should be completed and a decision taken whether to close a case or to proceed with investigations preferably within one month of receipt of any complaint, and positively within three months. Where the preliminary enquiry has not been completed within one month, reasons for the delay will be recorded in writing at the completion of the enquiry and made public.

(c) No anonymous complaint shall be entertained under this Act. The Complainant will have to reveal his identity to the Lokpal. However, if the complainant so desires, his identity shall be protected by Lokpal.

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

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

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

(c) shall afford to such public servant and the complainant an opportunity to offer comments and be heard.

Provided that such hearing shall be held in public, except in rare circumstances, to be recorded in writing, where it is not in public interest and in the interest of justice to hold it in public, it will be held in camera.

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

(iv) If, during the course of a preliminary inquiry or investigation under this Act, the Lokpal is prima facie satisfied that the allegation or grievance in respect of any action is likely to be sustained either wholly or partly, it may, through an interim order, recommend the public authority to stay the implementation or enforcement of the decision or action

complained against, or to take such mandatory or preventive action, on such terms and conditions, as it may specify in its order to prevent further harm from taking place. The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order. Lokpal, if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority.

(v) The Lokpal, either during the course of investigations, if it is satisfied that prosecution is likely to be initiated in that case, or at the end of the investigations at the time of initiating prosecution, shall make a list of moveable and immoveable assets of all the accused in that case and shall notify the same. No transfer of the same shall be permitted after such notification. In the event of final conviction, the trial court may, in addition to other measures, recover the loss determined under section 19 of this Act from this property,.

(vi) If during the course of investigation or enquiry into a complaint, the Lokpal feels that continuance of a public servant in that position could adversely affect the course of investigations or enquiry or that the said public servant is likely to destroy or tamper with the evidence or influence the witnesses, the Lokpal may issue appropriate recommendations including transfer of that public servant from that position or his suspension, if he is a government servant. The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order. Lokpal, if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority.

(vii) The Lokpal may, at any stage of inquiry or investigation under this Act, direct through an interim order, appropriate authorities to take such action as is necessary, pending inquiry or investigation.-

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

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

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

The public authority shall either comply with or reject the recommendations of Lokpal under this sub-section within 15 days of receipt of such an order. Lokpal, if it feels important, may approach appropriate High Court for seeking appropriate directions to the public authority.

(viii) Where after investigation into a complaint, the Lokpal is satisfied that the complaint involving an allegation against the public servant, other than the Ministers, Members of Parliament and judges, is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lokpal shall pass orders to that effect. In case of public servant being a Minister or a Member of Parliament, Lokpal shall make such recommendation to the President, who shall decide either to accept such recommendation or reject it within a month of its receipt.

Provided that the provisions of this section shall not apply to the Prime Minister.

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

Recovery of Loss to the Government and punishments

19. Recovery of loss to the Government: When a person is convicted of an offence under the Prevention of Corruption Act 1988, then the trial court shall quantify the loss caused to the government and apportion that amount to various convicts from whom this money must be recovered as arrears of land revenue.

19A. Punishments for offences: For offences mentioned in Chapter III of the Prevention of Corruption Act, the proviso to section 2(4) of this Act and section 28A of this Act, the punishment shall not be less than two years of rigorous imprisonment and may extend upto life imprisonment.

Provided that if the accused is an officer of the rank of Joint Secretary or above or a Minister, a member or Chairperson of the Lokpal, the punishment shall not be less than ten years of imprisonment.

Provided further that if the offence is of the nature mentioned in the proviso to section 2(4) of this Act and if the beneficiary is a business entity, in addition to other punishments mentioned in this Act and under the Prevention of Corruption Act, a fine amounting to five times the loss caused to the public shall be recovered from the accused and the recovery may be done from the assets of the business entity and from the personal assets of all its Directors, if the assets of the accused are inadequate.

Dealing with complaints against judges of High Courts or Supreme Court

19B. Receiving and disposing complaints against Judges of High Courts or Supreme Court:

(1) Any complaint against any Judge of a High Court or Supreme Court shall be dealt only by the office of the Chairperson of Lokpal.

(2) Each such complaint shall be subjected to a preliminary screening, which shall determine whether prima facie evidence exists of an offence under Prevention of Corruption Act. The screening shall be done by a member of Lokpal, who shall then present his findings to a full bench of Lokpal.

(3) A case shall not be registered without the approval of a full bench of Lokpal with majority of members of that bench being from legal background.

(4) Such case shall be investigated by a special team headed by an officer not below the rank of a Superintendent of Police.

(5) A decision whether to initiate prosecution shall be taken by a full bench of Lokpal with majority of members with legal background.

Whistleblower protection

20. Protection of Whistleblower:

(1) A whistleblower may seek the protection of the Lokpal if he has been subjected to or threatened with, professional or physical victimization.

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

(a) Professional victimization: If after conducting appropriate enquiries, the Lokpal feels that there is a real threat to the whistleblower on account of having made an allegation

under this Act, it shall, as soon as possible but not more than a month of receipt of such complaint, direct appropriate authorities to take such steps as directed by the Lokpal.

(b) If a whistleblower complains that he has been victimized professionally on account of making an allegation under this Act and the Lokpal, after conducting enquiries, is of the opinion that the whistleblower has been victimized for having made an allegation under this Act, it shall, as soon as possible but in not more than a month, direct appropriate authorities to take such steps as directed by the Lokpal.

Provided that for clause (a) the Lokpal may, but for clause (b) the Lokpal shall, also issue orders imposing appropriate penalties under relevant Rules against the government servants who issued threats or caused victimization.

Provided further that no such penalties shall be imposed without giving an opportunity of being heard to the affected government servants.

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

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

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

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

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

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

(h) Whistleblowers, who face threat of physical victimization or are actually assaulted may directly approach the Chairperson of Lokpal who shall meet them within 24 hours of their seeking such meeting and shall take appropriate action as per provisions of this Act.

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

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

(5) Lokpal shall make appropriate rules for the receipt and disposal of complaints from whistleblowers.

Grievance Redressal Systems

21. Citizens' Charters:

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

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

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

Provided that a public authority shall appoint at least one Public Grievance Redressal Officer in each station, where they have an office.

Provided further that the Public Grievance Redressal Officer shall either be Head of that Department or an officer not more than one rank below him but if that station does not have a Head of Department in any station, the seniormost officer in that station shall be appointed as the Public Grievance Redressal Officer.

(4) Every public authority shall review and revise its Citizens Charter at least once every year through a process of public consultation to be held in the presence of Chief Vigilance Officer in that public authority.

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

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

Provided further than such changes should not increase the existing time limits or reduce the number of items in citizen's charter.

21A. Receipt and disposal of Grievances:

(1) The Chief Vigilance Officer of any public authority shall declare such number of Vigilance Officers, as it deems fit, to be known as Appellate Grievance Officers, to receive and dispose grievances related to that public authority.

(2) If a citizen fails to receive satisfactory redressal to his grievance within a month of making a complaint to Public Grievance Redressal Officer, can make a complaint to Appellate Grievance Officer.

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

(3) If the complaint does not relate to an issue mentioned in Citizen's Charter of that public authority, the Appellate Grievance Officer, within a month of receipt of complaint, pass an order either rejecting the grievance or directing the public authority to redress the grievance in the manner and within such time, as is mentioned in the order.

Provided that no grievance shall be rejected without giving a reasonable opportunity of being heard to the complainant.

(4) A complaint to the Appellate Grievance Officer shall be deemed to have a vigilance angle if any of the following two conditions are satisfied:

(i) for issues mentioned in citizen's charter, if a citizen fails to get satisfactory redressal from Public Grievance Redressal Officer.

(ii) for issues other than those mentioned in citizen's charter, if the orders of Appellate Grievance Officer made under sub-section (3) of this section are violated.

(5) Each case, as mentioned in sub-section (4) of this section, shall be dealt in the following manner:

(i) After giving a reasonable opportunity of being heard, the Appellate Grievance Officer shall pass an order fixing responsibility for failure to satisfactorily redress complainant's grievance in prescribed time and direct the Drawing and Disbursing Officer of that public authority to deduct from the salary of such officials, as mentioned in the order, such penalty amounts as are directed by Appellate Grievance Officer, which shall not be less than Rs 250 per day of delay calculated from the day the time limit mentioned in citizens' charter or the time limit specified in the order passed under sub-section (3) of this section, for redressing that grievance got over,

(ii) Direct the Drawing and Disbursing Officer to compensate the complainant with such amounts as are deducted from the salaries of the said officers.

(6) The Officers mentioned in the order made under clause (i) of sub-section (5) of this section shall be required to show cause that they acted in good faith and did not have corrupt motives. If they fail to do so, the Appellate Grievance Officer shall proceed to recommend penalties against the said officers under CCS Conduct Rules.

Imposition of major and minor penalties

21B. Allegations of misconduct shall be received and enquired by vigilance officers.

21C. Allegations of misconduct and public grievances with deemed vigilance angle under section 21A shall be dealt in the following manner:

(1) The vigilance officer shall conduct an enquiry into each such case within three months of its receipt and present its report to the Chief Vigilance Officer.

(2) Within a fortnight of receipt of report, the Chief Vigilance Officer shall constitute a three member bench of Deputy Chief Vigilance Officers other than the one who conducted enquiry at clause (1) above.

(3) The bench shall hold a summary hearing giving reasonable opportunity to the vigilance officer who conducted enquiry, the complainant and the officers accused.

(4) The bench shall hold hearings on day to day basis and pass an order either imposing one or more of the minor or major penalties on the accused government servants.

Provided that such orders shall be passed within a month of constitution of the bench.

Provided that such order shall be in the form of a recommendation to the appropriate appointing authority.

(5) An appeal shall lie against the order of the bench before the Chief Vigilance officer, who shall pass an order within a month of receipt of appeal, after giving reasonable opportunity to the accused, the complainant and the vigilance officer who conducted enquiries.

Employees and staff and authorities in Lokpal

22. Chief Vigilance Officer:

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

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

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

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

(5) He shall be responsible for carrying out all such responsibilities as assigned to him from time to time by Lokpal including dealing with complaints in the manner as laid down by Lokpal from time to time.

Provided that the complaints which require investigations under Prevention of Corruption Act 1988 shall be transferred to the Investigative wing of Lokpal.

Provided further that the complaints, other than grievances, against officers of the level of Joint Secretary or above shall not be dealt by the Chief Vigilance Officer and shall be transferred to the Lokpal, who shall set up a committee of Chief Vigilance Officers of three other public authorities to enquire into such complaint.

(6) All the grievances shall be received and disposed by Chief Vigilance Officer on behalf of Lokpal, if the citizen fails to get satisfactory redressal from Public Grievance Officer under section 21 of this Act.

(7) Such number of Vigilance Officers shall be appointed under the Chief Vigilance Officer as are decided by Lokpal from time to time.

(8) The Vigilance Officers and the Chief Vigilance Officer shall have powers to enquire and impose penalties under CCS Conduct Rules in such cases and as per such rules as laid down by the Lokpal from time to time.

23. Staff of Lokpal, etc.-

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

(2) The number and categories of officers and employees shall be decided by the Lokpal.

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

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

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

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

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

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

(c) any person, including private persons, or any other agency.

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

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

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

(8) Lokpal shall be competent to increase or decrease its staff at various levels, within its overall budgetary constraints, depending upon its workload and keeping in mind the terms and conditions of the staff employed.

24. Repeal and savings –

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

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

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

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

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

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

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

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

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

25. Investigation Wing of Lokpal:

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

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

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

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

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

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

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

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

26. Complaints against officers or employees of Lokpal:

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

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

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

Provided that if the complainant so desires, his identity shall be protected.

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

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

(6) If, during the course of investigations, it is felt that the charges are likely to be sustained, such officer shall be divested of all his responsibilities and powers and shall be placed under suspension.

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

Provided that no order under this clause shall be passed without giving reasonable opportunity of being heard to the accused person.

Provided further that order under this clause shall be passed within 15 days of completion of investigations.

(8) A three member bench shall hear the cases of complaints against its staff and employees. However, for officers of the level of Chief Vigilance Officer or above, the hearings shall be done by full bench of Lokpal.

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

27. Protection-

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

(2) No proceedings of the Lokpal shall be held to be bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed or called in question in any court of ordinary Civil Jurisdiction.

Miscellaneous

28. Public Servants to submit property statements-

(1) Every public servant, other than those mentioned in Section 2(12)(a) to (c), shall within three months after the commencement of this Act and thereafter before the 30th June of every year submit to the head of that public authority, in the form prescribed by Lokpal, a statement of his assets and liabilities and those of the members of his family. Public servants mentioned in sections 2(12)(a) to (c) shall submit their returns in a format prescribed by the Lokpal, which shall include their sources of incomes, to the Lokpal with the aforesaid time lines.

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

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

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

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

28A. Properties deemed to have been obtained through corrupt means:

(1) If any property, moveable or immoveable, is subsequently found to be owned by the public servant or any of his family members, which had not been declared under this section by that public servant and which was acquired before filing of last return under this section, the same shall be deemed to have been obtained through corrupt means.

(2) If any property, moveable or immoveable, is subsequently found to be in possession of the public servant or any of his family members, which had not been declared under this section by that public servant, the same shall be deemed to be owned by that public servant and the same shall be deemed to have been acquired through corrupt means by that public servant, the onus of proving otherwise shall be on the public servant.

(3) The public servant shall be given an opportunity to explain, within 15 days,

(a) in the case of properties under sub-section (1) of this section, whether he had disclosed that property in any of the earlier years.

(b) in the case of properties under sub-section (2) of this section, to explain why these properties should not be deemed to be owned by the public servant.

(4) If public servant fails to provide satisfactory reply under sub-section (3) of this section with respect to some properties, Lokpal shall immediately confiscate all such properties.

(5) Transfer of those properties for which notices are issued under sub-section (3) of this section, shall be deemed to be null and void after the date of issue of such notices.

(6) Lokpal shall intimate such information to the Income Tax Department for appropriate action.

(7) Appeal against the orders of Lokpal shall lie in High Court of appropriate jurisdiction, which shall decide the matter within two months of filing of the appeal.

Provided that no appeal shall be entertained after expiry of 30 days from the date of order of Lokpal under sub-section (4).

(8) All properties confiscated under this section shall be auctioned to highest bidder. Half of the proceeds from the same shall be deposited by the Lokpal in Consolidated Fund of India. The balance amount could be used by Lokpal for its own administration.

Provided that if an appeal has been filed in any case, the auction shall not take place till the disposal of appeal.

28B.

(1) Within three months after the conclusion of any elections to the Parliament, the Lokpal shall compare the property statements filed by the candidates with Election Commission of India with their sources of income available with Income Tax Department. In such cases where assets are found to be more than known sources of income, it shall initiate appropriate proceedings.

(2) For an allegation against a Member of Parliament that he has taken a bribe for any conduct in Parliament, including voting in Parliament or raising question in Parliament or any other matter, a complaint could be made to the Speaker of Lok Sabha or the Chairperson of Rajya Sabha, depending upon the House to which that member belongs. Such complaints shall be dealt in the following manner:

(a) The complaint shall be forwarded to the Ethics Committee within a month of its receipt.

(b) The Ethics Committee shall, within a month, decide whether to

29. Power to delegate and assign functions:

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

(2) All functions carried out and powers exercised by such officials shall be deemed to have been so done by the Lokpal.

Provided that the following functions shall be performed by the benches and cannot be delegated:

(i) Granting permission to initiate prosecution in any case.

(ii) Order for dismissal of any government servant under CCS Conduct Rules.

(iii) Passing orders under section 10 on complaints against officials and staff of Lokpal.

(iv) Pass orders in cases of complaints, other than grievances, against officers of the level of Joint Secretary and above.

30. Time limits:

(1) Preliminary enquiry under sub-section (1) of section 9 of this Act should be completed within a month of receipt of complaint.

Provided that the enquiry officer shall be liable for an explanation if the enquiry is not completed within this time limit.

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

(3) Trial in any case filed by Lokpal should be completed within one year. Adjournments should be granted in rarest circumstances.

30A. Transparency and application of Right to Information Act:

(1) Lokpal shall make every effort to put every information on its website.

(2) A citizen would have a choice to make an appeal under section 19(3) of Right to Information Act, either with a member of Lokpal, so appointed for this purpose, or with the Central Information Commission. However, once having exercised that choice, he cannot go to the other authority for the same matter.

31. Penalty for certain types of complaint-

(1) Notwithstanding anything contained in this Act, if someone makes any complaint under this Act, which lacks any basis or evidence and is held by Lokpal to be meant only to harass certain authorities, Lokpal may impose such fines on that complainant as it deems fit.

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

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 under Land Revenue Act.

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

31A. Preventive measures:

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

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

31B. Reward Scheme:

(1) Lokpal shall encourage complainants from within and outside the government to report and fight against corruption by publicly recognizing such persons.

(2) Lokpal shall also prepare an appropriate scheme to give financial award to such complainants.

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

32. Power to make Rules –

(1) The Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

Provided that such rules shall be made only in consultation and with the approval of Lokpal.

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

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

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

(2A) Lokpal shall also be competent to make its own rules for the proper functioning of Lokpal.

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

(iii) procedure for registration of cases at Lokpal and initiation of prosecution

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

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

(4) Lokpal shall strictly adhere to the time limits mentioned at various places in this Act. In order to achieve that, Lokpal shall lay down work norms for each level of functionaries

and make an assessment of the additional number of functionaries and budget required in accordance with workload.

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

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

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

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

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

The Karnataka Lokayukta Act, 1984

The Karnataka Lokayukta Act, 1984

(KARNATAKA ACT OF 4 OF 1985)

Came into force w.e.f from 15-01-1986

As amended by Act Nos. 15 of 1986; 31of 1986; 1 of 1988;30 of 1991 ; 22 of 2000 & 25 of 2010)

Statement of Objects and Reasons

Karnataka Gazette, Extraordinary, dated 29-3-1983

The Administrative Reforms Commission had recommended the setting up of the institution of Lokayukta for the purpose of appointment of Lokayukta at the state's level, to improve the standards of public administration, by looking into complaints against the administrative actions, including cases of corruption, favouritism and official indiscipline in administrative machinery.

One of the election promises in the election manifesto of the Janatha Party was the setting up of the Institution of the Lokayukta.

The bill provides for the appointment of a Lokayukta and one or more Upalokayuktas to investigate and report on allegations or grievances relating to the conduct of public servants.

The public servants who are covered by the Act include :-

- Chief Minister;
- all other Ministers and Members of the State Legislature;
- all officers of the State Government;
- Chairman, Vice Chairman of local authorities, Statutory bodies or Corporations established by or under any law of the State Legislature, including Co-operative Societies;
- Persons in the service of Local Authorities, Corporations owned or controlled by the State Government, a company in which not less than 50% of the shares are held by the State Government, Societies registered under the State Registration Act, Co-operative Societies and Universities established by or under any law of the Legislature.

Where, after investigation into the complaint, the Lokayukta considers that the allegation against a public servant is prima facie true and makes a declaration that the post held by him, and the declaration is accepted by the competent authority, the public servant concerned, if he is a Chief Minister or any other Minister or Member of State Legislature shall resign his office and if he is any other non-official shall be deemed to have vacated his office, and, if an official, shall be deemed to have been kept under suspension, with effect from the date of the acceptance of the declaration.

If after investigation, the Lokayukta is satisfied that the public servant has committed any criminal offence, he may initiate prosecution without reference to any other authority. Any

prior sanction required under any law for such prosecution shall be deemed to have been granted.

The Vigilance Commission is abolished. But all inquiries and investigations and other disciplinary proceedings pending before the Vigilance Commission will be transferred to the Lokayukta.

There are other incidential and consequential provisions.Hence this bill.

Preamble

1. Short title and commencement
2. Definitions
3. Appointment of Lokayukta and Upalokayukta
4. Lokayukta or Upalokayukta not to hold any other office
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Preamble :

An act to make provision for the appointment and functions of certain authorities for making enquiries into administrative action relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution, taken by or on behalf of the Government of Karnataka or certain public authorities in the State of Karnataka (including any omission or commissions in connection with or arising out of such action) in certain cases and for matters connected therewith or ancillary thereto.

Whereas it is expedient to make provision for the appointment and functions of certain authorities for making enquiries into administrative action relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution taken by or on behalf of the Government of Karnataka or certain public authorities in the State of Karnataka (including any Omission of commission in connection with or arising out of such action) in certain cases and for matters connected therewith or ancillary thereto:-

Be it enacted by the Karnataka Legislature in Thirty-fourth Year of the Republic of India as follows:-

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

(1) This Act may be called the Karnataka Lokayukta Act, 1984.

(2) It shall come into force on such date as the State Government may, by notification appoint.

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

(1) "Action" means administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly;

(2) "Allegation" in relation to a public servant includes any affirmation that such public servant-

(a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;

(c) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;

OR

(d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs:

(3) "Chief Minister" means the Chief Minister of Karnataka;

(4) "Competent Authority" in relation to a public servant means-

(a) in the case of Chief Minister or a member of the State Legislature, the Governor acting in his discretion;

(b) in the case of a Minister or Secretary, the Chief Minister;

(c) in the case of a Government servant other than a Secretary, the Government of Karnataka;

(d) in the case of any other public servant, such authority as may be prescribed;

(5) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947;

(6) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who holds a civil post or is serving in connection with the affairs of the State of Karnataka 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 person 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 Karnataka;

(7) "Governor" means the Governor of Karnataka;

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

(9) "Lokayukta" means the person appointed as the Lokayukta under section 3;

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

(a) such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(b) there has been wilful negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;

(11) "Minister" means a member of the Council or Ministers for the State of Karnataka, but excluding the Chief Minister;

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

(a) the Chief Minister;

(b) a Minister;

(c) a Member of the State Legislature;

(d) a Government servant;

(e) the Chairman and Vice-Chairman (by whatever name called) or a member of a local authority in the State of Karnataka or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of section 617 of the Companies Act, 1956 and such other corporations or boards as the State Government may, having regard to its financial interest in such corporations or boards, by notification, from time to time, specify;

(f) member of a Committee or Board, statutory or non-statutory, constituted by the Government;

(g) a person in the service of pay of,-

(i) a local authority in the State of Karnataka;

(ii) a statutory body or a corporation (not being a local authority) established by or under a State or Central Act, owned or controlled by the State Government and any other board or Corporation as the State Government may, having regard to its financial interest therein by notification, from time to time, specify;

(iii) a company registered under the Companies Act, 1956, in which not less than fifty one percent of the paid up share capital is held by the State Government, or any company which is a subsidiary of such company;

(iv) a society registered or deemed to have been registered under the Karnataka Societies Registration Act, 1960, which is subject to the control of the State Government and which is notified in this behalf in the Official Gazette;

(v) a co-operative Society;

(vi) a university;

Explanation- In this clause, "co-operative society" means a co-operative society registered or deemed to have been registered under the Karnataka Co-operative Societies Act, 1959, and "university" means a university established or deemed to be established by or under any law of the State Legislature;

(13) "secretary" means the Chief Secretary, an Additional Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Secretary, or a Secretary-II to the Government of Karnataka and includes a Special Secretary, an Additional Secretary and a Joint Secretary;

(14) "Upalokayukta" means a person appointed as Upalokayukta under Section 3.

3. Appointment of Lokayukta and Upalokayukta.

(1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upalokayukta or Upalokayuktas.

(2)(a) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly. (b) A person to be appointed as an Upalokayukta shall be a person who has held the office of the Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Karnataka, the Chairman, Karnataka Legislative Council, the Speaker, Karnataka Legislative Assembly, the Leader of the opposition in the Karnataka Legislative Council and the Leader of the opposition in the Karnataka Legislative Assembly.

(3) A person appointed as the Lokayukta or an Upalokayukta shall, before entering upon his office, make and subscribe before the Governor, or some person appointed in that behalf of him, an oath or affirmation in the form set out for the purpose in the First Schedule.

4. **Lokayukta or Upalokayukta not to hold any other office**- The Lokayukta or Upalokayukta shall not be a member of the Parliament or be a member of the Legislature of any State and shall not hold any office or trust of profit (other than his office as Lokayukta or Upalokayukta) or be connected with any political party or carry on any business or practice any profession and accordingly, before he enters upon his office, a person appointed as the Lokayukta or an Upalokayukta shall-

(a) if he is a Member of the Parliament or of the Legislature of any State, resign such membership; or

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

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practicing any profession, suspend practice of such profession.

5. Term of office and other conditions of service of Lokayukta and Upalokayukta –

(1) A person appointed as the Lokayukta or Upalokayukta shall hold office for a term of five years from the date on which he enters upon his office;

Provided that.-

(a) the Lokayukta or an Upalokayukta may, by writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta or an Upalokayukta may be removed from office in the manner provided in Section 6.

(2) On ceasing to hold office, the Lokayukta or an Upalokayukta shall be ineligible for further employment to any office of profit under the Government of Karnataka or in any authority, corporation, company, society or university referred to in item (g) of clause (12) of section 2.

(3) There shall be paid to the Lokayukta and the Upalokayukta every month a salary equal to that of the Chief Justice of a High Court and that of a Judge of the High Court respectively;

(4) The allowances payable to and other conditions of service of the Lokayukta or an Upalokayukta shall be such as may be prescribed;

Provided that.-

(a) in prescribing the allowances payable to and other conditions of service of the Lokayukta, regard shall be had to the allowances payable to and other conditions of service of the Chief Justice of India;

(b) in prescribing the allowances payable to and other conditions of service of the Upalokayukta, regard shall be had to the allowances payable to and other conditions of service of a Judge of the High Court;

(c) no Dearness Allowance shall be payable either to the Lokayukta or Upalokayukta: Provided further that the allowances payable to and other conditions of service of the Lokayukta or Upalokayukta shall not be varied to his disadvantage of his appointment.

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

6. Removal of Lokayukta or Upalokayukta-

(1) The Lokayukta or an Upalokayukta shall not be removed from his office except by an order of the Governor passed after an address by each House of the State Legislature supported by a majority of the total membership of the House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2)The procedure of the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokayukta or an Upalokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 in relation to the removal of a Judge and accordingly the provisions of that Act shall, mutatis mutandis, apply in relation to the removal of the Lokayukta and Upalokayukta as they apply in relation to the removal of a Judge.

7. **Matters which may be investigated by the Lokayukta and an Upalokayukta.–**

(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by or with the general or specific approval of,-

(a) (i) the Chief Minister;

(ii) a Minister;

(iii) a member of the State Legislature;

(iv) the Chairman and Vice-Chairman (by whatever name called) or a member of an authority, board, or a committee, a statutory or non-statutory body or a corporation established by or under any law of the State Legislature including a society, cooperative society or a Government company within the meaning of section 617 of the Companies Act, 1956, nominated by the State Government;

in any case where a complaint involving a grievance or an allegation is made in respect of such action.

(b) any other public servant holding a post or office carrying either a fixed pay, salary or remuneration of more than rupees twenty thousand per month or a pay scale the minimum of which is more than rupees twenty thousand, as may be revised from time to time in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, recorded in writing, the subject of a grievance or an allegation.

(2) Subject to the provisions of the Act, an Upalokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant refereed to in sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upalokayukta, recorded in writing. the subject of a grievance or an allegation.

(2A) Notwithstanding anything contained in sub-sections (1) and (2), the Lokayukta or an Upalokayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the State Government.

(3) Where two or more Upalokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act.

Provided that no investigation made by an Upalokayukta under this Act, and no action taken or things done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

(4) Notwithstanding anything contained in sub-sections (1) to (3), when the office of an Upalokayukta is vacant by reason of his death, resignation, retirement, removal or otherwise or when an Upalokayukta is unable to discharge his functions owing to absence, illness or any other cause, his function may be discharged by the other Upalokayukta, if any and if there is no other Upalokayukta by the Lokayukta.

8. **Matters not subject to investigation**:-

(1) Except as hereinafter provided, the Lokayukta or an Upalokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action, -

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any tribunal, Court officer or other authority and has not availed of the same.

(2) The Lokayukta or an Upalokayukta shall not investigate, -

(a) any action in respect of which a formal and public enquiry has been ordered with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(b) any action in respect of a matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against become known to the complainant; or

(d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that he may entertain a complaint referred to in clauses (c) and (d) if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in those clauses.

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upalokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised.

9. **Provisions relating to complaints and investigations**-

(1) Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokayukta or an Upalokayukta.

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

(2) Every complaint shall be made in the form of a statement supported by an affidavit and in such forms and in such manner as may be prescribed.

(3) Where the Lokayukta or an Upalokayukta 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 and in the case of an investigation initiated suo-motu by him, the opinion recorded by him to initiate the investigation under sub-section (1) or (2), as the case may be, of section 7; to the public servant and the Competent Authority concerned;

(b) shall afford to such public servant an opportunity to offer his comments on such complaint or opinion recorded under sub-section (1) and (2) of section 7 as the case may be;

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

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upalokayukta, as the case may be, considers appropriate in the circumstances of the case.

(5) The Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, 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.

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

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

10. Issue of Search Warrant, etc.- (1) Wherein consequence of information in his possession, the Lokayukta or an Upalokayukta –

(a) has reason to believe that any person. –

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

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

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

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

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

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

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

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

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

(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, so far as may be, to searches and seizures under sub-section (1). warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973.

(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.

11. **Evidence-**

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

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

(a) Summoning and enforcing the attendance of any person and examining him on oath ;

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

(c) Receiving evidence on affidavits ;

(d) Requisitioning any public record or copy thereof from any court or office ;

(e) Issuing commissions for the examination of witnesses or documents ;

(f) such other matters as may be prescribed.

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

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document.

(a) as might prejudice the affairs of the State of Karnataka or the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation);

(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet,and for the purpose of this sub-section, a certificate issued by the Chief Secretary certifying that any information, answer or portion of a document is of the nature specified in clause(a) or clause(b), shall be binding and conclusive.

(5) For the purpose of investigation under this Act no person shall be compelled to give any evidence or produce any document, which he could not be compelled to give or produce in proceedings before a court.

12. **Reports of Lokayukta, etc**.

(1) If, after investigation of any action involving a grievance has been made, the Lokayukta or an Upalokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lokayukta or an Upalokayukta shall, by a

report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section(1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated to or the Lokayukta the Upalokayukta the action taken on the report.

(3) If, after investigation of any action involving an allegation has been made, the Lokayukta or an Upalokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

(4) The Competent authority shall examine the report forwarded to it under sub-section (3) and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or the Upalokayukta the action taken or proposed to be taken on the basis of the report.

(5) If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the Competent Authority concerned and the Complainant.

(6) The Lokayukta shall present annually a consolidated report on the performance of his functions and that of the Upalokayukta under this Act to the Governor.

(7) On receipt of the special report under sub-section (5), or the annual report under sub-section (6), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

(8) The Lokayukta or an Upalokayukta may at his discretion make available, from time to time, the substances of cases closed or otherwise disposed of by him which may appear to him to be of general, public, academic or professional interest in such manner and to such persons as he may deem appropriate.

13. Public servant to vacate office if directed by Lokayukta etc.

(1) Where after investigation into a complaint the Lokayukta or an Upalokayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lokayukta or the Upalokayukta shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, State Government or the Chief Minister, it may either accept or reject the declaration after giving an opportunity of being heard. In other cases, the competent authority shall send a copy of such report to the State Government, which may either accept or reject the declaration. If it is not rejected within a period of three months from the date of receipt of the report, or the copy of the report, as the case may be, it shall be deemed to have been accepted on the expiry of the said period of three months.

(2) If the declaration so made is accepted or is deemed to have been accepted, the fact of such acceptance or the deemed acceptance shall immediately be intimated by Registered post by the Governor, the State Government or the Chief Minister if any of them is the competent authority and the State Government in other cases then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or of the deemed acceptance of the declaration,

i) if the Chief Minister or a Minister resign his office of the Chief Minister, or Minister, as the case may be;

ii) if a public servant falling under items (e) and (f), but not falling under items (d) and (g) of clause (12) of section 2, be deemed to have vacated his office; and

iii) if a public servant falling under items (d) and (g) of clause (12) of section 2, be deemed to have been placed under suspension by an order of the appointing authority.

Provided that if the public servant is a member of an All India Service as defined in section 2 of the All India Services Act, 1951 (Central Act 61 to 1951) the State Government shall take action to keep him under suspension in accordance with the rules or regulations applicable to his service.

14. Initiation of Prosecution.- If after investigation into any complaint the Lokayukta or an Upalokayukta is satisfied that the public servant has committed any criminal offence and should be prosecuted in a court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then, notwithstanding anything contained in any law, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order.

15. Staff of Lokayukta, etc.-

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

(2) The categories, recruitment and conditions of service of the officers and employees referred in sub-section (1) including such special conditions as may be necessary for enabling them to act without fear in the discharge of their functions, shall be such as may be prescribed in consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukta or an Upalokayukta may for the purpose of conducting investigations under this Act utilize the services of.-

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

(aa) any officer or investigating agency of the Central Government with the prior concurrence of the Central Government and State Government; or

(b) any other person or any other agency.

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

Provided that when the office of the Lokayukta is vacant by reason of his death, resignation, retirement, removal or otherwise or when Lokayukta is unable to discharge his functions owing to absence, illness or any other cause, the Upalokayukta or if there are more than one Upalokayukta, the senior among them may discharge the functions of the Lokayukta under this sub-section.

15. Secrecy of Information-

(1) Any information obtained by the Lokayukta or an Upalokayukta or members of his staff in the course of or for the purpose of any investigation under this Act and any evidence recorded or collected in connection with such information, shall be treated as confidential and no court shall be entitled to compel the Lokayukta or the Upalokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars referred to therein, -

(a) for the purpose of this Act or for the purposes of any action or proceedings to be taken on such report under section 12; (b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923, or an offence of giving or fabricating false evidence under the Indian Penal Code or for purposes of trial of any offence under section 14 or any proceedings under section 17; or

(c) for such other purposes as may be prescribed.

17. Intentional insult or interruption to or bringing into disrepute the Lokayukta or Upalokayukta.-

(1) Whoever intentionally insults or causes any interruption to the Lokayukta or Upalokayukta while the Lokayukta or Upalokayukta is conducting any investigation or inquiry under this Act shall on conviction be punished with simple imprisonment for a term which shall not be less than six months but may extend to one year or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or an Upalokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which shall not be less than six months but may extend to one year or with fine, or with both.

(3) The provisions of section 199 of Code of Criminal procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said Section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokayukta or the concerned Upalokayukta;

Provided that the Court may for any adequate and special reasons to be mentioned in the judgment impose a lesser sentence of imprisonment and fine.

17A. Power to punish for contempt

The Lokayukta or Upa-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 (Central Act 70 of 1971) shall have the effect subject to the modification that the references therein to the High

Court shall be construed as including a reference to the Lokayukta or Upalokayukta, as the case may be.

18. Protection-

(1) No suit, prosecution, or other legal proceedings shall lie against the Lokayukta or an Upalokayukta or against any officer, employee, agency or person referred to in Section 15 in respect of anything which is in good faith done while acting or purporting to act in the discharge of his official duties under this Act.

(2) No proceedings of the Lokayukta or an Upalokayukta shall be held to be bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or an Upalokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court of ordinary Civil Jurisdiction.

19. **Conferment of additional functions on Lokayukta or Upalokayukta –**

(1) The Government may, by order, in writing and after consultation with an Upalokayukta, confer on the Upalokayukta powers to hold, in such manner and through such officers, employees and agencies referred to in section 15, as may be prescribed, enquiries against Government servants and persons referred to in item (g) of clause (12) of section 2, other than those falling under clause (ii) and (iv)of sub section (1) of Section (7) in disciplinary or other proceeding transferred under sub-section (3) of Section 26 commenced in furtherance of the recommendations of the Upalokayukta or otherwise.

(2) where powers are conferred on an Upalokayukta, under sub-section (1) such Upalokayukta shall exercise the same powers and discharge the same functions as he would in the case of any investigation made on a complaint involving a grievance or an allegation, as the case may be, and the provisions of this Act shall apply accordingly.

20. Prosecution for false complaint-

(1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction be punished with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees.

(2) No Court, except a Court of a Metropolitan Magistrate or a Judicial Magistrate First Class shall take cognizance of an offence under sub section (1).

(2A) No such Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom false, frivolous or vexatious complaint was made after obtaining the previous sanction of the Lokayukta or the Upalokayukta, as the case may be.

(3) 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.

21. Power to delegate- The Upalokayukta may, subject to such rules as may be prescribed, by general or special order, in writing direct that the functions and powers conferred by section 19 may also be exercised or discharged by such of the officers, employees or agencies referred to in section 15 as may be specified in the order.

22. Public Servants to submit property statements-

(1) Every public servant referred to in Sub-Section (1) of Section 7, other than a Government Servant, shall within three months after the commencement of this Act and thereafter before the 30th June of every year submit to the Lokayukta in the prescribed form a statement of his assets and liabilities and those of the members of his family.

(2) If no such statement is received by the Lokayukta from any such public servant within the time specified in sub-section (1), the Lokayukta shall make a report to that effect to the competent authority and send a copy of the report to the public servant concerned. If within two months of such report the public servant concerned does not submit such statement, the Lokayukta, shall publish or cause to be published the name of such public servant in three news papers having wide publication in the State.

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

23. Power to make rules –

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

(a) the authorities to be prescribed under sub-clause (d) of clause (4) of section.2;

(b) the allowance and pensions payable to and other conditions of service of the Lokayukta and an Upalokayukta;

(c) the form and manner in which a complaint may be made;

(d) the powers of a Civil Court which may be exercised by the Lokayukta or an Upalokayukta under clause (f) of sub-section (2) of section 11;

(e) the salary, allowances, recruitment and other conditions of service of the staff and employees of the Lokayukta or Upalokayukta under sub-section (2) of section 15;

(f) enquiries against Government servants under section 19;

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

2A) Any rule made under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a Statement laid before both Houses of the State Legislature subject to any modification made under sub-section

(3). Every rule made under this Act shall have effect as if enacted in this Act. (3) Every rule made under this Act shall be laid as soon as may be after it is made before each 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 both Houses agree in making any modification in the rule or both Houses agree 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.

24. Removal of doubts-

(1) For the removal of doubts it is hereby declared that nothing in this Act shall be construed as authorising the Lokayukta or an Upalokayukta to investigate any action which is taken by or with the approval of, -

(a) any Judge as defined in section 19 of the Indian Penal Code;

(b) any officer or servant of any civil or criminal court in India;

(c) the Accountant General for Karnataka;

(d) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in Article 324 of the Constitution and the Chief Electoral Officer, Karnataka State;

(e) the Speaker of the Karnataka Legislative Assembly or the Chairman of the Karnataka Legislative Council, and

(f) the Chairman or a member of the Karnataka Public Service Commission,

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

25. Removal of difficulties- Notwithstanding anything contained in this Act, the Governor may, by order, make such provision as he may consider necessary or expedient, -

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

(ii) for continuing the enquiries and investigations against Government servants and persons referred to in item (g) of clause 12 of section 2 pending before the Government or any other authority including the Karnataka State Vigilance Commission constituted under the Karnataka State Vigilance Commission Rules, 1980 by the Lokayukta or an Upalokayukta.

26. Repeal and savings –

(1) The Karnataka State Vigilance Commission Rules, 1980 and the Karnataka Public Authorities (Disciplinary Proceedings against Employees) Act, 1982 (Karnataka Act 31 of 1982) and the Karnataka Lokayukta Ordinance, 1984 (Karnataka Ordinance 1 of 1984) are hereby repealed.

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

(3) All enquiries and investigations and other disciplinary proceedings pending before the Karnataka State Vigilance Commission constituted under the Karnataka State Vigilance Commission Rules, 1980 and which have not been disposed of, shall stand transferred to and be continued by the Upalokayukta as if they were commenced before him under this Act.

(4) Notwithstanding anything contained in this Act, initially the staff of the Lokayukta shall consist of the posts of the Secretary and other Officers and Employees of the Karnataka State Vigilance Commission constituted under the Karnataka State Vigilance Commission Rules, 1980, immediately before the commencement of this Act and appointments to the said posts are hereby made by the transfer of the Secretary and other officers and employees of the State Vigilance Commission holding corresponding posts. The salaries, allowances and other terms and conditions of services of the said Secretary, officers and other employees shall, until they are varied, be the same as to which they were entitled to immediately before the commencement of this Act.

FIRST SCHEDULE

[See Section 3 (3)]

I, …… having been appointed as Lokayukta/ Upalokayukta 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 and 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.

SECOND SCHEDULE

[See Section 8(i)(a)]

(a) Action taken for the purpose of investigating crimes relating to the security of the State

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not,

(c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligations.

(d) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

(e) Grant of honours and awards.

Excerpts from 2nd Administrative Reforms Commission (ARC) Report

3 LEGAL FRAMEWORK FOR FIGHTING CORRUPTION

3.1 Evolution of the Anti-Corruption Laws in India

3.1.1 In the pre-independence period, the Indian Penal Code (IPC) was the main tool to combat corruption in public life. The Code had a chapter on 'Offences by Public Servants'. Sections 161 to 165 provided the legal framework to prosecute corrupt public servants. At that time the need for a special law to deal with corruption was not felt.

3.1.2 The Second World War created shortages which gave opportunity to unscrupulous elements to exploit the situation leading to large scale corruption in public life. This situation continued even after the war. The lawmakers concerned about this menace, felt that drastic legislative measures need to be taken. Hence the Prevention of Corruption Act, 1947 was enacted to fight the evils of bribery and corruption.

3.1.3 *The Prevention of Corruption Act 1947:* This Act did not redefine nor expand the definition of offences related to corruption, already existing in the IPC. Similarly, it also adopted the same definition of 'Public Servant' as in the IPC[38]. However the law defined a new offence - 'Criminal misconduct in discharge of official duty' - for which enhanced punishment (minimum 1 year to maximum 7 years) was stipulated. In order to shift the burden of proof in certain cases to the accused, it was provided that whenever it was proved that a public servant had accepted any gratification, it shall be presumed that the public servant accepted such a gratification as a motive or reward under Section 161 of IPC. In order to prevent harassment to honest officers, it was mandated that no court shall take cognizance of offences punishable under Sections 161,164 and 165 without the permission of the authority competent to remove the charged public servant. The Act also provided that the statement by bribe-giver would not subject him to prosecution.[39] It was considered necessary to grant such immunity to the bribe-giver, who might have been forced by circumstances into giving a bribe. If this immunity was not provided, all complainants would become liable for punishment, which would deter them from giving complaints against any public official who accepted a bribe.

3.1.4 The Criminal Law (Amendment) Act, 1952 brought some changes in laws relating to corruption. The punishment specified under Section 165 of IPC was enhanced to three years

[38] Section 2; The Prevention of Corruption Act, 1947
[39] Section 8; The Prevention of Corruption Act, 1947

instead of the existing two years. Also a new Section 165A was inserted in the IPC, which made abetting of offences, defined in Sections 161 and 165 of IPC, an offence. It was also stipulated that all corruption related offences should be tried only by special judges.

3.1.5 *Amendments in 1964:* The anti-corruption laws underwent comprehensive amendments in 1964. The definition of 'Public Servant' under the IPC was expanded (The Santhanam Committee had also recommended an expanded definition of the term 'Public Servant'). The CrPC was amended to provide in camera trial if either party or the court so desires. The presumption which was available under Section 4 of The Prevention of Corruption Act, was extended to include offences defined under Sections 5(1) and 5(2). The definition of 'criminal misconduct' was expanded and possession of assets disproportionate to the known sources of income of a public servant, was made an offence. Section 5(A) was amended so as to empower the State Governments to authorize officers of the rank of Inspectors of Police to investigate cases under the Act (earlier, this could be done only with the approval of the Magistrate (The Santhanam Committee recommended this). Police officers, competent to investigate cases under the Act, were empowered to inspect bankers' records, if they had reasons to suspect commission of an offence under the Act (This power is available under Section 94 CrPC, but only after a case has been registered. This was also one of the recommendations of the Santhanam Committee).

3.1.6 *The Prevention of Corruption Act, 1988:* This Act received Presidential assent on 9th September, 1988. It consolidates the provisions of the Prevention of Corruption Act 1947, the Criminal Law Amendment Act, 1952 and some provisions of IPC. Besides, it has certain provisions intended to effectively combat corruption among public servants. The salient features of the Act are as follows:

a. The term ' Public Servant' is defined in the Act. The definition is broader than what existed in the IPC.

b. A new concept – 'Public Dduty' is introduced in the Act.

c. Offences relating to corruption in the IPC have been brought in Chapter 3 of the Act, and they have been deleted from the Indian Penal Code.

d. All cases under the Act are to be tried only by Special Judges.

e. Proceedings of the court have to be held on a day-to-day basis.

f. Penalties prescribed for various offences are enhanced.

g. CrPC is amended (for the purposes of this Act only) to provide for expeditious trial {Section 22 of the Act provides for amended Sections 243, 309, 317 and 397 of CrPC}.

h. It has been stipulated that no court shall stay the proceedings under the Act on the grounds of any error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.[40]

i. Other existing provisions regarding presumptions, immunity to bribe-giver, investigation by an officer of the rank of DySP, access to bank records etc have been retained.

3.2 The Prevention of Corruption Act, 1988

3.2.1 Defining Corruption

3.2.1.1 The Prevention of Corruption Act does not provide a definition of 'Corruption'. Interestingly, Finland, which is the least corrupt nation according to the Transparency International's Corruption Perception Index also does not have any formal definition of corruption in its laws. Even the United Nations Convention against Corruption does not provide a definition of corruption. It lays down in Article 5, some preventive anti-corruption policies and practices. They are:

1. *Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

2. *Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.*

3. *Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.*

States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this Article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

[40] Section 19(3)(b), The Prevention of Corruption Act, 1947

3.2.1.2 The Prevention of Corruption Act, 1988, lists offences of bribery and other related offences and the penalties from Sections 7 to 15. These offences broadly cover acceptance of illegal gratification as a motive or reward for doing or forbearing to do any official act, or favouring or disfavouring any person; obtaining a valuable thing without consideration or inadequate consideration; and criminal misconduct involving receiving gratification, misappropriation, obtaining any pecuniary advantage to any person without any public interest, or being in possession of pecuniary resources or property disproportionate to his known sources of income. Attempts to commit such offences and abetment are also listed as offences, in keeping with the principles usually applied in criminal law. The accent is thus on consideration, gratification of all kinds and pecuniary advantage.

3.2.1.3 However, experience of the past decades shows that such an indirect definition of corrupt practices is paradoxically restrictive and a whole range of official conduct, detrimental to public interest, is not covered by strong penal provisions. In particular, there are four types of official conduct which cause immense damage to public interest, which do not explicitly constitute violation of criminal law.

3.2.1.4 The first and possibly the most important of these is gross perversion of the Constitution and democratic institutions, including, wilful violation of the oath of office. Constitutional functionaries have sometimes been found to indulge in such constitutional perversion out of partisan considerations or personal pique. In most such cases, there may be neither illegal consideration nor pecuniary advantage, nor any form of gratification involved. In some of those cases, the Supreme Court held individuals holding high office guilty of gross misconduct amounting to perversion of the Constitution. In such cases, except public opinion, political pressure and dictates of the conscience of the individual, there are no legal provisions to punish the perpetrators.

3.2.1.5 The second such class of offences is abuse of authority unduly favouring or harming someone, without any pecuniary consideration or gratification. In such cases, often partisan interests, nepotism and personal prejudices play a role, though no corruption is involved in the restrictive, 'legal' sense of the term. Nevertheless, the damage done by such wilful acts or denial of one's due by criminal neglect have profound consequences to society and undermine the very framework of ethical governance and rule of law.

3.2.1.6 Third, obstruction or perversion of justice by unduly influencing law enforcement agencies and prosecution is a common occurrence in our country. Again in most such cases, partisan considerations, nepotism and prejudice, and not pecuniary gain or gratification, may be the motive. The resultant failure of justice undermines public confidence in the system and breeds anarchy and violence.

3.2.1.7 Finally, squandering public money, including ostentatious official life-styles, has become more common. In all such cases, there is neither private pecuniary gain nor specific gain or loss to any citizen. There is also no misappropriation involved. The public exchequer at large suffers and both public interest and citizens' trust in government are undermined.

3.2.1.8 It is generally believed that all these four types of wilful abuse of office are on the increase in our country at all levels and need to be firmly curbed if we are to protect public interest and our democratic system. Otherwise, public servants – elected or appointed – will be seen not as custodians of public interest and sentinels of democracy but as opportunists working for personal aggrandizement and pursuing private agendas while occupying public office.

3.2.1.9 There is therefore need for classifying the following as offences under the Prevention of Corruption Act:

- Gross perversion of the Constitution and democratic institutions amounting to wilful violation of oath of office
- Abuse of authority unduly favouring or harming someone
- Obstruction of justice
- Squandering public money

3.2.1.10 Recommendation:

a. The following should be classified as offences under the Prevention of Corruption Act:

- Gross perversion of the Constitution and democratic institutions amounting to wilful violation of oath of office.
- Abuse of authority unduly favouring or harming someone.
- Obstruction of justice.
- Squandering public money.

3.2.2 Collusive Bribery

3.2.2.1 In any corrupt transaction, there are two parties - the bribe-giver and the bribe-taker. The offence of bribery can be classified into two categories. In one category the bribe giver is a victim of extortion, he is compelled to pay for a simple service, because if he does

not submit to the extortionary demands of the public servant, he ends up losing much more than the bribe. The delays, harassment, uncertainty, lost opportunity, loss of work and wages - all resulting from non-compliance with demands for a bribe - are so great that the citizen is sucked into a vicious cycle of corruption for day-to-day survival. Besides, there is another category of cases where the bribe-giver and bribe-taker together fleece society, and the bribe-giver is as guilty or even more guilty than the bribe-taker. These are cases of execution of substandard works, distortion of competition, robbing the public exchequer, commissions in public procurement, tax evasion by collusion, and causing direct harm to people by spurious drugs and violation of safety norms. These two categories of corruption are also termed as 'coercive' and 'collusive' corruption respectively. With the rapidly growing economy, cases of coercive corruption are on the increase, and, at times, these often assume the magnitude of 'serious economic offences'.

3.2.2.2 Chapter III of the Prevention of Corruption Act lays down various offences and penalties. Section 7 makes acceptance of illegal gratification by a public servant for doing any official act an offence. Though giving bribe is not separately defined as an offence, the bribe-giver is guilty of the offence of 'abetment' and is liable for the same punishment as the bribe-taker.[41] Section 24 of the Act, however, provides immunity from prosecution to a bribe-giver if he/she gives a statement in a court of law that he/she offered bribe. However, the Prevention of Corruption Act does not differentiate between 'corecive' and 'collusive' corruption.

3.2.2.3 Systemic reforms are very effective in combating coercive corruption. Besides, even though the general conviction rate in cases of corruption is low, it is observed that the rate of conviction in cases of coercive corruption is more than in collusive corruption. The reason for this is, the bribe-giver is also the victim and because of the immunity provided to him under Section 24 of the Prevention of Corruption Act, he often comes forward to depose against the bribe-taker. Besides, the 'trap cases' by the vigilance machinery are quite effective in such cases. The same is not true for 'collusive' corruption. Getting conviction in these cases is extremely difficult as both, the bribe-giver and the bribe-taker collude and are beneficiaries of the transaction. The negative impact of collusive corruption is much more adverse and the government and often the society, at large, are the sufferers.

3.2.2.4 The Commission is of the view that 'collusive' corruption needs to be dealt with by effective legal measures so that both the bribe-giver and the bribe-taker do not escape punishment. Also, the punishment for collusive corruption should be made more stringent. In cases of collusive corruption, the 'burden of proof' should be shifted to the accused.

[41] Section 12 of The Prevention of Corruption Act

3.2.2.5 The basic principle of our criminal justice system is that every person is presumed to be innocent till he/she is proved guilty. In other words, the burden of proving the charges lies totally on the prosecution. However, the Indian Evidence Act itself provides certain exceptions to this principle. For Example, Section 113A of the Indian Evidence Act provides that *"When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband".* Similarly, Section 13(1)(e) of the Prevention of Corruption Act stipulates that a public servant is said to commit the offence of criminal misconduct if he/she cannot satisfactorily account for the property in his/her possession, which is disproportionate to his/her known sources of income. It is therefore implied that the burden is on the accused public servant to justify his possessions in relation to the sources of income. Also Section 20 of the Prevention of Corruption Act stipulates that if it is proved that the accused public servant has accepted any gratification, the court is under an obligation to presume that the gratification was for a reward as mentioned in Section 7 and the burden of proof shifts to the accused.

3.2.2.6 Section 7 of the Prevention of Corruption Act, therefore, needs to be amended to provide for a special offence of 'collusive bribery'. An offence could be classified as 'collusive bribery' if the outcome or intended outcome of the transaction leads to a loss to the state, public or public interest. In all such cases if it is established that the interest of the state or public has suffered because of an act of a public servant, then the court shall presume that the public servant and the beneficiary of the decision committed an offence of 'collusive bribery'. The punishment for all such cases should be increased to 10 years.

3.2.2.7 Recommendations:

a. Section 7 of the Prevention of Corruption Act needs to be amended to provide for a special offence of 'collusive bribery'. An offence could be classified as 'collusive bribery' if the outcome or intended outcome of the transaction leads to a loss to the state, public or public interest.

b. In all such cases if it is established that the interest of the state or public has suffered because of an act of a public servant, then the court shall presume that the public servant and the beneficiary of the decision committed an offence of 'collusive bribery'.

c. **The punishment for all such cases of collusive bribery should be double that of other cases of bribery. The law may be suitably amended in this regard.**

3.2.3 Sanction for Prosecution

3.2.3.1 Section 19 of the Prevention of Corruption Act provides that previous sanction of the competent authority is necessary before a court takes cognizance of the offences defined under Sections 7, 10, 11, 13 and 15 of the Act. The objective of this provision is to prevent harassment to honest public servants through malicious or vexatious complaints. The sanctioning authority is expected to apply his/her mind to the evidence placed before him/her and be satisfied that a prima facie case exists against the accused public servant. Although the intention of this provision is clear, it has been argued that this clause has sometimes been used by a sanctioning authority to shield dishonest officials. There have also been cases where there have been inordinate delays in grant of such sanction. There have also been instances where unintentional defects in the grant of sanction has been used by the accused to challenge the sanction and have it set aside, thus nullifying the entire proceedings. The Commission has examined various aspects related to sanctions and is of the view that there are some areas requiring improvements, and this would need some amendments to the Law. These are dealt with in the following paras:

3.2.3.1.1 *Dispensing with sanction in cases where public servants have been trapped red-handed or in cases of possessing assets disproportionate to their known sources of income:* There are a number of cases of public servants being caught red handed while demanding/accepting bribes. The omnibus protection given under Section 19 of the Prevention of Corruption Act sometimes comes in the way of bringing corrupt public servants to justice as often the sanction is delayed or denied. The intention of the legislation appears to be to provide adequate protection to public servants in the discharge of their legitimate official duties. This objective can well be served if this provision is limited to such cases where the alleged misconduct is directly connected with the discharge of official duties. Such a protection is not required for offences which are basically based on the direct evidence of:

i. Demand or/and acceptance of bribes,

ii. Obtaining valuable things without or with inadequate consideration, and

iii. Cases of possession of assets disproportionate to the known source of income.

Therefore, there is a case for excluding the protection given in the above mentioned circumstances.

3.2.3.1.2 *Validity of sanction for prosecution:* It has been found that sanctioning authorities are often summoned to adduce evidence on the sanction they had given, and this takes place several years later. A number of cases are discharged/acquitted on the grounds that the sanctioning authority had not applied its mind while giving the sanction. Moreover, this often happens after all the other evidences have been adduced in the trial!

The objective of Section 19 of the Prevention of Corruption Act was to prevent prosecution without sanction of the competent authority. In many such cases, the issue of the validity of sanctions gets raised after the prosecution has adduced all evidence. This is not fair to the sanctioning authority who may have given this sanction several years earlier. It is also not fair to the accused who has undergone a major part of the prosecution process, particularly if the sanction is found to be untenable. Moreover, it has also been noted that sanctioning authorities are often not able to attend the court because of other official preoccupation and this also contributes to delay in concluding trial.

The Commission feels that there is need for amending the Prevention of Corruption Act to ensure that sanctioning authorities are not summoned as witnesses and if a trial court desires to summon the sanctioning authority, it should record the reasons for doing so. This should be at the first stage, even before framing of charges by the court.

3.2.3.1.3 *Sanctioning authority for MPs and MLAs:* Section 2 (definition) of the Prevention of Corruption Act does not explicitly include MPs or MLAs. This issue, whether elected representatives are public servants or not, came up for determination before various courts. The Supreme Court in P.V. Narasimha Rao v .State (CBI/SPE) held as follows:

> *" We think that the view of the Orissa High Court that a member of a Legislative Assembly is a public servant is correct. Judged by the test enunciated by Lord Atkin in Mc. Millan v Gust and adopted by Sikri, J. in Kanta Khaturia case, the position of a Member of Parliament, or of Legislative Assembly, is subsisting, permanent and substantive; it has an existence independent of the person who fills it and it is filled in succession by successive holders. The seat of each constituency is permanent and substantive. It is filled, ordinarily for the duration of the legislative term, by the successful candidate in the election for the constituency. When the legislative term is over, the seat is filled by the successful candidate at the next election. There is, therefore, no doubt in our minds that a Member of Parliament, or of a Legislative Assembly, holds an office and he is required and authorized thereby to carry out a public duty. In a word, a Member of Parliament or of a Legislative Assembly is a public servant for the purposes of the said Act".*

The National Commission for Review of the Constitution (NCRWC) recommended as follows:

"A second issue that was raised in this case concerned the authority competent to sanction prosecution against a member in respect of an offence involving acceptance of a consideration for speaking or voting in a particular manner or for not voting in either House of Parliament. A Member of Parliament is not appointed by any authority. He is elected by his or her constituency or by the State Assembly and takes his or her seat on taking the oath prescribed by the Constitution. While functioning as a Member, he or she is subject to the disciplinary control of the presiding officer in respect of functions within the Parliament or in its Committees. It would, therefore, stand to reason that sanction for prosecution should be given by the Speaker or the Chairman, as the case may be.

The Commission is of the view that the Authority for according sanction for prosecution under Section 19 of the Prevention of Corruption Act, should be stipulated in case of elected representatives. This Authority, in case of Members of Parliament should be the Speaker or Chairman, as the case may be. A similar procedure may be adopted by State Legislatures.

3.2.3.1.4 *Protection to those persons who have ceased to be public servants at the time of taking cognizance of the offence by the court:* Section 19(1) of the Prevention of Corruption Act reads as follows:

"No court shall take cognizance of an offence punishable under Sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

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

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

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

An issue has arisen whether such sanction would be necessary in case the accused is no longer a public servant on the day of taking of cognizance by the court. The Supreme Court has held that where the accused had ceased to be a public servant on the day the court took cognizance of the offence, the provisions of Section 6 (Prevention of Corruption Act, 1947) would not apply and the prosecution against him will not be vitiated by the lack of a previous sanction by the competent authority.

The objective of this provision was to provide protection to the public servant from malicious prosecution, and his/her status at the time of the commission of the alleged offence is relevant rather than his/her status at the time of taking cognizance of the offence by the court. The interpretation given by the courts may lead to a situation where a person who superannuates, or resigns from service would not get the protection of this provision, even if the alleged offence was committed while he/she was in service. Therefore, the law should be amended so that retired public servants can also get the same level of protection, as a serving public servant.

3.2.3.1.5 *Expediting sanctions:* It has been represented to the Commission that many a time there is substantial delay in obtaining sanction for prosecution from government, with the result that corrupt officials are often not brought to book. The Commission is of the view that the procedure for granting sanction, where government is the competent authority, needs to be streamlined so that there is no delay in processing such cases. The Commission would like to recommend that at the level of the Union Government, the sanction for prosecution should be processed by an Empowered Committee consisting of the Central Vigilance Commissioner and the Departmental Secretary to Government[42]. In case of a difference of opinion between the two, it could be resolved by placing the subject before the full Central Vigilance Commission. In case, sanction is sought against a Secretary to Government, the Empowered Committee would comprise the Cabinet Secretary and the Central Vigilance Commissioner.

3.2.3.2 Recommendations:

a. Prior sanction should not be necessary for prosecuting a public servant who has been trapped red-handed or in cases of possessing assets disproportionate to the known sources of income.

b. The Prevention of Corruption Act should be amended to ensure that sanctioning authorities are not summoned and instead the documents can be obtained and produced before the courts by the appropriate authority.

c. The Presiding Officer of a House of Legislature should be designated as the sanctioning authority for MPs and MLAs respectively.

d. The requirement of prior sanction for prosecution now applicable to serving public servants should also apply to retired public servants for acts performed while in service.

[42] Section 19(1) stipulates that sanction should be provided by the authority competent to remove the accused public servant. This would necessitate an amendment to Section 19.

e. In all cases where the Government of India is empowered to grant sanction for prosecution, this power should be delegated to an Empowered Committee comprising the Central Vigilance Commissioner and the Departmental Secretary to Government. In case of a difference of opinion between the two, the matter could be resolved by placing it before the full Central Vigilance Commission. In case, sanction is required against a Secretary to Government, then the Empowered Committee would comprise the Cabinet Secretary and the Central Vigilance Commissioner. Similar arrangements may also be made at the State level. In all cases the order granting sanction for prosecution or otherwise shall be issued within two months. In case of refusal, the reasons for refusal should be placed before the respective legislature annually.

3.2.4 Liability of Corrupt Public Servants to Pay Damages

3.2.4.1 While corrupt acts of a public servant are liable for punishment under the Prevention of Corruption Act, there is no civil liability for the wrong doer nor is there a provision for compensation to the person/organization which has been wronged or has suffered damage because of the misconduct of the public servant. The Constitutional Review Committee had recommended the enactment of a comprehensive law to provide for the creation of liability in cases where public servants cause loss to the State by malafide actions or omissions (para 6.17).

3.2.4.2 The Supreme Court did impose exemplary damages in cases of improper allotment of petrol pumps[43]. However, this order was later reversed in a Review Petition[44] in which the Court held that though exemplary damages could be awarded against public servants it was not justified in these cases. The Commission is of the view that in cases where public servants cause loss to the State or citizens by their corrupt acts, they should be made liable to make good the loss so caused, and in addition, should be made liable for damages. This may be provided by insertion of a chapter in the Prevention of Corruption Act. The circumstances of cases where such damages would be payable, the principles of assessing the damages and the criteria for awarding the damages to the persons who have been wronged should be clearly spelt out. It should also be ensured that adequate safeguards are provided so that bona fide mistakes should not end in award of such damages, otherwise public servants would be discouraged from taking decisions in a fair and expeditious manner.

[43] (1996) 6 Supreme Court Cases 593
[44] (1999) 6 Supreme Court Cases 667

3.2.4.3 Recommendation:

a. In addition to the penalty in criminal cases, the law should provide that public servants who cause loss to the state or citizens by their corrupt acts should be made liable to make good the loss caused and, in addition, be liable for damages. This could be done by inserting a chapter in the Prevention of Corruption Act.

3.2.5 Speeding up Trials under the Prevention of Corruption Act:

3.2.5.1 The average time taken by trial courts in the disposal of cases has increased over the years. At the end of 1996, the number of cases pending trial were 8225 whereas at the end of the year, the number of cases pending trial rose to 12703. In the year 2005 the number of cases registered were 3008, 2162 cases were chargesheeted and in 2048 cases, trials were completed. (These figures pertain to cases taken up by the State Anti-Corruption Wings, extracted from 'Crime in India' published by the National Crime Records Bureau).

3.2.5.2 A major cause of delay in the trial of cases is the tendency of the accused to obtain frequent adjournments on one plea or the other. There is also a tendency on the part of the accused to challenge almost every interim order passed even on miscellaneous applications by the trial court, in the High Court and later, in the Supreme Court and obtaining stay of the trial. Such types of opportunities to the accused need to be restricted by incorporating suitable provisions in the CrPC. It may also be made mandatory for the judges to examine all the witnesses summoned and present on a given date. Adjournments should be given only for compelling reasons.

3.2.5.3 In order to ensure speedy trial of corruption cases, the Prevention of Corruption Act made the following provisions:

a. All cases under the Act are to be tried only by a Special Judge.

b. The proceedings of the court should be held on a day-to-day basis.

c. No court shall stay the proceedings under the Act on the grounds of any error or irregularity in the sanction granted, unless in the opinion of the court it has led to failure of justice.

3.2.5.4 The experience with the trial of cases under the Act, has been disappointing in spite of the provisions which were considered as path-breaking at the time. Although the judges trying corruption cases under the Prevention of Corruption Act have been declared as Special

Judges, they have been saddled with numerous other non-corruption cases with the result that trials in corruption cases get delayed.

3.2.5.5 The Commission feels that there is need to fix a time limit for various stages of trial in corruption cases. This could be done through an amendment to the CrPC. More importantly, the existing provisions for conducting trials on a day-to-day basis should be meticulously adhered to.

3.2.5.6 Recommendations:

a. A legal provision needs to be introduced fixing a time limit for various stages of trial. This could be done by amendments to the CrPC.

b. Steps have to be taken to ensure that judges declared as Special Judges under the provisions of the Prevention of Corruption Act give primary attention to disposal of cases under the Act. Only if there is inadequate work under the Act, should the Special Judges be entrusted with other responsibilities.

c. It has to be ensured that the proceedings of courts trying cases under the Prevention of Corruption Act are held on a day-to-day basis, and no deviation is permitted.

d. The Supreme Court and the High Courts may lay down guidelines to preclude unwarranted adjournments and avoidable delays.

3.3 Corruption Involving the Private Sector

3.3.1 According to the Bribe Payers Index 2006 of Transparency International, businesses from India, China and Russia, who are at the bottom of the index, had the greatest propensity to pay bribes. This raises the issue of how corruption in private bodies should be dealt with.

3.3.2 Corruption in the private sector does not come under the purview of the Prevention of Corruption Act. However, if the private sector (or any person engaged by them) is involved in bribing any public authority then he/she is liable to be punished for the offence of abetment of bribery under the Prevention of Corruption Act. A large number of public services, which were traditionally done by government agencies, are being entrusted to non-government agencies. In such cases, persons engaged by the private agency replace the role of erstwhile public servants. It is therefore necessary to bring such agencies within the fold of the Prevention of Corruption Act. Also, a large number of Non-Governmental Organizations receive

substantial aid from government. As these agencies spend public money it would be desirable that persons engaged by such organizations be deemed to be public servants for the purpose of the Prevention of Corruption Act.

3.3.3 Article 12 of UN Convention against Corruption, to which India is a signatory, however, deals with corruption in the private sector:

1. *Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

2. *Measures to achieve these ends may include, inter alia:*

   (a) Promoting cooperation between law enforcement agencies and relevant private entities;

   (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

   (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

   (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;

   (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure; and

   (f) Ensuring that private enterprises, taking into account their structure and size,

have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. *In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:*

   (a) *The establishment of off-the-books accounts;*

   (b) *The making of off-the-books or inadequately identified transactions;*

   (c) *The recording of non-existent expenditure;*

   (d) *The entry of liabilities with incorrect identification of their objects;*

   (e) *The use of false documents; and*

   (f) *The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

4. *Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.*

3.3.4 The Prevention of Bribery Ordinance (PBO) of Hong Kong deals specifically with corruption in the private sector. For example, Section 9 of PBO safeguards the interests of private companies by protecting employers from employees who are corrupt. Section 9 also prohibits an agent from soliciting or accepting an advantage without his principal's permission when conducting his principal's affairs or business.

3.3.5 In India, the Companies Act, 1956 provides the statutory framework which governs the internal processes of a Company. The Company is a juridical person whose internal processes are determined by the Companies Act and its Articles of Association. In case of non-compliance, the penal provisions are invoked against the Company and its officers in default. The Companies Act, 1956 contains penal provisions against criminal offences by companies and their directors and officers. Though the offence of corruption or bribery is not specified under the Companies Act, 1956, instances of wrong doing by

Companies and their officers are addressed through the mechanisms of Accounts and Audit (Section 211), Inspection under Section 209A, Technical Scrutiny of Balance Sheet (Section 234), Investigation under Section 235/237 or Section 247, special audit under Section 233A, reference to Company Law Board (CLB) under Section 388B etc. Besides, Companies are required to have audit committees of the Board of Management to look into various aspects related to financial propriety. The Commission feels that corruption in the private sector should be addressed by effective enforcement of 'Regulations on Corporate Governance'.

3.3.6 The Commission is further of the view that corruption within the private sector should be tackled through the effective enforcement of existing laws and regulations. Bringing the activities of the entire private sector within the fold of the Prevention of Corruption Act is neither desirable nor practical. ('Serious Economic Offences' is dealt with later in this Chapter in para 3.7)

3.3.7 Recommendations:

a. The Prevention of Corruption Act should be suitably amended to include in its purview private sector providers of public utility services.

b. Non-Governmental agencies, which receive substantial funding, should be covered under the Prevention of Corruption Act. Norms should be laid down that any institution or body that has received more than 50% of its annual operating costs, or a sum equal to or greater than Rs 1 crore during any of the preceding 3 years should be deemed to have obtained 'substantial funding' for that period and purpose of such funding.

3.4 Confiscation of Properties Illegally Acquired by Corrupt Means

3.4.1 Prosecution and subsequent conviction of corrupt public servants has not been commensurate with the extent of corruption. As mentioned earlier, the level of proof required and the procedural hurdles have ensured that a large number of corrupt public servants are not convicted. Even worse, they often flaunt their ill-gotten wealth with impunity. It is necessary that apart from criminal prosecution, the corrupt public servant should also be denied the ownership of his/her ill gotten wealth.

3.4.2 The Prevention of Corruption Act provides for confiscation of assets of public servants in excess of their known sources of income. However, the provision has proved inadequate because such forfeiture is possible only on conviction for the relevant offences.

At present, for attachment and forfeiture of illegally acquired property of public servants the provisions of the Criminal Law Amendment Ordinance, 1944 are invoked. Under this Ordinance, there is a provision for interim attachment of the property illegally acquired. The Special Judge is empowered to do so based on an application by an authorized person. Depending upon the outcome of the criminal case, the attached property is either forfeited or released.

3.4.3 Another shortcoming in the existing provisions is that the procedure for attachment can start only after the court has taken cognizance of the offence. In actual situations, this may be too late as the accused may get enough time to hide or adjust his/her ill gotten wealth. Moreover, under the existing provisions, the State or the Union Government has to authorize the filing of a request seeking attachment. This could also be time consuming.

3.4.4 In the case of DDA v Skipper Construction Company (private limited), the Supreme Court observed:

> *"A law providing for forfeiture of properties acquired by holders of public offices by indulging in corrupt and illegal acts and deals is a crying necessity in the present state of our society".*

3.4.5 The Law Commission in its 166th Report (1999) observed as follows:

> *" The Prevention of Corruption Act has totally failed in checking corruption. In spite of the fact that India is rated as one of the most corrupt countries in the world, the number of prosecutions and more so the number of convictions are ridiculously low. A corrupt Minister or a corrupt top civil servant is hardly ever prosecuted under the Act, and in the rare event of his/her being prosecuted, the prosecution hardly reaches conclusion. At every stage there will be revisions and writs to stall the process."*

3.4.6 In the same Report, the Law Commission had suggested enactment of a law for forfeiture of property of corrupt public servants and a Bill titled 'The Corrupt Public Servants (Forfeiture of Property)' was annexed. The Report is pending consideration of the Government since February 1999. The relevant provision of the Bill reads as follows:

> *"where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with provisions of the Act".*

3.4.7 Under the draft Bill, a public servant is prohibited from holding any 'illegally acquired property', and it is provided that such property shall be liable to be forfeited to the

government. Powers of forfeiture are proposed to be given to the Competent Authority (CVC). The provisions of the proposed Bill regarding forfeiture are in addition to the provision relating to conviction for a minimum period of seven years, which may extend up to fourteen years. The provisions of the proposed Bill apply not only to the public servant but also to every person who is a "relative" of the public servant or an "associate" of such person or the holder of any property which was at any time previously held by the public servant, unless such holder proves that he was a transferee in good faith for adequate consideration. It is also stipulated in the draft Bill that the burden of proving that the property sought to be forfeited has not been acquired illegally, is on the accused public servant. As the proceedings would be of a civil nature, the level of proof would not be as stringent as in a criminal trial.

3.4.8 The Commission notes that the Jammu and Kashmir Legislature has passed 'The Prevention of Corruption (Amendment) Act, 2006'. This Act provides for seizure and forfeiture of properties of a public servant that have been acquired by acts of omission and commission which constitute an offence of criminal misconduct under Section 5 of the Prevention of Corruption Act. The initial powers of seizure have been given to the Investigating Officer. However, the seizure order made by the Investigating Officer has to be placed before a 'Designated Authority' within 48 hours for confirmation or otherwise. The Designated Authority is notified by the State Government and is an officer not below the rank of Secretary to Government. An appeal against the order of the Designated Authority lies with the Special Court. The Special Court if satisfied about such seizure, may order forfeiture of such property. Thus, the scope of the Jammu and Kashmir Prevention of Corruption (Amendment) Act 2006, is somewhat limited as compared to the draft Bill suggested by the Law Commission. Moreover, the Act of Jammu and Kashmir provides for confiscation only on conviction.

3.4.9 The Commission is of the view that for confiscation of the property of a public servant convicted for possession of disproportionate assets, the law should shift the burden of proof to the public servant who is convicted. The presumption, in such cases, should be that the disproportionate assets found in the possession of the public servant were acquired by him though corrupt means and a proof of preponderance of probability should be sufficient for confiscation of property. These requirements are adequately met in the draft Bill proposed by the Law Commission.

3.4.10 Recommendation:

a. The Corrupt Public Servants (Forfeiture of Property) Bill as suggested by the Law Commission should be enacted without further delay.

3.5 Prohibition of 'Benami'[45] Transactions

3.5.1 The Law Commission, in its 57th and 130th Reports, had recommended enactment of a legislation prohibiting Benami transactions and acquiring properties held Benami. A law entitled The Benami Transactions (Prohibition) Act, 1988 was passed in 1988. The Act precludes the person who acquired the property in the name of another person from claiming it as his own. Section 3 of the Act prohibits Benami transactions while Section 4 prohibits the acquirer from recovering the property from the Benamidar.

3.5.2 Section 5 of the Act permits acquisition of property held benami. It states

"(1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)".

3.5.3 Unfortunately, in the last 18 years, Rules have not been prescribed by the government for the purposes of sub-section (1) of Section 5, with the result that the government is not in a position to confiscate properties acquired by the real owner in the name of his benamidars. The wealth amassed by corrupt public servants is often kept in 'Benami' accounts or invested in properties in others' names. Strict enforcement of the the Benami Transactions (Prohibition) Act, 1988, could unearth such properties and make property accumulation difficult for corrupt officers and also work as a deterrent for others.

3.5.4 Recommendation:

a. Steps should be taken for immediate implementation of the Benami Transactions (Prohibition) Act, 1988.

3.6 Protection to Whistleblowers

3.6.1 Whistleblowers play a crucial role in providing information about corruption. Public servants who work in a department/agency know the antecedents and activities of others in their organization. They are, however, often unwilling to share the information for fear of reprisal. There is a very close connection between the public servant's willingness to disclose corruption in his organization and the protection given to him and his/her identity. If adequate statutory protection is granted, there is every likelihood that the government would be able to get substantial information about corruption.The term "whistleblowing" itself is a relatively recent addition to our lexicon. In the United States, in the post-Watergate era, after the trials and tribulations of Daniel Ellsberg, the man who "blew the whistle" on the so called

[45] 'Benami' is a Hindi word meaning 'without name'. It is commonly used to denote immoral transfers of property in names of others or even fictitious names, with an intention to escape from certain laws.

"Pentagon papers", whistleblowing has not only been protected by statute but is also encouraged as an ethical duty on the part of the citizens. Furthermore, after the spectacular collapse of Enron and WorldCom, the US Congress passed the Sarbanes-Oxley Act of 2002, granting sweeping protection to whistleblowers in publicly traded companies. Anyone retaliating against a corporate whistleblower can now be imprisoned for up to 10 years[46].

Box 3.1: The Whistleblowers

Manjunath Shanmugam working with Indian Oil Corporation (IOC) was a graduate of the Indian Institute of Management, Lucknow. He refused bribes and ignored threats to his life in his fight against adulteration by the petrol pump owners. He paid the price. He was shot dead on 19th November, 2005 allegedly at the behest of corrupt petrol pump owners.

Satyendra Dubey, working with the National Highways Authority of India (NHAI), exposed the rampant corruption in construction of roads. He was also found dead on 27th November, 2003.

3.6.2 Laws providing such protection exist in the UK, the USA, Australia and New Zealand. The UK Public Interest Disclosure Act, 1998, the Public Interest Disclosure Act, 1994 of Australia, the Protected Disclosure Act, 2000 of New Zealand, and the Whistle blowers Protection Act, 1984 of USA are legislations providing protection to whistleblowers. All these laws generally provide for preserving the anonymity of the whistleblower and safeguarding him/her against victimization within the organization.

3.6.3 The Law Commission in its 179th Report has proposed a Public Interest Disclosure (Protection of Informers) Bill, which provides protection to whistleblowers. The Bill has provisions for providing safeguards to the whistleblowers against victimization in the organization. It also has a provision that the whistleblower may himself seek transfer in case he apprehends any victimization in the current position. In order to ensure protection to whistleblowers, it is necessary that immediate legislation may be brought on the lines proposed by the Law Commission.

3.6.4 Recommendation:

a. Legislation should be enacted immediately to provide protection to whistleblowers on the following lines proposed by the Law Commission:

- Whistleblowers exposing false claims, fraud or corruption should be protected by ensuring confidentiality and anonymity, protection from victimization in career, and other administrative measures to prevent bodily harm and harassment.
- The legislation should cover corporate whistleblowers unearthing fraud or serious damage to public interest by willful acts of omission or commission.

[46] Source: Raghu Dayal-"Whistleblowers need to be protected"-ET: 26-12-06

- Acts of harassment or victimization of or retaliation against, a whistleblower should be criminal offences with substantial penalty and sentence.

3.7 Serious Economic Offences

3.7.1 Economic Offences, called frauds in common parlance (the term itself has been defined in the Indian Contract Act[47]) have become a matter of concern because of an increasing trend both in terms of size and complexity. This worrying trend has its roots in the rapid pace at which the Indian economy is growing and the financial sector is diversifying. The impact of some of these crimes is widespread and can cause much damage to the economy seriously affecting the public at large and sometimes even becoming a threat to national security. These economic offences include tax evasion, counterfeiting, distorting share markets, falsification of accounts, frauds in the banking system, smuggling, money laundering, insider trading and even bribery. In a world of increasing financial activity, with new instruments for such activity and new technology to facilitate it, the present laws are not adequate to combat new economic crimes.

Box 3.2: The Need for a Serious Frauds Office

Investigations into the recent stock market 'scam' have underscored the limitations of a fragmented approach in our enforcement machinery. Though a number of agencies investigated the highly publicised fraud, none really got the holistic picture of what really happened. The chances of effectively punishing the fraudsters, in such a situation, are very slim.

Financial frauds in the corporate world are very complex in nature, and can be properly investigated only by a multi-disciplinary team of experts; there are limits to what even gifted amateurs can achieve, especially when they do not have a common platform and different enforcement agencies concerned play a lone hand from their respective turfs. There is a need to provide for a more concerted approach, perhaps by creating an office along the lines of the Serious Fraud Office (SFO) in the United Kingdom.

Source: Report of the Committee on Corporate Audit and Governance (Naresh Chandra Committee, 2002)

3.7.2 There are a large number of laws governing economic offences. These include the Indian Penal Code (IPC); the Banking Regulation Act, 1949; the Companies Act, 1956; the Customs Act, 1962; the Income Tax Act, 1961; the Essential Commodities Act, the Conservation of Foreign Exchange and the Prevention of Smuggling Activities Act, the Foreign Exchange Management Act, the Prevention of Food Adulteration Act, the Indian Patents Act etc. In a large number of these Acts, investigations are carried out by the police. Some states have also established Economic Offences Wings to guide such investigations. In respect of some Central Laws, investigations are taken up by designated agencies under the law. The Central Bureau of Investigation also takes up cases by way of referral by other authorities or on directions by the government or the courts. It is generally felt that the punishment provided under the existing laws is not enough of a deterrent; as a result these offences have become a high gain low risk activity.

[47] Section 17 of the Contract Act defines fraud as follows: "Fraud means and includes any of the following acts committed by a party to a contract, with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: (a) suggestion as a fact, of that which is not true, by one who does not believe it to be true; (b) active concealment of a fact by one having knowledge of belief of that fact; (c) a promise made without any intention of performing it; (d) any other fact fitted to deceive; (e) any such act or omission as the law specifically describes to be fraudulent".

3.7.3 Of late, economic offences, have been drawing more attention because these are being used to fund criminal and even terrorist activities. In 1993, the N.N. Vohra Committee had revealed the powerful nexus between those who violated the economic laws, politicians and government functionaries, which resulted in protection of large-scale economic crimes. That Committee had also pointed out that in those cases, which became public, only nominal action was taken against the offenders.

3.7.4 Developed countries have responded to the challenge of such offences by constituting a specialized machinery to deal with serious economic crimes. In England and Wales, the Serious Frauds Office (SFO) was formed in April 1988, in response to the need for a unified organisation for the investigation and prosecution of serious fraud cases. The Office is headed by the Director who is appointed by and accountable to the Attorney General. This office has multi-disciplinary teams with expertise in law, accountancy, investigation etc. Investigations are led by Case Controllers who are generally experienced lawyers. The SFO derives powers under the Criminal Justice Act, 1987, and also prosecutes its own cases, without having to refer to the Crown Prosecution Service (CPS). It needs to be mentioned that the Criminal Justice Act, 1987 does not define 'serious fraud'. The Director of the SFO is empowered under Section 1(3) of the Act to "investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud".

3.7.5 In New Zealand, the Serious Fraud Office (SFO) constituted under the SFO Act, detects, investigates and prosecutes cases of serious fraud. The SFO Act, 1990 gives the SFO powers to obtain evidence during the course of its investigations. The SFO is headed by a Director who is empowered to investigate serious frauds. In determining what constitutes a serious fraud, the Director has to consider- (a) The suspected nature and consequences of the fraud; (b) The suspected scale of the fraud; (c) The legal, factual, and evidential complexity of the matter; (d)Any relevant public interest considerations.

3.7.6 The Mitra Committee Report (The Report of the Expert Committee on Legal Aspects of Bank Frauds 2001) submitted to the Reserve Bank of India pointed out that criminal jurisprudence in India based on proof beyond doubt was too weak an instrument to control bank frauds. The Committee recommended a two-pronged strategy for systemic reforms through strict implementation of Regulator's Guidelines and obtaining compliance certificates. Second, a punitive approach by defining scams as a serious offence with the burden of proof shifting to the accused and with a separate investigative authority for serious frauds, and special courts and prosecutors for trying such cases was recommended. The Committee suggested the creation of a Statutory Fraud Committee under the Reserve Bank of India. It also recommended a legislation called "The Financial Fraud (Investigation, Prosecution, Recovery and Restoration of Property) Bill, 2001." In its proposed draft,

provisions have been made for constitution of a Financial Fraud Enquiry Committee and a Bureau of Investigation of Financial Fraud. An amendment has been suggested in the I.P.C. by insertion of a new chapter XXIV containing Sec.512 and 513(a). The proposed Section 512 defines 'Financial Fraud' to mean and include "any of the following acts committed by a person or with his connivance, or by his agent, in his dealings with any bank or financial institution or any other entity holding public funds:

- the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- active concealment of a fact by one having knowledge or belief of the fact;
- a promise made without any intention of performing it;
- any other act fitted to deceive;
- any such act or omission as the law specially declares to be fraudulent provided that whoever acquires, possesses or transfers any proceeds of financial fraud or enters into any transaction which is related to proceeds of fraud either directly or indirectly or conceals or aids in the concealment of the proceeds of financial fraud, commits financial fraud."

3.7.7 The proposed Section 513(a) provides for punishment for financial fraud. Following the Davie Committee Report of England, Explanation (2) to the proposed Section 513(a) provides guidelines for classifying serious financial frauds. Thus, "if and only if, the case:

- involves a sum exceeding Rs. Ten crores; or
- is likely to give rise to widespread public concern; or
- its investigation and prosecution are likely to require high specialized knowledge of financial market or of the behaviour of banks or other financial institutions; or
- involves significant international dimensions; or
- in the investigation of which there is requirement of legal, financial, investment and investigative skills to be brought together; or
- which appear to be complex to the regulators, banks, Union Government or any financial institution;

can it be classified as 'financial fraud' for the express purposes of the proposed Act. This draft Act also provides for establishment of special courts and amendment to the Indian Evidence Act, 1872 relating to trial of cases pertaining to financial frauds.

3.7.8 The Committee also recommended the inquisitorial system of proof in the evidential process. For this, they have suggested amendment of the Indian Evidence Act so that mens rea could be presumed by the court.

3.7.9 The Naresh Chandra Committee on Corporate Audit and Finance recommended in 2002:

1. *A Corporate Serious Fraud Office (CSFO) should be set up in the Department of Company Affairs with specialists inducted on the basis of transfer/deputation and on special term contracts.*

2. *This should be in the form of a multi-disciplinary team that not only uncovers the fraud, but is able to direct and supervise prosecutions under various economic legislations through appropriate agencies.*

3. *There should be a Task Force constituted for each case under a designated team leader.*

4. *In the interest of adequate control and efficiency, a Committee headed by the Cabinet Secretary should directly oversee the appointments to, and functioning of this office, and coordinate the work of concerned departments and agencies.*

5. *Later, a legislative framework, along the lines of the SFO in the UK, should be set up to enable the CSFO to investigate all aspects of the fraud, and direct the prosecution in appropriate cases.*

3.7.10 A Serious Frauds Investigation Office (SFIO) was set up in 2003 as a specialised multi-disciplinary organisation to deal with cases of serious corporate frauds. It has experts from the financial sector, capital market, banks, accountancy, forensic audit, taxation, law, information technology, company law, customs and investigation. SFIO presently carries out investigations under the provisions of Sections 235 to 247 of the Companies Act. Its Charter includes forwarding of its investigation reports on violations of the provisions of other Acts to the concerned agencies for prosecution/appropriate action.

3.7.11 The Expert Committee on Company Law, headed by Dr. Jamshed J. Irani (2004) had observed:

"In addition to investigation, there is also a need to take up prosecution of the concerned corporate and officers in default in the appropriate forum. For this purpose, procedures would need to be simplified to enable SFIO to move swiftly and purposefully for successful prosecution of the guilty. To enable this, there are certain ambiguities in the law which would have to be removed to enable SFIO to take up prosecution under the IPC in addition to violation of the Companies Act. The Committee recommends that a separate statute may be framed to regulate and guide the functioning of the (SFIO) and to address such issues to enable successful investigation and prosecution of cases of corporate fraud. Therefore, presence of SFIO may be recognized in the Companies Act. Officers of the SFIO may also be authorised by Central Government to file complaints for offences under Criminal Procedure Code in addition to for offences under the Companies Act.

The Committee took note of the fact that corporate frauds were generally the result of very complex and intricate series of actions. It may not be easy for the law enforcement agencies at the State Government level to respond effectively to such situations in the absence of proper training and development of skills of the concerned law enforcing personnel for such investigations. The Committee recommends that the SFIO, set up by the Central Government, should serve as a Nodal Agency for development of such expertise and its dissemination to the State Governments, who may also be encouraged to set up similar organisations and provide requisite specialization as a part of their action against economic offences. This would also enable better coordination in respect of prosecution of offences under IPC"

3.7.12 The West Bengal National University of Juridical Sciences, Kolkata had also undertaken a project on drafting of an Economic Offences Code for India. The draft code, entitled 'Serious Economic Offences (Prevention, Control, Investigation and Trial) Act' defines 'Serious Economic Offence' to mean "any dishonest, fraudulent or illegal transaction involving money or property of the value exceeding Rupees Five Crores or such other amount as may be prescribed, which –

a) has serious impact on the national economy or the national security of India, or

b) affects, or is likely to prejudicially affect, the social, economic or political relation of India with other nations, or

c) has adversely affected large number of citizens of India as victims of the offence, or

d) involves person holding high positions of public trust or public duty in government, public or private undertakings, including banks and other financial institutions or other body corporates, and shall also include such offence committed by persons within India or in any place beyond India."

3.7.13 The draft Bill envisages the constitution of a high-powered and autonomous body called the 'Commission for the Control of Serious Economic Offences' to ensure effective implementation of this law. Establishment of special courts and special rules of procedure and evidence relating to investigation and trial of serious economic offence have also been provided.

3.7.14 During the hearing of a PIL filed in the Supreme Court by an NGO, Common Cause, the Reserve Bank of India suggested the creation of an independent and insulated Serious Frauds Office. This PIL was in relation to the mammoth size of non-performing assets plaguing the banking sector and the frequency of economic offences. While appreciating the suggestion, the Hon'ble Supreme Court has asked the Union Government to respond to the idea on priority basis.[48]

3.7.15 The Commission had discussions on this issue with the Reserve Bank of India, the Security and Exchange Board of India and the ICICI Bank. SEBI is of the view that given the absence of an adequate number of persons of appropriate level with skill sets in the area of financial investigation, it might be worthwhile to strengthen existing institutions rather than create new institutions. ICICI Bank is of the view that strong investigation, law enforcement and judicial systems would go a long way in the development of a an effective fraud control mechanism in the financial system; and the Economic Offences Wing and the Cyber Crime wing in the bank are lending specialization and expertise in dealing with frauds/crimes related to Banking. They also stated that a similar specialization and dispensation in the Judiciary will be of immense help in trying cases of frauds in the financial system. RBI was of the view that the recommendations of the Mitra Committee should be implemented.

3.7.16 The Commission is of the view that the current provisions in the Banking Regulation Act, 1949; SEBI Act, 1992 and the Companies Act, 1956 are not strong enough to prevent large scale fraudulent practices nor are they deterrent enough. The present regulatory bodies like RBI, SEBI and Department of Company Affairs are not adequately empowered to address criminality involved in such scams and frauds. There is, therefore, need for a separate institution for investigation and prosecution of serious financial fraud cases and recovery of assets involved therein.

3.7.17 There is need to define 'Serious Economic Offence' under a statute and prescribe deterrent punishment for it. The existing SFIO, though a positive step, can investigate offences only under the Companies Act. The complex and multi-disciplinary nature of 'Serious Economic Offences' would require the constitution of an empowered body to investigate and prosecute the cases under all such offences. This would require the

[48] Reported in The Times of India, New Delhi Edition on 11th November, 2006

establishment of a new and adequately empowered Serious Frauds Office (SFO) which would, necessarily, subsume the existing SFIO. The Serious Frauds Office thus constituted should be under the control and supervision of a Serious Frauds Monitoring Committee chaired by the Cabinet Secretary with representatives from the financial sector, capital and futures markets, commodity markets, accountancy, direct and indirect taxation, forensic audit, criminal and company law, investigation and information technology. The SFO should be empowered to take up cases suo motu or upon reference by the Union or the State Governments.

3.7.18 As getting conviction for economic offences under the existing laws is difficult and moreover, because these offences many times generate funds for other organized crimes and terrorist activities, the Commission agrees with the suggestion made by the Mitra Committee that for 'Serious Frauds' the Court may presume the existence of mens rea.

3.7.19 Recommendations:

a. A new law on 'Serious Economic Offences' should be enacted.

b. A Serious Economic Offence may be defined as :

   i. One which involves a sum exceeding Rs 10 crores; or

   ii. is likely to give rise to widespread public concern; or

   iii. its investigation and prosecution are likely to require highly specialized knowledge of the financial market or of the behaviour of banks or other financial institutions; or

   iv. involves significant international dimensions; or

   v. in the investigation of which there is requirement of legal, financial, investment and investigative skills to be brought together; or

   vi. which appear to be complex to the Union Government, regulators, banks, or any financial institution.

c. A Serious Frauds Office (SFO) should be set up (under the new law), to investigate and prosecute such offences. It should be attached to the Cabinet Secretariat. This office shall have powers to investigate and prosecute all such cases in Special Courts constituted for this purpose. The SFO should be staffed by experts from diverse disciplines

such as the financial sector, capital and futures market, commodity markets, accountancy, direct and indirect taxation, forensic audit, investigation, criminal and company law and information technology. The SFO should have all powers of investigation as stated in the recommendation of the Mitra Committee. The existing SFIO should be subsumed in this.

d. A Serious Frauds Monitoring Committee should be constituted to oversee the investigation and prosecution of such offences. This Committee, to be headed by the Cabinet Secretary, should have the Chief Vigilance Commissioner, Home Secretary, Finance Secretary, Secretary Banking/ Financial Sector, a Deputy Governor RBI, Secretary, Department of Company Affairs, Law Secretary, Chairman SEBI etc as members.

e. In case of involvement of any public functionary in a serious fraud, the SFO shall send a report to the Rashtriya Lokayukta and shall follow the directions given by the Rashtriya Lokayukta (see para 4.3.15).

f. In all cases of serious frauds the Court shall presume the existence of *mens rea* of the accused, and the burden of proof regarding its non-existence, shall lie on the accused.

3.8. Prior Concurrence for Registration of Cases: Section 6A of the Delhi Special Police Establishment Act, 1946

3.8.1 As per Section 6-A of the Delhi Special Police Establishment Act, 1946

"The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to-

b the employees of the Central Government of the level of Joint Secretary and above; and

c such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

3.8.2 It has been argued that given the prevailing corruption ridden environment, there is danger of such a provision being misused to protect corrupt senior public servants, and if at all such a protection is to be given, the power should vest with an independent body like the CVC, which can take an objective stand.

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3.8.3 The counter argument is that officers at the level of Joint Secretaries and above have an important role in decision making in the government. Also while taking these decisions or rendering advice they should be able to do so without any fear or favour. Exposing these officers to frequent enquiries could have a demoralizing effect on them and encourage them most of the time to 'save their skin' and not act in a manner that would best serve the public interest.

3.8.4 The Commission on balance is of the view that it would be necessary to protect honest civil servants from undue harassment, but at the same time in order to ensure that this protection is not used as a shield by the corrupt, it would be appropriate if this permission is given by the Central Vigilance Commissioner in consultation with the Secretary to Government concerned and if the Secretary is involved, a committee comprising the Central Vigilance Commissioner and the Cabinet Secretary may consider the case for granting of permission. In case of Cabinet Secretary such permission may be given by the Prime Minister.

3.8.5 Recommendation:

a. **Permission to take up investigations under the present statutory arrangement should be given by the Central Vigilance Commissioner in consultation with the concerned Secretary. In case of investigation against a Secretary to Government, the permission should be given by a Committee comprising the Cabinet Secretary and the Central Vigilance Commissioner. This would require an amendment to the Delhi Special Police Establishment Act. In the interim the powers of the Union Government may be delegated to the Central Vigilance Commissioner, to be exercised in the manner stated above. A time limit of 30 days may be prescribed for processing this permission.**

3.9 Immunity Enjoyed by Legislators

3.9.1 The National Commission to Review the Working of the Constitution recommended (Para 5.15.6) that Article 105(2) may be amended to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges should not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Such a recommendation was made because corrupt acts include accepting money or other valuable considerations to speak and/or vote in a particular manner and, for such acts, they should be liable for action under the ordinary law of the land.

3.9.2 The NCRWC stated as follows

> *"The law of immunity of members under the parliamentary privilege law was tested in PV Narsimha Rao Vs. State (CBI/SPE), (AIR 1998 SC 2120). The substance of the charge was that certain members of Parliament had conspired to bribe certain other members to vote against a no-confidence motion in Parliament. By a majority decision the Court arrived at the conclusion that while bribe-givers, who were Members of Parliament, could not claim immunity under Article 105, the bribe-takers, also Members of Parliament, could claim such immunity if they had actually spoken or voted in the House in the manner indicated by the bribe-givers. It is obvious that this interpretation of the immunity of Members of Parliament runs counter to all notions of justice, fair play and good conduct expected from Members of Parliament. Freedom of speech inside the House cannot be used by them to solicit or to accept bribes, which is an offence under the criminal law of the country. The decision of the court in the aforesaid case makes it necessary to clarify the true intent of the Constitution. To maintain the dignity, honour and respect of Parliament and its members, it is essential to put it beyond doubt that the protection against legal action under Article 105 does not extend to corrupt acts".*

3.9.3 Right to equality and equal protection of law is a fundamental right and the Constitution enshrines this principle of equality. The Ruling in the above case creates an anomalous situation wherein the Members of Parliament are immune from prosecution for their corrupt acts if they are related to voting or speaking in the Parliament. This runs contrary to norms of justice and fair-play. Members of Parliament, being the lawmakers have to maintain the highest standards of integrity and probity. It is, therefore, necessary to amend the Constitution to remove this anamoly.

3.9.4 Recommendations:

a. The Commission, while endorsing the suggestion of the National Commission to Review the Working of the Constitution, recommends that suitable amendments be effected to Article 105(2) of the Constitution to provide that the immunity enjoyed by Members of Parliament does not cover corrupt acts committed by them in connection with their duties in the House or otherwise.

b. The Commission also recommends that similar amendments may be made in Article 194(2) of the Constitution in respect of members of the state legislatures.

3.10 Constitutional Protection to Civil Servants – Article 311

3.10.1 Civil servants in India enjoy unique protection in terms of specific provisions in Part XIV of the Constitution, which authorize the regulation of their conditions of service. Article 309 stipulates that subject to the provisions of the Constitution, acts of appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. Under Article 310, - persons serving the Union or a State hold office during the pleasure of the President or the Governor of the State as the case may be. The exercise of this pleasure is, however, circumscribed by the provisions of Article 311. The Article reads as follows :

"Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State–

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the

authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

3.10.2 The procedure laid down in Article 311, subject to the provisos, or exceptions, therein, is intended to, first, assure a measure of security of tenure to government servants, who are covered by the Article and, second, provide certain safeguards against arbitrary dismissal or removal of a government servant or reduction to a lower rank. These provisions are enforceable in a court of law and where there is an infringement of Article 311 orders passed by the disciplinary authority are ab-initio void. The provisions of Articles 310 and 311, apply to all government servants.

Arguments in favour of retaining Article 311

3.10.3 Article 311 of the Constitution has been a matter of much debate over the past fifty years. Arguments range from its retention in its present form, or even strengthening it, to its total deletion. Those in favour of retaining Article 311 argue that the Article subjects the doctrine of pleasure contained in the preceding Article 310 to certain safeguards. Indeed, this Article earlier also envisaged giving an opportunity to the accused official to protest the quantum of punishment proposed if the charges were proved - this requirement was, however, dispensed with through the 42nd amendment to the Constitution.

3.10.4 It is further argued that the safeguards under Article 311 are focused and that the framers of the Constitution were mindful of the rare eventualities in which even such minimal safeguards would not be necessary. Indeed, the safeguard of an opportunity of being heard has been held to be a fundamental principle of natural justice. Even if Article 311 were to be repealed, it is argued, the need for giving an opportunity to be heard cannot be dispensed with. The requirement that only an authority which is the appointing authority or any other authority superior to it can impose a punishment of dismissal or removal also appears reasonable as the government follows a hierarchical structure where the appointing authority for different categories of employees are assigned to different levels- the obvious principle being that for positions having higher responsibility, the appointing authority is higher up in the hierarchy.

3.10.5 Moreover, if Article 310 stands without the procedural safeguards of Article 311, it is highly unlikely that the rules governing disciplinary proceedings and departmental inquiries can be dispensed with on the ground that the President or the Governor have a right to dismiss an official from service without proving charges after due inquiry. In such a situation the only outcome would be an increase in litigation concerning service matters.

3.10.6 Besides, judicial review is an integral part of our Constitution and a substantial portion of the appellate work of the Supreme Court concerns Article 311. A random check of the decided cases from the Index notes of the Supreme Court cases yields various rulings, which indicate that the Article is not an obstacle in dealing with delinquent public servants:

(i) The disciplinary authority is free to take a view contrary to the finding of 'not guilty' by the inquiry officer. (*High Court v Shrikant Patil* 2000 1SCC 416).

(ii) Where the charges are proved in a departmental inquiry while the person is acquitted of the same charges in criminal prosecution, acquittal will have no effect on disciplinary action as the degree of proof required in the two proceedings is quite different. (*Senior Superintendent v A. Gopalan* AIR 1999 SC 1514).

(iii) Where the appointing authority is the President or the Governor, it is not necessary for these office-holders to be personally satisfied about the justification for disciplinary penalty. (*Union v Sripati Ranjan* 1975 4 SC 699).

(iv) Where the three eventualities envisaged in second proviso to Article 311 (2) are attracted, recourse to Article 14 cannot be had to get an opportunity of being heard. (*Union v Tulsiram Patel* 1985 3 SCC 398).

(v) Where witnesses are intimidated, it is open to the disciplinary authority to take a view that an inquiry is not "reasonably practicable" (*Satyavir v Union* 1985 4 SCC 252).

(vi) Article- 311 is also not attracted if age of retirement is reduced. (*Andhra Pradesh v Moinuddin* AIR 1994 SC 1474).

(vii) Compulsory retirement also does not attract the aforesaid Article (*Biswanath v Bihar* 2001 SCC 2 305).

(viii) Courts do not sit in appeal over findings of Departmental inquiries. The role of the higher courts is restricted to ascertain whether the inquiry was fairly or properly conducted; once that is proved, the court will not interfere with the ultimate finding. The court will interfere only in cases where there is no evidence whatsoever to support the finding of guilt. (*Kuldeep v Commissioner of Police 1999* 2 SCC 10).

3.10.7 It is argued that it is the rules governing disciplinary enquiries, and not Article 311 itself, that are responsible for the delays in enquiry and even in the removal of delinquent government servants. Most of the relevant procedures antedate the Constitution and little information exists about their origin, or, in some cases, even about their *raison d'etre.* It will be clear from the rulings cited above that the Supreme Court has adopted a judicious approach to Article 311 and it would be unreasonable to take the view that the said Article has proved a panacea for delinquent Government employees.

Arguments in favour of repealing Article 311

3.10.8 But the argument above is itself the starting point of the argument in favour of repealing Article 311. It can be argued that if the decisions of the judiciary did not obviate the need to act against delinquent officials, then why retain the Article with its potential to protect the corrupt through any unintended interpretation? Indeed, it is not as if in all cases involving Article 311 the Supreme Court has taken a 'pro Government' stance. There are cases where the apex court has struck down the actions of the disciplinary authority or the Government. Some instances can be cited illustratively;

(i) Where a temporary servant was accused of accepting bribe, it was held that the matter should have been dealt with in accordance with Article 311 and if proved guilty the penalty of dismissal, instead of termination of service should have been imposed. (*Madan Gopal v Punjab* AIR 1963 SC 531).

(ii) Where a temporary constable was discharged from service, it was held that "the order of discharge, though couched in innocuous terms and stated to be made in accordance with (the rules) was really a camouflage for an order of dismissal from service on the ground of misconduct as found on an enquiry into the allegations behind her back. It was penal in nature as it cast a stigma on the service career of the appellant. The order was made without serving the appellant any charge sheet, without asking for any explanation from her, without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnessess. It, therefore, contravenes Article 311(2) of the Constitution and is liable to be quashed and set aside." (*Smt. Rajinder Kaur v State of Punjab and Another,* AIR 1986 SC 1790).

(iii) Where an inquiry was held at a place away from the place of posting and the accused employee could not attend the proceedings due to lack of funds as he was not paid any subsistence allowance (during the period of suspension), it was held that the inquiry was vitiated. (*Fakirbhai v Presiding Officer* 1986 3 SCC 111).

(iv) It is necessary for the Disciplinary Authority to furnish copy of report of Inquiry Officer to Charged Officer and give him an opportunity to make a representation

against it before taking a decision on the charges. (*Union of India v. Mohd. Ramzan Khan,* 1991 (1)SLR SC 159 : AIR 1991 SC 471)

(v) (a) Adverse entries awarded to an employee lose their significance on his promotion to a higher post and cannot be taken into consideration for forming opinion for prematurely retiring him.

(b) Uncommunicated remarks or remarks pending disposal of representation cannot be the basis for premature retirement. (*Brij Mohan Singh Chopra v. State of Punjab*, 1987 (2) SLR SC 54).

(vi) It has been been observed, "But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Govenment may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with." (*P.L. Dhingra v Union of India*, 1958 SCR p.828 at 862).

3.10.9 There are a number of decisions of the lower courts which have tied down the disciplinary authorities with technical detail where the procedure has become more important than the substance.

3.10.10 In present times, the position prevailing in India has to be viewed against the practice followed in other countries, where such punitive action is possible with a hearing permitted at the discretion of the appropriate authority, not as a matter of right. Even in the UK, whose administrative systems were adopted in India, such freedom does not exist. India is perhaps one of very few countries where a public servant, who, though an agent of the government, has the power to invoke Constitutional rights against the government which is his/her employer.

3.10.11 The Constitution has been amended to recognize the needs of governance as felt from time to time. The Indian Constitution, and Part XIV thereof, was drafted at a time when, in the aftermath of partition, and post-colonial administrative upheavals, it was felt necessary to prescribe certain guarantees to the bureaucracy. In the present scenario, that protection does not appear quite necessary. For one, the recent growth of the economy has ensured that Government is no longer the only significant source of employment. Indeed, in the present debate of even providing outcome oriented contractual appointments for senior positions, there is a new focus on the question of permanency in the civil services. Inflexibility and compartmentalization, created over decades within the bureaucratic structure, has been encouraged by the difficulty in even transferring staff who have rushed to courts against their transfer; this was presumably not the intention of the framers of the Constitution. The increase in corruption and inefficiency in Government has been

acknowledged as requiring major "surgery". The role of Government as a model employer cannot take away from the fact that public good must override individual right, certainly of the corrupt and inefficient public servant.

3.10.12 It is no doubt essential that reasonable opportunity is provided to a government official against what might be arbitrary or vindictive action. But this should be only reasonable, not excessive, and that must be the criteria for assessing the nature of legal protection that the employee must receive. The protection required to be provided in terms of security of tenure or permanancy in the civil service must not lead to a situation where delayed action becomes common reason for emboldening errant officials into committing acts against public interest.

3.10.13 It has been held that, for proper compliance with the requirement of 'reasonable opportunity' as envisaged in Article 311(2), a government servant against whom action is contemplated should, in the first instance, be given an opportunity to deny the charges. If, as a result of an inquiry, the charges are proved and it is proposed to impose any of the penalties of dismissal, removal, or reduction in rank, such penalty may be imposed on the basis of the findings of the inquiry. It is not necessary to give him any opportunity of making a representation on the penalty proposed after the amendment of clause (2) of Article 311 of the Constitution with effect from 3rd January, 1977. The Santhanam Committee had listed as many as 15 criteria laid down by the Supreme Court and the High Courts in order to enable conduct of an inquiry in accordance with the spirit of the Constitution. The interpretations and requirements laid down by the highest courts have made disciplinary proceedings for major penalties very convoluted, tedious and time consuming involving a large number of sequential steps before a person can be found guilty of the charges and punished. The process unfortunately does not end there. Provisions exist for appeal, revision and review only after completion of which, the delinquent officer would begin to suffer the penalty. The accused officer also has the right to challenge the legality of the action of disciplinary authority before the Administrative Tribunal, get an interim stay of the proceedings and relief thereafter, and to substantively appeal against the decision of the disciplinary authority or the government as the case may be in the Tribunal. This apart, he reserves his fundamental right to invoke the writ jurisdiction of the High Court and the Supreme Court protesting the violation of such rights in the conduct of the inquiry.

3.10.14 Understandably, this has given rise to the demand for curtailing rights of the public servant in relation to his employment. The only amendment of any substantial nature that has been affected is to dispense with the requirement of a second opportunity to show cause. The Santhanam committee had observed:

"…In view of the constitutional requirements and the judicial pronouncements, we consider that it would not be possible to radically simplify the procedure unless the Constitution is suitably amended. However, we examined the possibility of simplifying the procedure in relation to disciplinary proceedings to the extent possible within the existing legal framework".

3.10.15 The Hota Committee, while recommending measures to make civil services responsive, citizen, friendly and ethical, has stated as follows:

"We recommend that Article 311 of the Constitution be amended to provide that if there are allegations against a civil servant / person holding a civil post of accepting illegal gratification or of having assets disproportionate to his known sources of income and the President or the Governor is satisfied that the civil servant / person holding a civil post be removed from service forthwith in the public interest, the President or the Governor may pass an order removing the civil servant / person holding the civil post from service and give him an opportunity in a post-decisional hearing to defend himself.

If the person removed from service is prosecuted in a court of law, the President or the Governor may also specify by order that a post-decisional hearing may be given to the person removed from service only after a judgement of the court of law acquitting him becomes final and conclusive. The person so removed shall be given a post-decisional hearing in a regular departmental inquiry to defend himself against the charge. If he is exonerated of the charge, he shall be reinstated in service with full restoration of his service conditions, including his seniority, and shall be paid the arrears of pay and allowances due to him in full.

In our view, such a Constitutional amendment would :

- *Facilitate summary removal from service of a corrupt officer;*
- *Inspire confidence in the minds of the common people that corrupt practice by members of the civil service / persons holding civil posts will not be tolerated;*
- *Ensure justice to the official so removed in a post-decisional hearing.*

3.10.16 The National Commission to Review the Working of the Constitution had recommended :

"Yet the services have remained largely immune from imposition of penalties due to the complicated procedures that have grown out of the constitutional guarantee against arbitrary and vindictive action (Article 311). The constitutional safeguards have in practice acted to shield the guilty against swift and certain punishment for abuse of public office for private gain. A major corollary

has been erosion of accountability. It has accordingly become necessary to revisit the issue of constitutional safeguards under Article 311 to ensure that the honest and efficient officials are given the requisite protection but the dishonest are not allowed to prosper in office. A comprehensive examination of the entire corpus of jurisprudence has to be undertaken to rationalize and simplify the procedure of administrative and legal action and to bring the theory and practice of security and tenure in line with the experience of the last more than 50 years".

3.10.17 The view favouring the deletion of Article 311 argues ultimately that, over time, the provisions of Article 311 have given rise to a mass of judicial pronouncements which have led to much confusion and uncertainty in interpretation. These pronouncements should not continue to have significance and effect on the strength of the continued existence of Article 311. If this Article is deleted, judicial pronouncements based on the Article would no longer be in force and binding. This could be made clear in the statement of objects and reasons of any proposed amendment to the Constitution so that these rulings are not relied upon to claim a protection which was not intended.

Summing up – Removing Article 311

3.10.18 The Commission has given deep consideration to the case for and against Article 311 remaining in the Constitution of India. No other Constitution appears to contain the kind of guarantees that this Article does. The Government of India Act-1919 was the first enactment to apply the 'doctrine of pleasure' in India, through Section 96B thereof. Its application was "subject to rules", and the courts while examining challenges to penalties under that Act applied the extant rules to determine whether these were rightly imposed. In other words, when this doctrine was first applied in India, it was deemed sufficient to provide protection against any unjust exercise of 'pleasure'. With the provisions of Judicial review now available in our Constitution, the protection available to Government employees is indeed formidable even outside Article 311. This is borne out by the fact that ample relief is available to employees invoking judicial intervention in cases involving compulsory retirements even though Article 311 does not extend to such cases.

3.10.19 When Sardar Patel argued for protection of civil servants, the intention was clearly to embolden senior civil servants to render impartial and frank advice to the political executive without fear of retribution. But the compulsions of equal treatment of all public servants and judicial pronouncements have made such a protection applicable to employees of PSUs, para-statal organizations and even body corporates like cooperatives and this has crated a climate of excessive security without fear of penalty for imcompetence or wrong-doing. The challenge before the nation now is to confront this exaggerated notion of life-time security irrespective of performance and to create a climate conducive to effective delivery of services and accountability with reasonable security of tenure.

3.10.20 The Commission believes that the rights of a civil servant under the Constitution should be subordinate to the overall reqirement of public interest and the contractual right of the State. It cannot be an argument that a corrupt civil servant's rights are more important than the need to ensure an honest, efficient and corruption-free administration. Ultimately, the public servant, an agent of the State, cannot be superior to the State and it is his fundamental duty to serve the State with integrity, devotion, honesty, impartiality, objectivity, transparency and accountability.

3.10.21 It is true that the government as an employer is expected to act in a fair manner and it has to be a model employer worthy of emulation by others. It has also to be ensured that honest and efficient public servants are not subjected to the whims and fancies of their superiors. No government can be expected to dispense with the services of a government servant in an arbitrary manner or without a proper enquiry. Such arbitrary removal is not possible even in the private sector. Strictly, there should be no need for retaining Article 310, and legal safeguards may be provided through legislation under Article 309.

3.10.22 Articles 309, 310 and 311 form a continuum. If the whole gamut of "conditions of service" is codified as required by the substantive part of Article 309, this can include matters such as disciplinary proceedings and imposition of penalties. Moreover, as noted above, with rule of law accepted as an integral part of the basic structure of the constitution, reasonable protection now attributed to Article 311 will continue to be available to satisfy the requirements of 'rule of law'.

3.10.23 Taking into account these considerations and a fairly common perception that explicit articulation of "protection" in the Constitution itself gives an impression of inordinate 'protection', the Commission is of the view that on balance Article 311 need not continue to be a part of the Constitution. Instead appropriate and comprehensive legislation under Article 309 could be framed to cover all aspects of recruitment and service, even with regard to dismissal, removal or reduction in rank. Appropriate legislation by the respective legislatures may also be ensured through a revised Constitutional provision. The Commission will examine in detail issues related to such enactment in its Report on Civil Services Reforms.

3.10.24 Recommendations:

a. Article 311 of the Constitution should be repealed.

b. Simultaneously, Article 310 of the Constitution should also be repealed.

c. Suitable legislation to provide for all necessary terms and conditions of services should be provided under Article 309, to protect the bona fide actions of public servants taken in public interest; this should be made applicable to the States.

d. Necessary protection to public servants against arbitrary action should be provided through such legislation under Article 309.

3.11 Disciplinary Proceedings

3.11.1 The term, "Disciplinary Proceedings" has not been defined under any legislation or rules. A working definition would, however, run something like; *Action initiated to find whether an employee has violated a prescribed or implicit code of ethical and professional conduct to enable the employer to impose penalties like forfeiture of employment or denial of employment related benefits on the guilty.* In the entire repertoire of measures to deal with misconduct by civil servants, disciplinary proceedings occupy a special place as the entire process is carried out within the civil service system. It is axiomatic that an efficient disciplinary system promotes efficiency and professionalism and drastically inhibits recourse to external judicial processes.

3.11.2 Prior to the enactment of the Government of India Act, 1919, there was no formal system of departmental inquiries as a prelude to disciplinary action. Police manuals and regulations governing Forest Departments provided penalties like dismissal, monetary fines and stoppage of increments etc. Such penalties were imposed after calling for, and considering explanations. A system of oral inquiry appears to have first started in the Railways in the early 1920s although at that time the Indian Railway system was an amalgam of private and public initiatives. Insofar as the system of disciplinary proceedings is concerned, enactment of the Government of India Act, 1919 is rightly regarded as a watershed. Section 96B of that Act, while prescribing that "every person in the civil service of the crown holds office during His majesty's pleasure", had made this "subject to provisions of this Act and Rules made thereunder". The importance of this provisions was that specific rules were envisaged for the first time to regulate conditions of service, including imposition of penalties.

3.11.3 Pursuant to the above provision, the Civil Services Classification Rules, 1920 were framed. Rule XIV of these Rules, for the first time, prescribed a procedure for conducting disciplinary proceedings. The provisions of these rules were amplified in the form of the amended Civil Services Regulations of 1930. The basic provisions currently in vogue essentially remain unchanged. [The early history of these measures can be gleaned from a number of judicial pronouncements such as; the judgement of the Privy Council in **R. Venkata Rao v Secretary of State for India** *AIR (1937) PC 31,* and of the Calcutta and Rangoon High Courts respectively in **Satish Chandra Das v Secretary of State** *ILR (54) Cal 44* and **J.R Baroni v Secretary of State** *AIR (1929) Rang 207*].

3.11.4 It is also pertinent to note that the provisions relating to "Services under the Union and the States" in Part XIV of the Constitution, and in particular Articles 309 to 313 thereof, reproduces verbatim, provisions of the Government of India Act, 1935. As such, the present framework for prescribing penalties, including the method of imposition thereof, contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 essentially continues the pattern firmed up in pre independence days with certain modifications brought in pursuance of the recommendations of the Santhanam Committee. Rules on the subject framed by State Governments are also remarkably similar to the Central Rules (to be referred hereinafter as the 'CCA Rules") for the obvious reason that they share a 'common lineage' as the 'parent rules' of 1920 had all India application including to the local governments.

3.11.5 A major change that has been brought about, post independence, is that the Code of Conduct has been separated from CCA and analogous Rules in the form of Central Civil Services (Conduct) Rules and the All India Services (Conduct) Rules etc on the lines suggested by the Santhanam Committee have been notified. That Committee, after examination of the separate rules then prevailing in regard to discipline and appeal for the All India Services, the Central Civil Services, the Railways and the civilians in Defence Services recommended unified set of rules. The Committee stated: *"Our intention was that the conduct rules, particularly those relating to integrity should be uniform. If, for any reason, it is necessary to promulgate the rules separately for a service or a department there could be no objection to the rules being promulgated separately provided the rules, particularly those relating to integrity are uniform".* Accordingly, in the present pattern, the norms of professional and, to a limited extent personal behaviour, are laid down in the conduct rules while the consequences of violation of these norms are dealt with in the CCA and similar rules.

3.11.6 CCA Rules envisage two kinds of penalties. **Minor penalties** consist of "Censure", "Withholding of promotion for a specified period", and "Withholding of increment and recovery from the salary of whole or part of pecuniary loss caused by the employee". Minor penalty can be imposed after calling for and considering the explanation of the accused employee. **Major Penalties** comprise reduction in rank through reversion to a lower scale of pay or to the parent cadre etc, compulsory retirement, removal or dismissal from service. Such penalties can be imposed only after a detailed inquiry except in cases covered by the second proviso to Article 311 (2) i.e. in the eventuality of conviction for a criminal offence, on grounds related to security of the state and where an inquiry is considered not practicable.

3.11.7 Detailed procedures governing the initiation of disciplinary proceedings, and the progress and culmination, thereof, is diagrammatically depicted in **Figure 3.1**. While there are minor variations in this pattern in the states or even in the Union Government in respect of the non Gazetted establishment, broadly the 'flows' indicated therein embrace the entire community of central and state government employees including those of the public sector and nationalized banks. Without going into the details of such procedures, but to be able to appreciate the issues involved, it will be sufficient to note the following procedural outlines along with the time limit within which the Central Vigilance Commission (CVC) expects these to be attended to:

- Complaints received or lapses noticed are examined to ascertain whether they involve a 'vigilance angle' (essentially violation of conduct rules) - 1 month .
- Decision about whom to refer complaints to ascertain whether these have any substance to the CBI or departmental agencies-3 months.
- Submission of findings of investigations- 3 months.
- Department/CBI report to be sent for **'First Stage Advice'** to the CVC- 1 month from the date of reference.
- Formulation of CVC's advice-1 month.
- Issue of charge-sheet, statement of imputation of misconduct, and list of witnesses and documents etc, if it is decided to proceed in departmental inquiry - 1 month from the receipt of CVC advice.
- Consideration of Defence Statement of the accused employee- 15 days.
- Issue of final orders in minor penalty cases-2 months from receipt of Defence Statement.
- Appointment of the Inquiry Authority (IA) and Presenting Officer (PO) where the 'first stage advice' recommends major penalty which requires detailed inquiry- Immediately after receipt of Statement of Defence.
- Completion of inquiry- 6 months from the date of appointment of the Inquiry Officer and the Presenting Officer.
- Sending a copy of the inquiry report, (where the accused is held guilty or the disciplinary authority records reasons for disagreement with an inquiry report holding that charges are not proved), to the charged officer for representation, if any- 15 days from the receipt of representation.

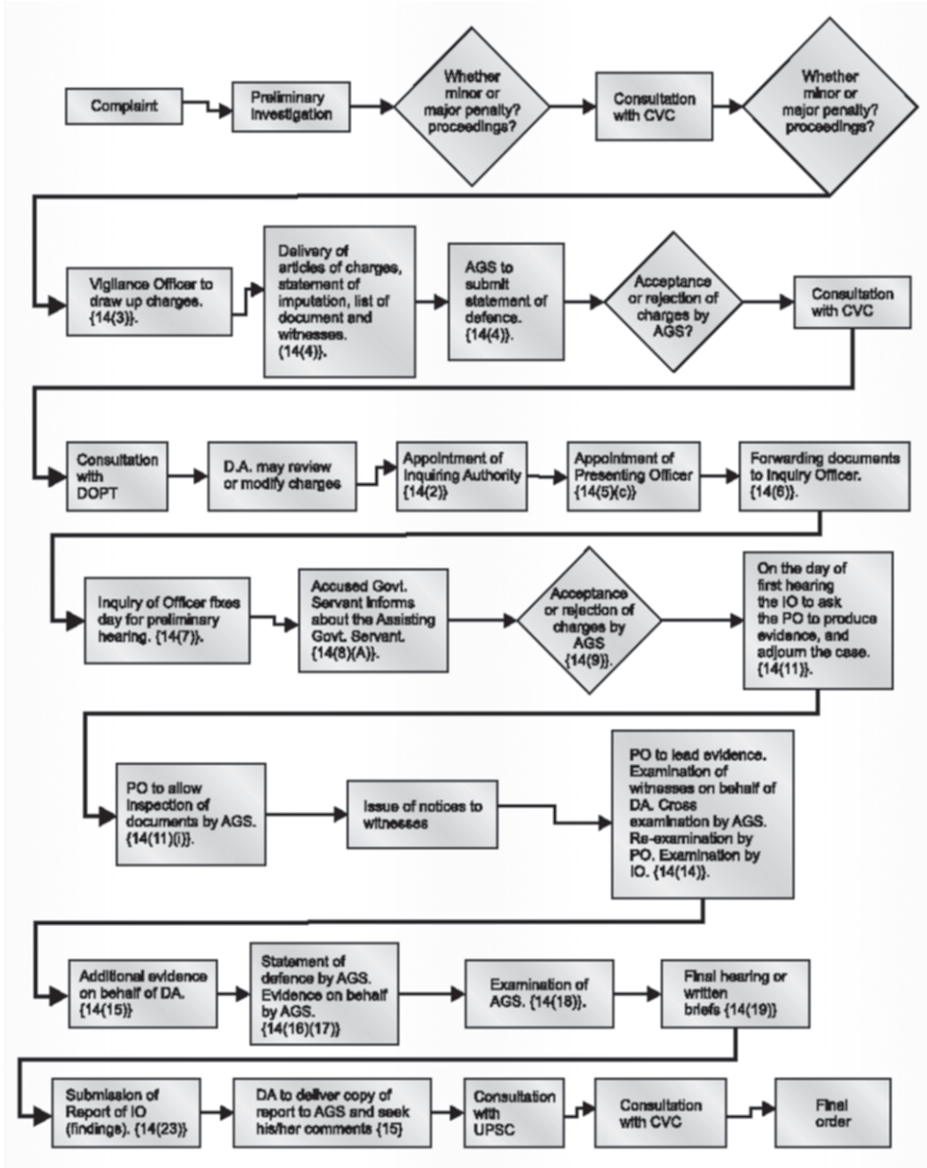


Figure 3.1 - Stages in a Disciplinary Proceeding

- Considering the representation of the accused employee and forwarding the inquiry report for **Second Stage Advice to the CVC**- 1 month from the date of receipt of the representation.

- Issue of orders on the inquiry report- 1 month from the receipt of CVC's 'second stage advice (or 2 months from the date of inquiry report where such advice is not required).

(It may be noticed that the above schedule does not include the time taken between commission of a 'wrong' and its detection or receipt of a complaint about it. A very rough calculation would also indicate that even if the above time schedule is adhered to, the estimated time taken in bringing to culmination cases involving minor and major penalties can be respectively estimated at 10 month 15 days and 16 months. It needs to be added that this schedule excludes the time required for consultation with the UPSC wherever required)

3.11.8 In order to appreciate the problems involved in the conduct of actual proceedings, it will be necessary to also invite attention to the following factors impinging on departmental inquiries particularly in the Union Government.

- The CVC has emerged as the nodal, statutory authority to over-see vigilance administration and, also to a certain extent of the working of the Central Bureau of Investigation. Initiation and completion of inquiries require clearance of this authority.

- Each Ministry/Department or other organization in the Union Government now has an internal vigilance set-up under a whole-time or part-time Chief Vigilance Officer (CVO) with the responsibility of conducting or supervising preliminary investigations in complaints, preparing the article of charge etc. keeping a watch on progress of proceedings and examining inquiry reports apart from undertaking preventive vigilance and surveillance etc.

- The total civil establishment of the Government of India consists primarily of Groups "C" and "D" staff. The monitoring and supervisory role of the CVC is, however, confined to only Groups "A" and Gazetted "B". In other words, the bulk of disciplinary cases do not benefit from the attention of the CVC.

- Disciplinary proceedings are often resorted to in cases originally investigated by the CBI for criminal prosecution if warranted by the investigation, but where the investigating agency eventually reaches the conclusion that the incriminating evidence collected is not sufficient to secure conviction but is of a degree to

suffice for the finding of guilt in departmental proceedings. (The degree of proof required in a criminal case must prove guilt 'beyond reasonable doubt; in departmental proceedings, as also in civil cases, 'preponderance of probabilities is sufficient).

- Historically, departmental proceedings were entrusted for inquiry to officials from within the organization, chosen at random subject only to the consideration that the inquiry officer be senior to the accused in rank. The present trend is to have full time inquiry officers working as Commissioner Departmental Inquiries in the CVC. This, however, only supplements the system of part-time inquiry officers as the number of departmental inquiries is significantly high.

- The Department of Personnel and Training now has a very limited role in conduct of departmental inquiries except in case of members of All India services and, for the most part, the various Ministries/Departments exercise the functions of disciplinary authorities in respect of officials borne on their establishment.

  With the formation of Central Administrative Tribunals (CATs) in the 1980s most of the judicial proceedings arising out of departmental inquiries are handled in these fora which, not infrequently, entertain pleas to stay disciplinary proceedings on technical grounds and even entertain pleas against interlocutory orders. Public servants are able to challenge the orders of the tribunal in High Courts. There is, in addition, recourse to the Supreme Court under Article 136 of the Constitution of filing 'appeal by special leave".

3.11.9 The Commission takes note of the fact that there is considerable dissatisfaction among all sections of stake-holders about the way the process of disciplinary proceedings is operating. The Hota Committee which had gone into some aspects of such proceedings had also drawn attention to the delays and procedural aspects therein which prevent disciplinary penalties from becoming a tool for ensuring efficiency and probity. That committee had also suggested measures like more frequent resort to proceedings for minor penalties, relieving the inquiry officer of all other duties while conducting the inquiry, and furnishing copies of the documents proposed to be utilized to prove the case against the accused employee along with the charge-sheet etc.

3.11.10 A recent study[49] brings out some revealing information. Some of the salient findings (cases studied) are;

- In 116 cases studied, the average time taken between reference to CVC for the 'first stage advice' and receipt of the advice in cases studied was 170 days (these cases apparently involved imposition of minor penalty).

[49] *Source*: "Disciplinary Proceedings as a Tool of Anti Corruption Strategy", W R Reddy (IIPA New Delhi, 2005)

- In 234 cases involving proceedings for a major penalty the average time taken between appointment of the Inquiry Officer and completion of inquiry was 584 days.
- In 56 cases the average time taken from receipt of the inquiry report to sending the case to the CVC for 'second stage advice' was 288 days.
- In 33 cases the average time taken between the 'date of occurrence of misconduct'* and sending the cases to the CVC for 'first stage advice' was 1284 days.
- Analysis of certain completed cases revealed the following 'break-up' of time taken by various agencies;

Administrative Department	- 69%
Inquiry Officer	- 17%
CVC	- 9%
UPSC	- 5%

- There was considerable variation in the time taken often in the same stages depending on the source relied upon viz. Disciplinary Cases Monitoring and Management Information System (DCMMIS) of the Administrative Vigilance Division of the Department of Personnel and Training, CVC data of 'first stage advice' i.e. cases resulting in closure or minor penalties and 'second stage advice' of the same organization i.e. cases referred again after departmental inquiry.

(The concept of 'date of occurrence of misconduct', though an innovative bench-mark, needs to be used with caution in a situation where the 'discovery' of misconduct is necessarily possible only at some future date).

3.11.11 From the above data two facts clearly emerge: *first, there* is no congruence between the time taken in completion of various stages and the schedule prescribed for their completion by the CVC; and *second,* while it would be unrealistic in such cases to expect 'immediate report of the offence', the discovery of the commission of a 'misconduct' is shockingly delayed. In fact, it is not very clear, on the whole, as to how such 'misconducts' come to light- whether a significant number of cases could be detected within the organization or whether most such cases were disclosed through complaints of 'affected-outsiders'. These are aspects on which greater clarity and empirical evidence are clearly required.

3.11.12 The Commission is of the view that the existing regulations governing disciplinary proceedings need to be recast and the following broad principles should be followed in laying down the new regulations.

a. The procedure needs to be made simple so that the proceedings could be completed within a short time frame.

b. Emphasis should be on documentary evidence, and only in case documentary evidence is not sufficient, recourse should be made to oral evidence.

c. An appellate mechanism should be provided within the department itself.

d. Imposition of major penalties should be recommended by a committee in order to ensure objectivity.

The Commission would be elaborating these aspects in its Report on civil services reforms.

3.12 Statutory Reporting Obligations

3.12.1 Statutory provisions have cast reporting obligations on the citizen. Such provisions apply to both citizens and public servants backed with penal provisions in the event of failure to comply with such obligations. Section 39 of the Code of Criminal Procedure, 1973 makes it mandatory for any person to report to a magistrate or officer of the law any alleged corrupt offence by a public servant failing which he shall be liable for prosecution. However, this provision has remained a dead letter because no mechanisms are available for protection of the informants. Obviously, fear of potential whistleblowers being subjected to reprisals by the perpetrators of corrupt acts, and the inability of the government to protect their person and property in the event of such threats are powerful deterrents which far outweigh the moral pressure of duty as a citizen. In the case of a civil servant, the threat is not only from the actual agents who perpetrate the crime reported, but also from the government apparatus where there is collusive corruption. Thus, he suffers both from external physical threat and internal official harassment.

3.12.2 Failure to give information as required by law also constitutes an offence under Sections 176 or 202 of the Indian Penal Code which deal with omission to give notice to public servant by a person legally bound to give it and intentional omission to give information of offence by a person bound to inform. Section 125 of the Indian Evidence Act, 1872 also covers aspects of the interest and integrity of the information given in respect of offences. Official communication with regard to crime is privileged, and a police officer or a magistrate cannot be compelled to disclose the source of information received by him with regard to the commission of the offence. These provisions indicate how the law makers had, over a century ago, realized the importance of the need to encourage public and official reporting of crimes or of the intention to commit crimes of corruption. In this context, Malaysia has stipulated that a public official who is offered a bribe but fails to report it, may be convicted and imprisoned for up to ten years. The Commission feels that making a law on whistleblower's protection would provide the necessary protection against departmental victimization (para 4.7.4) thus creating an environment where public servants would come forward and reveal details of corrupt practices within their organizations.

4 INSTITUTIONAL FRAMEWORK

4.1 Existing Institutions/Agencies

Union Government

4.1.1 The Administrative Vigilance Division of the Department of Personnel & Training is the nodal agency for dealing with Vigilance and Anti-corruption. Its tasks, *inter alia*, are to oversee and provide necessary directions to the Government's programme of maintenance of discipline and eradication of corruption from the public services. The other institutions and agencies at the Union level are - (i) The Central Vigilance Commission (CVC); (ii) Vigilance units in the Ministries/Departments of Government of India, Central public enterprises and other autonomous organisations; and (iii) the Central Bureau of Investigation (CBI).

Central Vigilance Commission

4.1.2 In pursuance of the recommendations made by the Committee on Prevention of Corruption, popularly known as the Santhanam Committee, the Central Vigilance Commission was set up by the Government of India by a Resolution dated 11.2.1964. It was accorded statutory status, consequent upon the judgement of the Hon'ble Supreme Court in Vineet Narain v. Union of India, through the Central Vigilance Commission Act, 2003. The CVC advises the Union Government on all matters pertaining to the maintenance of integrity in administration. It exercises superintendence over the working of the Central Bureau of Investigation, and also over the vigilance administration of various Ministries and other organizations of the Union Government.

Vigilance Units in the Government of India

4.1.3 All Ministries/Departments in the Union Government have a Chief Vigilance Officer (CVO) who heads the Vigilance Division of the organization concerned, assisting and advising the Secretary or Head of Office in all matters pertaining to vigilance. He also provides a link between his organisation and the Central Vigilance Commission on the one hand and his organisation and the Central Bureau of Investigation on the other. Vigilance functions performed by the CVO include collecting intelligence about corrupt practices of the employees of his organisation; investigating verifiable allegations reported to him; processing

investigation reports for further consideration of the disciplinary authority concerned; and referring matters to the Central Vigilance Commission for advice wherever necessary.

The Central Bureau of Investigation

4.1.4 The Central Bureau of Investigation (CBI) is the principal investigative agency of the Union Government in anti-corruption matters. It derives its powers from the Delhi Special Police Establishment Act, 1946 (DSPE Act) to investigate certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. The Special Police Establishment, which forms a division of the Central Bureau of Investigation, has three units, viz. (i) Anti-corruption Division, (ii) Economic Offences Wing, and (iii) Special Crimes Division. The Anti-corruption Division investigates all cases registered under the Prevention of Corruption Act, 1988 as also cases of offences under any other sections of the IPC or other law if committed along with offences of bribery and corruption. The Anti-corruption Division investigates cases pertaining to serious irregularities allegedly committed by public servants. It also investigates cases against public servants of State Governments, if the case is entrusted to the CBI. The Special Crimes Division investigates all cases of economic offences and conventional crimes; such as offences relating to internal security, espionage, sabotage, narcotics and psychotropic substances, antiquities, murders, dacoities/robberies, cheating, criminal breach of trust, forgeries, dowry deaths, suspicious deaths and other offences under IPC and other laws notified under Section 3 of the DSPE Act.

Vigilance Systems in State Governments

4.1.5 At the level of state governments, similar vigilance and anti-corruption organisations exist, although the nature and staffing of these organisations vary between and across state governments. While some states have Vigilance Commissions and anti-corruption bureaus, others have Lokayuktas. Andhra Pradesh has an Anti Corruption Bureau, a Vigilance Commission and a Lokayukta. Tamil Nadu and West Bengal have State Vigilance Commissions to oversee the vigilance functions. The Vigilance Commissioner in Tamil Nadu is a serving Secretary to Government and functions as a Secretary though he brings out an Annual Report in his capacity as Vigilance Commissioner. Maharashtra has a combination of an Ombudsman and a Vigilance Commissioner, a multi-member body called the Lokayukta with a retired Judge of the higher judiciary as the Chairman and a retired civil servant as Vice Chairman. There are Vigilance Commissioners in the States of Assam, Bihar, Gujarat, Jammu & Kashmir, Meghalaya and Sikkim. In the Union Territories, the Chief Secretary himself acts as the Vigilance Commissioner. Some States have adopted the pattern of the Union Government and set up internal vigilance organizations with dual responsibility of reporting to the Vigilance Commissioner and the departmental head with subordinate units in offices of Heads of Departments and the districts reporting to the higher formations and the Vigilance Commissioner.

4.2 Evaluation of the Anti-Corruption Machinery in India

4.2.1 The working of many of these anti-corruption bodies leaves much to be desired. In order to analyse the functioning of the anti-corruption laws and the agencies involved in their enforcement, the Commission studied the details of cases investigated, tried and convicted in the past three decades, based on the annual statistics published by the National Crime Records Bureau. The analysis is summarized in Fig-4.1 to Fig-4.4.

Fig. 4.1: Analysis of Cases Prosecuted by CBI under the Prevention of Corruption Act

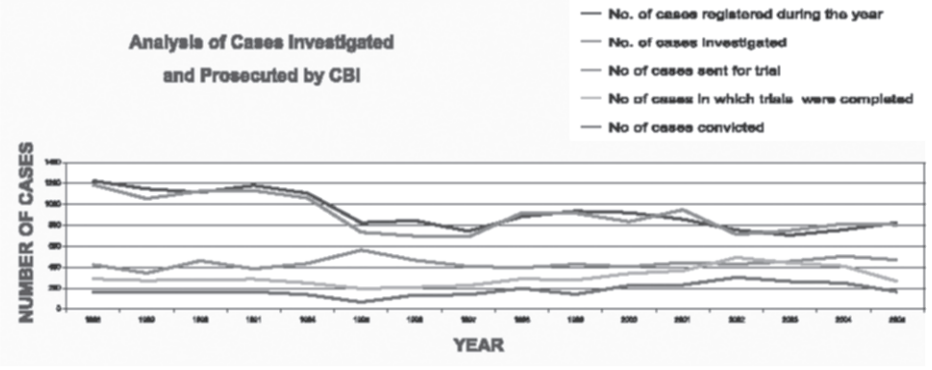


Fig.4.2: Analysis of Cases Investigated and Prosecuted by State Anti Corruption Wings

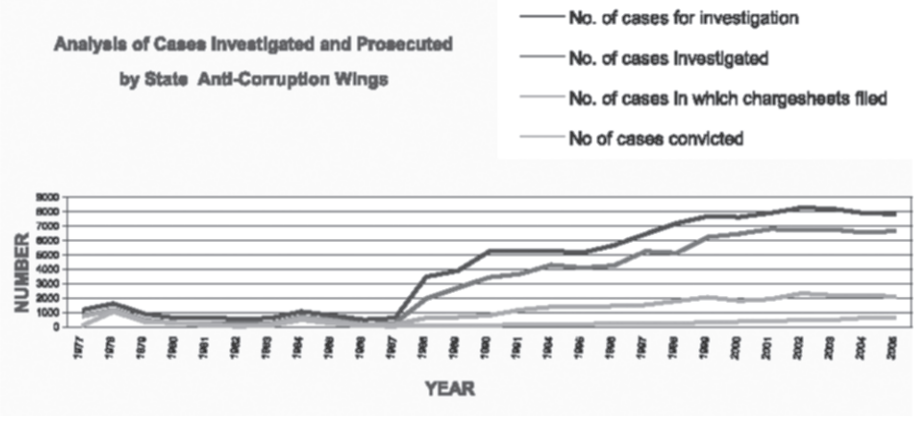


Fig 4.3: Comparison of Conviction Rates of CBI and State Anti Corruption Organisations

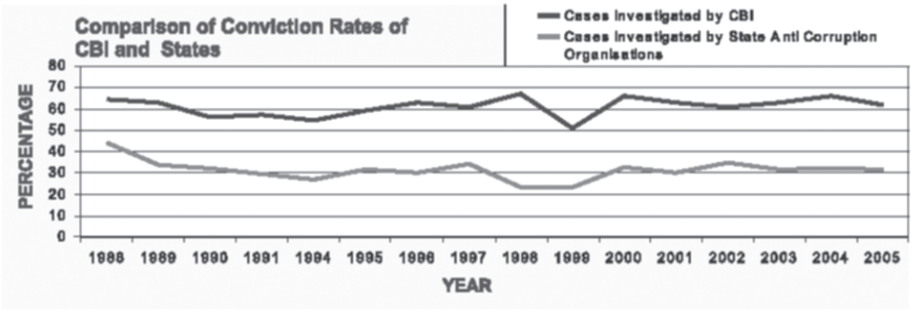
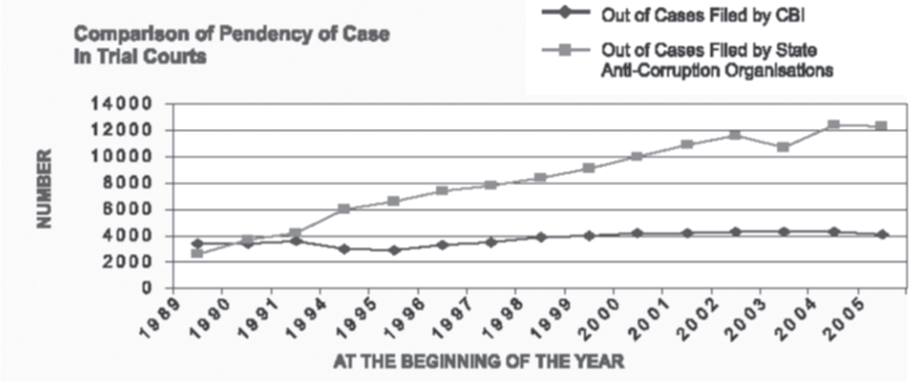


Fig. 4.4: Pendency of Cases in Courts



4.2.2 From an analysis of the available statistics, the following broad conclusions may be drawn:

a. The conviction rate in cases by CBI is low compared to the cases registered, which nevertheless is double that of the State Anti Corruption organisations. The number of cases of the CBI pending for trial at the beginning of the year 2005 was 4130 and 471 more cases were added during the year. But only 265 cases could be disposed of during the year. Similarly, in the States there were 12285 cases pending at the beginning of 2005, and 2111 cases were added during the year. But only 2005 cases were disposed of during the year. If one were to assume that no cases are filed from now onwards, it would take about six years to clear the backlog in the states.

b. There has been rapid increase in the number of cases registered and investigated by the State Anti-Corruption organisations after 1988.

c. The number of cases pending for investigation before the State Anti Corruption organisations has been increasing.

d. The number of cases disposed of in trials each year is much less than the number of cases filed, indicating that the backlog of cases in trial courts is increasing.

4.2.3 An international comparison of the conviction rate for the offence of bribery, as indicated in Figure 4.5, reveals that most countries have a much higher rate of conviction than India.[50]

Table 4.1: International Comparison of Persons Convicted for Bribery

	Year			Rate per 100,000 inhabitants		
Country	1998	1999	2000	1998	1999	2000
Albania			1			0.03
Armenia	13	12	28	0.34	0.32	0.74
Azerbaijan	45	45	45	0.57	0.56	0.56
Belarus	246	224	220	2.44	2.24	2.20
Bulgaria	32	26	38	0.39	0.32	0.47
Chile	5	8	7	0.03	0.05	0.05
China	8,770	8,568	9,729	0.71	0.69	0.77
Costa Rica	10	4	4	0.27	0.11	0.10
Croatia	31	55	44	0.71	1.26	1.00
Cyprus	1	1	-	0.13	0.13	-
Czech Republic	111	110	118	1.08	1.07	1.15
Egypt	-	528	1,225	-	0.84	1.92
Estonia	28	20	43	1.99	1.44	3.14
Finland	5	3	3	0.10	0.06	0.06
France	193	314	279	0.33	0.54	0.47
Georgia	11	2	18	0.20	0.04	0.36
Germany	427	395	-	0.52	0.48	-
Guatemala	380	369	600	3.52	3.32	5.26
HongKong, China (SAR)	130	74	107	1.96	1.10	1.57
Hungary	278	297	294	2.75	2.94	2.94
India	654	684	-	0.07	0.07	-
Indonesia	136	391	232	0.07	0.19	0.11
Italy	963	723	717	1.67	1.26	1.24
Japan	187	153	119	0.15	0.12	0.09
Korea, Republic of	803	1,466	960	1.73	3.13	2.03
Latvia	17	32	10	0.69	1.33	0.42
Lithuania	44	43	51	1.19	1.16	1.38
Macedonia, FYR	11	23	19	0.55	1.14	0.94
Malaysia	230	641	800	1.04	2.82	3.43
Mexico	49	239	247	0.05	0.25	0.25

Population source: World Bank

[50] *Source*: Eighth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, covering the period 2001 2002, http://www.unodc.org/pdf/crime/eighthsurvey/8pv.pdf

4.3 The Lok Pal

4.3.1 The first Administrative Reforms Commission had recommended the establishment of the institution of Lok Pal. The Lok Pal Bill has been introduced several times but due to various reasons it has not been enacted into law. The Lok Pal is supposed to be a watchdog over the integrity of Ministers and the Members of Parliament. The Indian Lok Pal was intended to be similar to the institution of Ombudsman existing in the Scandinavian countries. The institution of Ombudsman has emerged 'as a bulwark of democratic government against the tyranny of officialdom'. The Lok Pal Bill provides for constitution of the Lok Pal as an independent body to enquire into cases of corruption against public functionaries, with a mechanism for filing complaints and conducting inquiries etc.

4.3.2 The Commission is of the view that the Lok Pal Bill should become law with the least possible delay. As recommended in the Bill, the Lokpal should deal with allegations of corruption against Ministers and Members of Parliament.

4.3.3 Allegations of corruption against government officials are dealt with departmentally and also by the Central Bureau of Investigation under the Central Vigilance Commission. In some cases of corruption there may be collusion between the Ministers and the officers. Therefore there should be an organic link between the Lok Pal and the Central Vigilance Commissioner. The reason for this is that an overarching approach to fighting corruption in high places is necessary. Corruption at the political level is at times with the connivance of officials. Some cases of corruption involving officers may also point towards political patronage and involvement. Thus the linkage between the CVC and the Lok Pal would enable sharing of information and prompt action against all persons involved. It may also be provided that all cases of corruption involving Ministers or Members of Parliament which also have elements of connivance or collusion by officials, should be enquired into by the Lok Pal only. While the Central Vigilance Commission should enjoy full functional autonomy, it should nevertheless work under the overall guidance and superintendence of the Lok Pal.

4.3.4 The Commission is of the view that the Lok Pal should be a three-member body. This would bring in the expertise and insight of more than one person which would be essential for transparency and objectivity. Moreover, the multi-member characteristic would render it more immune to any extraneous influence. The Commission is also of the view that of the three members, the Chairman should be from the judiciary (a serving or retired Supreme Court Judge), the second member should be an eminent jurist and the third should be the Central Vigilance Commissioner (ex-officio).

4.3.5 One issue which has been debated for long is whether the office of Prime Minister should be brought under the jurisdiction of the Lok Pal. Those who believe that the Prime Minister's conduct should be scrutinized by the Lok Pal rightly argue that all public servants should be accountable. In a democracy, the citizen is the sovereign, and every public servant holds office to serve the citizens, spending tax money and exercising authority under the laws made on citizens' behalf or under the Constitution, which we, the people, gave unto ourselves. Therefore, no functionary, however high, should be exempt from scrutiny by the Lok Pal.

4.3.6 In constitutional theory, according to the Westminster model, the Prime Minister is the first among equals in a Council of Ministers exercising collective responsibility. Therefore, whatever rules apply to other Ministers, should apply to the Prime Minister as well.

4.3.7 However, there are deeper issues that need to be examined carefully. While the Prime Minister's office was merely the first among equals in conception, over time the Prime Minister became the leader of the executive branch of government. The Cabinet accepts collective responsibility once decisions are made. That is why all policy debates are customarily within the Council of Ministers away from public gaze, and Ministers are not free to express their reservations or differences of opinion in public. It is the function of the Prime Minister to lead and to coordinate among the Ministers in framing of policies, decision making and execution of those policies and decisions. The Prime Minister's unchallenged authority and leadership are critical to ensure cohesion and sense of purpose in government, and to make our Constitutional scheme function in letter and spirit. The Prime Minister is accountable to the Parliament, and on his survival, depends the survival of the government. If the Prime Minister's conduct is open to formal scrutiny by extra-Parliamentary authorities, then the government's viability is eroded and Parliament's supremacy is in jeopardy.

4.3.8 In our Constitutional scheme of things, the Prime Minister is appointed on the basis of the President's judgment of his commanding majority support in Parliament. All Ministers are then appointed only on the advice of the Prime Minister. The President cannot ordinarily dismiss the Prime Minister as long as he enjoys the majority support in the House of the People. But other Ministers are removed by the President at any time on the advice of the Prime Minister. No reasons are required to be given by the Prime Minister for removal of such Ministers. Integrity and competence of the Ministers are not sufficient conditions to continue in office. They must enjoy the confidence of the Prime Minister in order to hold office as Ministers. This scheme has been deliberately introduced in our Constitution to preserve the authority of the Prime Minister, and to ensure cohesion and coordination in the functioning of government. Any enquiry into a Prime Minister's official conduct by any authority other than the Parliament would severely

undermine the Prime Minister's capacity to lead the government. Such weakening of Prime Minister's authority would surely lead to serious failure of governance and lack of harmony and coordination, and would severely undermine public interest.

4.3.9 Those who argue that the Prime Minister is like any other Member of Parliament or any other Minister are technically correct. In reality, in all countries following the Parliamentary executive model drawing the Cabinet from the legislature, the Prime Minister becomes the leader of the country and government. The authority of the Prime Minister, as long as he enjoys Parliamentary support, has become synonymous with the nation's dignity and prestige. A Prime Minister facing formal enquiry by a Lok Pal would cripple the government. One can argue that such an enquiry gives the opportunity to the incumbent to defend himself against baseless charges and clear his name. But the fact is, once there is a formal enquiry by a Lok Pal on charges, however baseless they might be, the Prime Minister's authority is severely eroded, and the government will be paralysed. Subsequent exoneration of the Prime Minister cannot undo the damage done to the country or to the office of the Prime Minister. If the Prime Minister is indeed guilty of serious indiscretions, Parliament should be the judge of the matter, and the Lok Sabha should remove the Prime Minister from office. No lengthy enquiry or impeachment is therefore contemplated in our scheme of things, and a mere passing of no-confidence motion without assigning reasons is sufficient to change government. In the directly elected executive model of government, the Parliament cannot remove the President who is the chief executive, and therefore a complex process of impeachment, and an enquiry by Special Prosecutors to precede such an impeachment have become necessary.

4.3.10 It could be argued that since any Minister could be removed on Prime Minister's advice, or Parliament as well, the Lok Pal need not have jurisdiction on a Minister's conduct also. But Parliament does not really sit in judgment over a Minister's conduct. It is the Prime Minister and the Council of Ministers as a whole whose fate is determined by Parliament's will. And the Prime Minister does not have the time or energy to personally investigate the conduct of a Minister. The government's investigative agencies are controlled or influenced by the Ministers, and therefore it is difficult for the Prime Minister to get objective assessment of the Ministers' official conduct. Therefore, an independent, impartial body of high standing would be of great value in enforcing high standards of ethical conduct among Ministers. A similar reasoning applies to Members of Parliament, since Parliament's time and energy cannot be consumed by detailed enquiry into the conduct of a Member. But, the final decision of removing the Member must vest in Parliament, and that of removal of a Minister must be on the advice of the Prime Minister. Parliament is responsible to the

nation for its decisions, and the Prime Minister is responsible to the Parliament for his decisions. These responsibilities of Parliament and Prime Minister cannot be transferred to any unelected body.

4.3.11 Finally, while the Prime Minister is yet another Member of Parliament in constitutional theory, political evolution transformed him into the leader of the nation. Theoretically, each member of the legislature is elected by his/her constituents in our model of government. But over the past century, elections even in parliamentary system have become plebiscitary in nature. Most often, the Prime Minister's personality, vision, and leadership are the issues, which determine the electoral outcomes. Similarly, the opposition focuses its energies and hopes on its leader. The electoral contest is transformed into a test of acceptability of the leaders. The constituency contests have thus become increasingly dependent on the larger question of whose governmental leadership people trust or seek at that point of time. Given this overwhelming political reality, it would be unwise to subject the Prime Minister's office to a prolonged public enquiry by any unelected functionary. Ultimately, the Parliament is the best forum we can trust to enforce integrity in the office of the Prime Minister.

4.3.12 The same principles and arguments also hold good in respect of the Chief Minister of a state.Therefore, it would be unwise to include the Chief Minister in the Lokayukta's jurisdiction. Several states have excluded the Chief Minister from the Lokayukta's ambit though in a few states, the Chief Minister is included. But, if the Chief Minister is brought under the jurisdiction of a federal institution of high standing, then the risks are mitigated. The Commission is of the view that once the Lok Pal or equivalent institution is in place, all Chief Ministers should be brought under Lok Pal's purview. Such a provision would necessitate making Lok Pal a Constitutional authority and defining his jurisdiction in the Constitution while leaving the details of appointment and composition to be fixed by parliament through legislation.

4.3.13 In order to enable the Lok Pal to enhance its effectiveness and to increase the trust the public has in the institution, it is essential for the Lok Pal to establish mechanisms for effective interaction with the public in general and the private sector and the civil society in particular. Such association would also help better understanding of the environment, build checks and balances in its functioning, and prevent abuse of authority by investigating agencies by bringing them to the Lok Pal's notice. The experience of ICAC in Hong Kong which has been elaborated upon in para 5.1.2 has shown that the education and awareness raising function is crucial to any anti-corruption strategy if it is to be effective. Botswana's DCEC, Singapore's CPIB and the ICAC of New South Wales, Australia, have similar mandates. In fact, the ICAC of New South Wales is noted for holding public hearings to

expose corruption. In the light of the successful experience of these countries with anti-corruption efforts by associating the public in general and the private sector and the civil society in particular, the Commission would like to recommend that such activities should be taken up by the Lok Pal.

4.3.14 The role of the Lok Pal in ethical conduct in high places cannot be over-emphasised. The Commission would like to recommend, that the Lok Pal be given a Constitutional status. This would provide the eminence and status and Constitutional safeguards appropriate for such an important institution, which is expected to be a watchdog against wrong doings by high public authorities.

Another minor issue is the name itself. To provide an element of a continuum in the fight against corruption from the Union to the States, from the top to the grass roots, it may be useful to provide a connect with the State Lokayuktas and name the proposed Lok Pal as the 'Rashtriya Lokayukta'. The Commission would, therefore, like to make the following recommendations to make changes in the Lok Pal Bill.

4.3.15 Recommendations:

a. The Constitution should be amended to provide for a national Ombudsman to be called the Rashtriya Lokayukta. The role and jurisdiction of the Rashtriya Lokayukta should be defined in the Constitution while the composition, mode of appointment and other details can be decided by Parliament through legislation.

b. The jurisdiction of Rashtriya Lokayukta should extend to all Ministers of the Union (except the Prime Minister), all state Chief Ministers, all persons holding public office equivalent in rank to a Union Minister, and Members of Parliament. In case the enquiry against a public functionary establishes the involvement of any other public official along with the public functionary, the Rashtriya Lokayukta would have the power to enquire against such public servant(s) also.

c. The Prime Minister should be kept out of the jurisdiction of the Rashtriya Lokayukta for the reasons stated in paras 4.3.7 to 4.3.11.

d. The Rashtriya Lokayukta should consist of a serving or retired Judge of the Supreme Court as the Chairperson, an eminent jurist as Member and the Central Vigilance Commissioner as the ex-officio Member.

(e) The Chairperson of the Rashtriya Lokayukta should be selected from a panel of sitting Judges of the Supreme Court who have more than three years of service, by a Committee consisting of the Vice President of India, the Prime Minister, the Leader of the Opposition, the Speaker of the Lok Sabha and the Chief Justice of India. In case it is not possible to appoint a sitting Judge, the Committee may appoint a retired Supreme Court Judge. The same Committee may select the Member (i.e. an eminent jurist) of the Rashtriya Lokayukta. The Chairperson and Member of the Rashtriya Lokayukta should be appointed for only one term of three years and they should not hold any public office under the government thereafter, the only exception being that they can become the Chief Justice of India, if their services are so required.

(f) The Rashtriya Lokayukta should also be entrusted with the task of undertaking a national campaign for raising the standards of ethics in public life.

4.4 The Lokayukta

4.4.1 In the wake of the recommendations of the first Administrative Reforms Commission, many State Governments enacted legislation to constitute the Lokayukta to investigate allegations or grievances arising out of the conduct of public servants including political executives, legislators, officers of the State Government, local bodies, public enterprises and other instrumentalities of Government including cooperative societies and universities. By virtue of such legislation, a member of the public can file specific allegations with the Lokayukta against any public servant for enquiry. It is also open to the Lokayukta to initiate suo-motu inquiry into the conduct of public servants. The Lokayukta is generally a retired Judge of the High Court or the Supreme Court and normally appointed for a five-year term on the basis of a joint decision involving the Chief Minister, the Chief Justice, the Speaker of the House and leader of the Opposition. However, in many states the Lokayukta does not have an independent investigating authority at its disposal and is therefore dependent on Government agencies to carry forward its investigations. The Maharashtra and Orissa Lokayuktas assume more the character of a grievance redressal organization rather than an Ombudsman for cases of corruption.

4.4.2 Over seventeen states presently have Lokayuktas but there is no uniformity in the provisions of the enactments, with fundamental differences regarding their functions. While in all states the Lokayuktas deal with issues of corruption, in some, they also deal with other grievances. In a few states, a wide range of functionaries including Chief Ministers,

Vice Chancellors and office bearers of cooperatives have been brought within the Lokayukta's purview; in others, the coverage is quite restrictive. In some States, investigative powers are vested in them with an investigation machinery attached. Some also provide for powers of search and seizure in the course of investigation. The expenditure on the Lokayukta is, in some States, charged on the consolidated fund of the State providing requisite financial independence for the institution. Some Lokayuktas have powers to punish for contempt.

4.4.3 Be that as it may, the experience in regard to the working of the Lokayuktas has been rather unfortunate as the following examples will show. Though Maharashtra was the first State to establish this institution as early as in 1972, its public credibility was lost when the incumbent continued to function for several months after he was asked to step down. Orissa instituted and then abolished the institution. In Haryana, the institution of Lok Pal was abolished overnight through an Ordinance as the serving High Court Judge functioning as the Lok Pal had protection against summary dismissal. The Punjab Government also repealed the Act through an Ordinance as a fallout of a matter in which the Lok Pal had received eight complaints against former Ministers in the previous ministry in the State. The Rajasthan Lokayukta was forthright in recommending to the Government in its annual report in 1996 that there was no use of continuing the institution as the institution had not proved to be effective. Even though the Madhya Pradesh Lokayukta had indicted two Ministers in a land deal and certain other Ministers were also held responsible for wrong doing, no action whatsoever was taken against any of them. Here too, in its annual report for 1997-98, the Lokayukta had advised the Government that unless adequate powers were given to it there was no need for continuance of the institution. In Andhra Pradesh and Bihar, the annual reports of the Vigilance Commission have not been laid on the table of the legislature as required by the order constituting the Commission.

4.4.4 The Karnataka Lokayukta which has been a very active institution, is headed by a retired Judge of the Supreme Court and has jurisdiction over all public servants including the Chief Minister and Ministers. With the Anti Corruption Bureau of the State forming part of the institution, it has unfettered power to enquire or investigate into cases of misconduct and deals both with allegations and grievances. However, though the Karnataka Act provides for the submission of property returns to the Lokayukta by the Chief Minister, Ministers and all legislators, few have submitted these returns so far and no action has been taken against those who have not done so.

4.4.5 In this context, the Lokayuktas' Conference[51] had proposed a comprehensive Bill for a uniform institution of Lokayukta in every state, based on a Central legislation with Constitutional back up. In the Draft Bill, maladministration has been defined to make it more broad based to facilitate investigation and the definition of public functionary coming

[51] Held on 17th and 18th January, 2003 in Bangalore.

within the ambit of the institution has been widened. Various powers have been proposed to strengthen the Lokayukta. Most importantly, it has been proposed that the proceedings before the Lokayukta should be treated as judicial proceedings investing it with jurisdiction, powers and authority to punish for contempt of itself as a High Court. The proposals include the conferment of constitutional status on par with High Court Judges.

4.4.6 The entire structure of the anti-corruption machinery in the States needs reconsideration. An all-out effort to combat corruption would require that this problem be dealt with appropriately at all levels. On the one hand, curbing corruption at the cutting edge level would require a machinery having wide reach which could investigate a large number of cases of corruption effectively. On the other, curbing corruption at the highest level would require a mechanism with adequate powers, expertise and status which could investigate cases against high public functionaries like Ministers. If the Lokayukta is to be effective, it would neither be appropriate nor feasible to make this institution investigate petty cases against junior functionaries as its primary effort. Therefore, it is necessary to have the equivalent of the Central Vigilance Commission at the state level to deal with cases of corruption among public servants. The Lokayukta could then deal with corruption at the highest level covering senior-most public functionaries. However, often the thread of corruption runs through several levels, indicating connivance of Ministers and public officials. It is therefore necessary to have a link between the Lokayukta and the State Vigilance Commissioner. The Commission in para 4.3.15 has recommended that the Central Vigilance Commissioner be made a Member of the Lok Pal. The Commission has also recommended a multi-member Lok Pal, so that it is better insulated against outside influence and also because a decision of a multi-member Commission would be more objective as it would have inputs from the different members. A similar approach at the state level would be appropriate. The multi-member Lokayukta should have a retired Supreme Court Judge or a retired Chief Justice of the High Court in the Chair, the State Vigilance Commissioner as a member and an eminent jurist or an eminent administrator of impeccable credentials as a member. A collegium comprising the Chief Minister, the Leader of the Opposition and the Chief Justice of the High Court should appoint the Chairman and Members of the Lokayukta.

4.4.7 The State Vigilance Commissions should exercise superintendence over the functioning of the Anti-Corruption Bureaus. It should tender independent and impartial advice to the disciplinary and other authorities in disciplinary cases, involving the vigilance angle at different stages i.e. investigation, inquiry, appeal, review etc; and exercise a general check and supervision over vigilance and anti-corruption work in Departments of the State Government and other organizations within the control of the State Government.

4.4.8 The Commission is of the view that to insulate the institution of Lokayukta from the vagaries of political expediency, of the kind witnessed in the past, it would be necessary to give the Lokayukta, as in the case of the Lok Pal, a Constitutional status. It would be necessary to amend the Constitution to provide for the institution of Lokayukta in all states. This would also provide the opportunity to vest this authority with certain uniform powers, responsibilities and functions across all states. To this effect the Commission believes that the Lokayukta can be a state level equivalent of the Rashtriya Lokayukta with a similar constitution.

4.4.9 Recommendations:

a. The Constitution should be amended to incorporate a provision making it obligatory on the part of State Governments to establish the institution of Lokayukta and stipulate the general principles about its structure, power and functions.

b. The Lokayukta should be a multi-member body consisting of a judicial Member in the Chair, an eminent jurist or eminent administrator with impeccable credentials as Member and the head of the State Vigilance Commission {as referred in para 4.4.9(e) below} as ex-officio Member. The Chairperson of the Lokayukta should be selected from a panel of retired Supreme Court Judges or retired Chief Justices of High Court, by a Committee consisting of the Chief Minister, Chief Justice of the High Court and the Leader of the Opposition in the Legislative Assembly. The same Committee should select the second Member from among eminent jurists/administrators. There is no need to have an Up-Lokayukta.

c. The jurisdiction of the Lokayukta would extend to only cases involving corruption. They should not look into general public grievances.

d. The Lokayukta should deal with cases of corruption against Ministers and MLAs.

e. Each State should constitute a State Vigilance Commission to look into cases of corruption against State Government officials. The Commission should have three Members and have functions similar to that of the Central Vigilance Commission.

f. The Anti Corruption Bureaus should be brought under the control of the State Vigilance Commission.

g. The Chairperson and Members of the Lokayukta should be appointed strictly for one term only and they should not hold any public office under government thereafter.

h. The Lokayukta should have its own machinery for investigation. Initially, it may take officers on deputation from the State Government, but over a period of five years, it should take steps to recruit its own cadre, and train them properly.

i. All cases of corruption should be referred to Rashtriya Lokayukta or Lokayukta and these should not be referred to any Commission of Inquiry.

4.5 Ombudsman at the Local Level

4.5.1 The 73rd and the 74th amendments to the Constitution have firmly established decentralization of powers and functions to the third tier of the government hierarchy on a statutory footing as a measure of democratisation calculated to bring government closer to the people and increase the accountability of the local administration. However, concern has been expressed that decentralisation without proper safeguards can increase corruption, if the process is not simultaneously accompanied by the creation of suitable accountability mechanisms otherwise available at the level of the Union Government and state governments. This gives greater scope for corruption. A disturbing trend visible is the growing corruption and capture of power by local political elites with questionable integrity.

4.5.2 The Commission is of the view that a system of Local Bodies Ombudsman may be established to hear complaints of corruption against local bodies (elected members as well as officials). Such Ombudsman may be constituted for a group of districts. The Local Bodies Ombudsman should have powers to enquire into allegations of corruption against public functionaries in local bodies. They should be empowered to take action against the elected members if they are found guilty of misconduct. For this, the State Panchayat Raj Acts, and the Municipalities Acts would have to be amended to prescribe the details. The overall superintendence over the Local Bodies Ombudsman's should vest in the Lokayukta of the state, who should be given revisionary powers over the Local Bodies Ombudsman.

4.5.3 The Government of Kerala has appointed Ombudsman under the Kerala Panchayati Raj (Amendment) Act, 1999. It conducts investigations in respect of any action involving

corruption, maladministration or irregularities in the discharge of administrative functions by local self government institutions, or by an elected representative, of or an official working in any local self government institution and for the disposal of any complaint relating to such action in accordance with the provisions of the Kerala Panchayat Raj Act, 1994 (Act No.13 of 1994).

4.5.4 In the wake of the larger Constitutional role now envisaged for decentralised local governments, it would be a good initiative to have a separate vigilance oversight agency to investigate allegations of corruption and maladministration against elected executives and members of the three tiers of these local bodies and their paid personnel. The total number of such elected personnel is so large that it is virtually impossible for the state Lokayuktas to exercise effective vigilance over these bodies.

4.5.5 The Commission is of the view that the Ombudsman should be appointed under the respective Panchayat Raj/Urban Local Bodies Acts in all States/UTs., for a group of connected districts. The Ombudsman should be empowered to investigate cases of corruption or maladministration by functionaries of local self government institutions. It is often argued that constitution of Local Ombudsman would lead to duplication of efforts since the Lokayukta is already there. The Commission has already recommended that the Lokayukta should investigate cases only against Ministers or equivalent rank public functionaries and legislators. Therefore, there would be no clash of jurisdiction between the Local Ombudsman and the Lokayukta. However, in order to provide proper guidance to the Local Ombudsman, they should be placed under the overall guidance and superintendence of the Lokayukta.

4.5.6 Recommendations:

a. A local bodies Ombudsman should be constituted for a group of districts to investigate cases against the functionaries of the local bodies. The State Panchayat Raj Acts and the Urban Local Bodies Act should be amended to include this provision.

b. The local bodies Ombudsman should be empowered to investigate cases of corruption or maladministration by the functionaries of the local self governments, and submit reports to the competent authorities for taking action. The competent authorities should normally take action as recommended. In case they do not agree with the recommendations, they should give their reasons in writing and the reasons should be made public.

4.6 Strengthening Investigation and Prosecution

4.6.1 Prosecution is often a weak link in the chain of anti-corruption law enforcement and there are instances where prosecutors have facilitated the discharge of a delinquent officer. It is, therefore, crucial that cases of corruption are handled by efficient prosecutors whose integrity and professional competence is above board. The Supreme Court did mandate a key safeguard in corruption cases, by decreeing that a panel of lawyers, answerable to a body similar to that of the Director of Prosecutions in the United Kingdom should be created to review the prosecution of corruption cases. As the Supreme Court observed, this panel of "competent lawyers of experience and impeccable reputation shall be prepared on the advice of the Attorney General." According to the Supreme Court, each case of prosecution by the CBI will have to be reviewed by a lawyer from the panel, and responsibility for unsuccessful prosecution should be fixed. It would be desirable that the Lokayuktas/State Vigilance Commissions are empowered to supervise the prosecution of corruption related cases. This would provide the much needed oversight of the prosecutors on the one hand, and guidance to the prosecutors on the other.

4.6.2 Corruption prevention and enforcement in an increasingly electronic environment both in government institutions and outside, requires specific measures to equip the investigating agencies with electronic investigating tools and capability to undertake such investigation. Systematic training of officers in this area more particularly at the state level is essential.

4.6.3 In view of the complexities involved in investigating modern-day corruption, the investigating agencies should be equipped with economic, accounting and audit, legal, technical, and scientific knowledge, skills and tools of investigation. More specifically they require specialised knowledge of forensic accounting, audit in different fields like engineering depending on the nature of the case. It would be advisable to have officials in the investigative agencies drawn from different wings of government.

4.6.4 Inter-agency information exchange and mutual assistance among various enforcement and investigative agencies such as the Directorate of Enforcement, Economic Intelligence Agencies including those relating to direct and indirect taxes as well as the State investigating agencies can play a key role in unearthing serious cases of frauds and economic offences. In recognition of this fact, Ministry of Finance has set up an elaborate nodal agency for this purpose. Under the present system, there is an Economic Intelligence Council chaired by the Union Finance Minister with representatives from key Ministries and investigative and intelligence agencies at the national level. Eighteen Regional Economic Intelligence

Committees (REICs) were also set up in 1996 and reactivated in 2003 to, *inter alia*, ensure operational coordination between various enforcement and economic intelligence agencies as well as similar State level agencies. The REICs are required to meet on a monthly basis. There is perhaps need for the Ministry of Finance to monitor the work of the REICs so that they become more effective nodal agencies for checking fraud and corruption arising from economic and related offences.

4.6.5 It has been also noticed that the cases filed relate mostly to those based on complaints or press reports, being reactive action on the part of the anti-corruption agencies. Few cases emanate out of the department's own efforts. Streamlined vertical corruption runs through several levels of the official hierarchy in corruption prone departments, and does not receive the attention it deserves. This calls for strengthening sources of information to specifically target officers involved in the chain of hierarchical corruption. Anti-corruption agencies should conduct systematic surveys of departments with particular reference to highly corruption prone ones in order to gather intelligence and to observe officers at the higher levels with questionable reputations.

4.6.6 Recommendations:

a. The State Vigilance Commissions/Lokayuktas may be empowered to supervise the prosecution of corruption related cases.

b. The investigative agencies should acquire multi-disciplinary skills and should be thoroughly conversant with the working of various offices/ departments. They should draw officials from different wings of government.

c. Modern techniques of investigation should also be deployed like electronic surveilance, video and audio recording of surprise inspections, traps, searches and seizures.

d. A reasonable time limit for investigation of different types of cases should be fixed for the investigative agencies.

e. There should be sustained step-up in the number of cases detected and investigated. The priorities need to be reoriented by focussing on 'big' cases of corruption.

The Central Vigilance Commission Act, 2003

रजिस्ट्री सं० डी० एल०-(एन) 04/0007/2003—05 REGISTERED NO. DL(N)-04/0007/2003—05

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, dated the 12th September, 2003/*Bhadra* 21, 1925 *(Saka)*

The following Act of Parliament received the assent of the President on the 11th September, 2003, and is hereby published for general information:—

THE CENTRAL VIGILANCE COMMISSION ACT, 2003

NO. 45 OF 2003

[11*th September,* 2003]

An Act to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

Short title.

1. This Act may be called the Central Vigilance Commission Act, 2003.

Definitions.

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

(*a*) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (*1*) of section 4;

(*b*) "Commission" means the Central Vigilance Commission constituted under sub-section (*1*) of section 3;

(*c*) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (*1*) of section 2 of the Delhi Special Police Establishment Act, 1946; 25 of 1946.

(*d*) "Government company" means a Government company within the meaning of the Companies Act, 1956; 1 of 1956.

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

(*f*) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (*1*) of section 4.

CHAPTER II

THE CENTRAL VIGILANCE COMMISSION

Constitution of Central Vigilance Commission.

3. (*1*) There shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act and the Central Vigilance Commission constituted under sub-section (*1*) of section 3 of the Central Vigilance Commission Ordinance, 1999 which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 shall be deemed to be the Commission constituted under this Act. Ord. 4 of 1999.

(*2*) The Commission shall consist of—

(*a*) a Central Vigilance Commissioner — Chairperson;

(*b*) not more than two Vigilance Commissioners — Members.

(*3*) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(*a*) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration; or

(*b*) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (*a*) or clause (*b*):

(*4*) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(*5*) The Central Vigilance Commissioner, the other Vigilance Commissioners and the Secretary to the Commission appointed under the Central Vigilance Commission Ordinance, 1999 or the Resolution of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 shall be deemed to have been appointed under this Act on the same terms and conditions including the term of office subject to which they were so appointed under the said Ordinance or the Resolution, as the case may be. Ord. 4 of 1999.

Explanation.—For the purposes of this sub-section, the expression "term of office" shall be construed as the term of office with effect from the date the Central Vigilance Commissioner or any Vigilance Commissioner has entered upon his office and continued as such under this Act.

(*6*) The headquarters of the Commission shall be at New Delhi.

Appointment of Central Vigilance Commissioner and Vigilance Commissioners.

4. (*1*) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

(*a*) the Prime Minister — Chairperson;

(*b*) the Minister of Home Affairs — Member;

(*c*) the Leader of the Opposition in the House of the People — Member.

Explanation.—For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.

(*2*) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

Terms and other conditions of service of Central Vigilance Commissioner.

5. (*1*) Subject to the provisions of sub-sections (*3*) and (*4*), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. The Central Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.

(*2*) Subject to the provisions of sub-sections (*3*) and (*4*), every Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier:

Provided that every Vigilance Commissioner, on ceasing to hold the office, shall be eligible for appointment as the Central Vigilance Commissioner in the manner specified in sub-section (*1*) of section 4:

Provided further that the term of the Vigilance Commissioner, if appointed as the Central Vigilance Commissioner, shall not be more than four years in aggregate as the Vigilance Commissioner and the Central Vigilance Commissioner.

(*3*) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

(*4*) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(*5*) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(*6*) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

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

(*b*) further employment to any office of profit under the Government of India or the Government of a State.

(*7*) The salary and allowances payable to and the other conditions of service of—

(*a*) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(*b*) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government, his salary in respect of the service as the Central Vigilance Commissioner or, as the case may be, the Vigilance Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salary, allowances and pension payable to, and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

Removal of Central Vigilance Commissioner and Vigilance Commissioner.

6. (*1*) Subject to the provisions of sub-section (*3*), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(*2*) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (*1*) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(*3*) Notwithstanding anything contained in sub-section (*1*), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

(*a*) is adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

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

(*d*) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(*e*) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(*4*) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any

benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (*1*), be deemed to be guilty of misbehaviour.

Power to make rules by Central Government for staff.

7. The Central Government may, in consultation with the Commission, make rules with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

Functions and powers of Central Vigilance Commission.

8. (*1*) The functions and powers of the Commission shall be to—

(*a*) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (*2*) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.

2 of 1974.

(*b*) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (*1*) of section 4 of the Delhi Special Police Establishment Act, 1946:

25 of 1946.

Provided that while exercising the powers of superintendence under clause (*a*) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(*c*) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.

2 of 1974.

(*d*) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (*2*) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in sub-section (*2*) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.

2 of 1974.

(*e*) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

49 of 1988.

2 of 1974.

(*f*) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

49 of 1988.

(*g*) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(*h*) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

(*2*) The persons referred to in clause (*d*) of sub-section (*1*) are as follows:—

(*a*) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;

(*b*) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (*d*) of sub-section (*1*).

Proceedings of Commission.

9. (*1*) The proceedings of the Commission shall be conducted at its headquarters.

(*2*) The Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Central Vigilance Commissioner and other Vigilance Commissioners.

(*3*) Save as provided in sub-section (*2*), all business of the Commission shall, as far as possible, be transacted unanimously.

(*4*) Subject to the provisions of sub-section (*3*), if the Central Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

(*5*) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior-most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(*6*) No act or proceeding of the Commission shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in the constitution of, the Commission; or

(*b*) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or

(*c*) any irregularity in the procedure of the Commission not affecting the merits of the case.

Vigilance Commissioner to act as Central Vigilance Commissioner in certain circumstances.

10. (*1*) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

(*2*) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

Power relating to inquiries.

11. The Commission shall, while conducting any inquiry referred to in clauses (*b*) and (*c*) of sub-section (*1*) of section 8, have all 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, namely:— 5 of 1908.

(*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.

Proceedings before Commission to be judicial proceedings.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

2 of 1974.

45 of 1860.

CHAPTER IV

EXPENSES AND ANNUAL REPORT

Expences of Commission to be charged on the Consolidated Fund of India.

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

Annual report.

14. (*1*) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission within six months of the close of the year under report.

(*2*) The report referred to in sub-section (*1*) shall contain a separate part on the functioning of the Delhi Special Police Establishment in so far as it relates to sub-section (*1*) of section 4 of the Delhi Special Police Establishment Act, 1946.

25 of 1946.

(*3*) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V

MISCELLANEOUS

Protection of action taken in good faith.

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

Central Vigilance Commissioner, Vigilance Commissioner and staff to be public servants.

16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Report of any inquiry made on reference by Commission to be forwarded to that Commission.

17. (*1*) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(*2*) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(*3*) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.

Power to call for information.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.

Consultation with Commission in certain matters.

19. The Central Government shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of the All-India Services, consult the Commission.

Power to make rules.

20. (*1*) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

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

(*a*) the number of members of the staff and their conditions of service under section 7;

(*b*) any other power of the civil court to be prescribed under clause (*f*) of section 11; and

(*c*) any other matter which is required to be, or may be, prescribed.

Power to make regulations.

21. (*1*) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.

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

(*a*) the duties and the powers of the Secretary under sub-section (*4*) of section 3; and

(*b*) the procedure to be followed by the Commission under sub-section (*2*) of section 9.

Notification, rule, etc., to be laid before Parliament.

22. Every notification issued under clause (*b*) of sub-section (*2*) of section 8 and every rule made by the Central Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or the regulation, or both Houses agree that the notification or the rule or the regulation should not be made, the notification or the rule or the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

Power to remove difficulties.

23. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, 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, as soon as may be after it is made, be laid before each House of Parliament.

Provisions relating to existing Vigilance Commission.

24. With effect from the constitution of the Commission under sub-section (*1*) of section 3, the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD, dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, in so far as its functions are not inconsistent with the provisions of this Act, continue to discharge the said functions and—

(*a*) all actions and decisions taken by the Vigilance Commission insofar as such actions and decisions are relatable to the functions of the Commission constituted under this Act shall be deemed to have been taken by the Commission;

(*b*) all proceedings pending before the Vigilance Commission, insofar as such proceedings relate to the functions of the Commission, shall be deemed to be transferred to the Commission and shall be dealt with in accordance with the provisions of this Act;

(*c*) the employees of the Vigilance Commission shall be deemed to have become the employees of the Commission on the same terms and conditions;

(*d*) all the assets and liabilities of the Vigilance Commission shall be transferred to the Commission.

Appointments, etc., of officers of Directorate of Enforcement.

42 of 1999.

25. Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 or any other law for the time being in force,—

(*a*) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—

(*i*) the Central Vigilance Commissioner — Chairperson;

(*ii*) Vigilance Commissioners — Members;

(*iii*) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;

(*iv*) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;

(*v*) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member;

(*b*) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;

(*c*) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;

(*d*) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;

(*e*) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (*a*);

(*f*) the Committee referred to in clause (*a*) shall, in consultation with the Director of Enforcement, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;

(*g*) on receipt of the recommendation under clause (*f*), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.

Amendment of Act 25 of 1946.

26. In the Delhi Special Police Establishment Act, 1946,—

(*a*) after section 1, the following section shall be inserted, namely:—

Interpretation section.

"1A. Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2003, shall have the meanings, respectively, assigned to them in that Act.";

(*b*) for section 4, the following sections shall be substituted, namely:—

Superintendence and administration of Special Police Establishment.

"4. (*1*) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission. 49 of 1988.

(*2*) Save as otherwise provided in sub-section (*1*), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(*3*) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

Committee for appointment of Director.

4A. (*1*) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(*a*) the Central Vigilance Commissioner	—	Chairperson;
(*b*) Vigilance Commissioners	—	Members;
(*c*) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government	—	Member;
(*d*) Secretary (Coordination and Public Grievances) in the Cabinet Secretariat	—	Member.

(*2*) While making any recommendation under sub-section (*1*), the Committee shall take into consideration the views of the outgoing Director.

(*3*) The Committee shall recommend a panel of officers—

(*a*) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and

(*b*) chosen from amongst officers belonging to the Indian Police Service constituted under the All-India Services Act, 1951, 61 of 1951.

for being considered for appointment as the Director.

Terms and conditions of service of Director.

4B. (*1*) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

(*2*) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (*1*) of section 4A.

Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure, etc.

4C. (*1*) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

(*2*) On receipt of the recommendation under sub-section (*1*), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.";

(*c*) after section 6, the following section shall be inserted, namely:—

Approval of Central Government to conduct inquiry or investigation.

"6A. (*1*) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to— 49 of 1988.

(*a*) the employees of the Central Government of the level of Joint Secretary and above; and

(*b*) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(*2*) Notwithstanding anything contained in sub-section (*1*), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (*c*) of the *Explanation* to section 7 of the Prevention of Corruption Act, 1988.". 49 of 1988.

Repeal and saving.

27. (*1*) The Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD. III, dated the 4th April, 1999 as amended *vide* Resolution of even number, dated the 13th August, 2002 is hereby repealed.

(*2*) Notwithstanding such repeal and the cesser of operation of the Central Vigilance Commission Ordinance, 1999, anything done or any action taken under the said Resolution and the said Ordinance including the appointments made and other actions taken or anything done or any action taken or any appointment made under the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as amended by the said Ordinance shall be deemed to have been made or done or taken under this Act or the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as if the amendments made in those Acts by this Act were in force at all material times. Ord. 4 of 1999. 25 of 1946. 46 of 1973.

THE SCHEDULE

[*See* section 5(*3*)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:—

"I, A. B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do $\frac{\textit{swear in the name of God}}{\textit{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, 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 and that I will uphold the constitution and the laws.".

SUBHASH C. JAIN,
Secy. to the Govt. of India.

Independent Commission Against Corruption Ordinance, Hong Kong

Chapter:	204	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number	Version Date

		Long title		30/06/1997

To provide for the establishment of an Independent Commission Against Corruption and matters incidental thereto.

[15 February 1974]

(Originally 7 of 1974)

Section:	1	Short title		30/06/1997

This Ordinance may be cited as the Independent Commission Against Corruption Ordinance.

Section:	2	Interpretation	14 of 2003	09/05/2003

In this Ordinance, unless the context otherwise requires-

"Commission" (廉政公署) means the Independent Commission Against Corruption established under section 3;

"Commissioner" (廉政專員) means the Commissioner of the Independent Commission Against Corruption appointed in accordance with the Basic Law and includes the Deputy Commissioner appointed under section 6; (Replaced 1 of 2003 s. 3)

"officer" (廉署人員) means an officer of the Commission appointed under section 8;

"prescribed officer" (訂明人員) means-

(a) any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b) the following persons (to the extent that they are not persons included in paragraph (a))-

(i) any principal official of the Government appointed in accordance with the Basic Law;

(ii) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) and any person appointed under section 5A(3) of that Ordinance;

(iii) Chairman of the Public Service Commission;

(iv) any member of the staff of the Commission;

(v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary; (Added 14 of 2003 s. 19)

"public body" (公共機構) has the meaning assigned to it in section 2 of the Prevention of Bribery Ordinance (Cap 201); (Replaced 51 of 1987 s. 2)

"public servant" (公職人員) has the meaning assigned to it in section 2 of the Prevention of Bribery Ordinance (Cap 201); (Replaced 51 of 1987 s. 2. Amended 1 of 2003 s. 3)

"Public Service (Administration) Order" (《公務人員(管理)命令》) means-

(a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);

(b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and

(c) any other regulation made or any direction given under that Order,

as amended from time to time. (Added 1 of 2003 s. 3)

(Amended 14 of 2003 s. 19)

Section:	3	Establishment of the Commission		30/06/1997

There is hereby established the Independent Commission Against Corruption which shall consist of the Commissioner, the Deputy Commissioner and such officers as may be appointed.

Section:	4	Maintenance of the Commission		30/06/1997

The expenses of the Commission shall be charged to the general revenue.

(Amended 51 of 1987 s. 3)

Section:	5	Office of Commissioner	14 of 2003	09/05/2003

(1) The Commissioner, subject to the orders and control of the Chief Executive, shall be responsible for the direction and administration of the Commission. (Replaced 1 of 2003 s. 3)

(2) The Commissioner shall not be subject to the direction or control of any person other than the Chief Executive.

(3) The Commissioner shall hold office on such terms and conditions as the Chief Executive may think fit.

(4) The Commissioner shall not, while he holds the office of the Commissioner, discharge the duties of any other prescribed officer. (Amended 14 of 2003 s. 20)

(Amended 1 of 2003 s. 3)

Section:	6	Appointment of Deputy Commissioner	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

The Chief Executive may appoint a Deputy Commissioner on such terms and conditions as he may think fit.

(Amended 1 of 2003 s. 3)

Section:	7	Acting Commissioner	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) If the office of the Commissioner is vacant or the Commissioner is absent from duty, the Deputy Commissioner shall, save where the Chief Executive otherwise directs, act as Commissioner.

(2) If both the Commissioner and the Deputy Commissioner are absent from duty, the Chief Executive may appoint another person to act as Commissioner during that absence.

(Amended 1 of 2003 s. 3)

Section:	8	Appointment of officers	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) The Commissioner may appoint such officers as the Chief Executive thinks necessary to assist the Commissioner in the performance of his functions under this Ordinance.

(2) (a) Subject to paragraph (b), the Commissioner may, if he is satisfied that it is in the interests of the Commission to do so, after consulting the Advisory Committee on Corruption, terminate the appointment of an officer.

(b) Before terminating an appointment under this subsection-

(i) the Commissioner shall by notice in writing inform the officer concerned that the termination of his appointment is under consideration and the reasons therefor; and

(ii) in the notice such officer shall be given a period of not less than 7 days within which to make, and is hereby authorized to make if he so wishes, written representations to the Commissioner as regards such reasons or as to why his appointment should not be terminated or as regards both.

(c) Where an appointment is terminated under this subsection-

(i) the Commissioner shall notify the officer in writing of the termination; and

(ii) the officer may, within the period of 21 days beginning on the date of the notification under subparagraph (i), appeal to the Chief Executive against the termination.

(d) On an appeal under paragraph (c) the Chief Executive may confirm or set aside the termination.

(e) Where an appointment is terminated under subsection (2)(a), the termination shall operate forthwith but if on an appeal under paragraph (c)(ii) the termination is set aside, the officer concerned shall be treated in all respects as if the Commissioner had not terminated his appointment. (Replaced 48 of 1996 s. 19)

(3) The terms and conditions of employment of officers shall be subject to the approval of the Chief Executive, who may vary any terms or conditions imposed by virtue of subsection (4).

(4) Subject to this section and section 11(2), the Commissioner and officers shall be employed subject to Public Service (Administration) Order, Government regulations and such administrative rules as apply generally to public officers, except insofar as the application of such Public Service (Administration) Order, Government regulations or rules may be modified by standing orders made under section 11(2).

(Amended 1 of 2003 s. 3)

Section:	9	Warrant card		30/06/1997

The Commissioner may issue to such officers as he thinks fit a warrant card which shall be prima facie evidence of the officer's appointment as such.

Section:	10	Power of arrest	14 of 2003	09/05/2003

(1) An officer authorized in that behalf by the Commissioner may without warrant arrest a person if he reasonably suspects that such person is guilty of an offence under this Ordinance or the Prevention of Bribery Ordinance (Cap 201) or the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) or, being a prescribed officer, is guilty of an offence of blackmail committed by or through the misuse of office. (Amended 27 of 1980 s. 2; 10 of 2000 s. 47; 14 of 2003 s. 21)

(2) Where, during an investigation by the Commission of a suspected offence under the Prevention of Bribery Ordinance (Cap 201) or of a suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), another offence is disclosed, any such officer may without warrant arrest a person if he reasonably suspects that such person is guilty of that other offence and- (Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

(a) he reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by, the suspected offence under the Prevention of Bribery Ordinance (Cap 201) or the suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), as the case may be; or (Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

(b) the other offence is one which is specified for the purposes of this subsection in subsection (5).

(3) Any such officer-

(a) may use such force as is reasonable in the circumstances in effecting an arrest under subsection (1) or (2); and (Amended 18 of 1976 s. 2)

(b) may, for the purpose of effecting such an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be so arrested.

(4) No premises or place shall be entered under subsection (3) unless the officer has first stated that he is an officer and the purpose for which he seeks entry and produced his warrant card to any person requesting its production, but subject as aforesaid any such officer may enter any such premises or place by force, if necessary.

(5) The following offences are specified for the purposes of subsection (2)-

(a) the offence of perverting or obstructing the course of justice;

(aa) the offence of theft under section 9 of the Theft Ordinance (Cap 210); (Added 27 of 1980 s. 2)

(b) the offence of blackmail under section 23 of the Theft Ordinance (Cap 210);

(ba) the offence of fraud under section 16A of the Theft Ordinance (Cap 210); (Added 45 of 1999 s. 5)

(c) the offence of obtaining property by deception under section 17 of the Theft Ordinance (Cap 210);

(d) the offence of obtaining pecuniary advantage by deception under section 18 of the Theft Ordinance (Cap 210);

(da) the offence of obtaining services by deception under section 18A of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)

(db) the offence of evading liability by deception under section 18B of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)

(dc) the offence of making off without payment under section 18C of the Theft Ordinance (Cap 210);

(Added 51 of 1987 s. 4)

(dd) the offence of procuring a false entry in certain records under section 18D of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)

(de) the offence of false accounting under section 19 of the Theft Ordinance (Cap 210); (Added 27 of 1980 s. 2. Amended 51 of 1987 s. 4)

(e) the offence of assisting an offender under section 90 of the Criminal Procedure Ordinance (Cap 221);

(ea) any offence under regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); (Replaced 134 of 1997 s. 85)

(f) the offence of conspiracy to defraud and the offence of conspiracy to commit any of the offences referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e) or (ea); (Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5)

(g) an attempt to commit any offence referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e) or (ea) or the offence of aiding, abetting, counselling or procuring any offence so referred to. (Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5)

(Replaced 14 of 1976 s. 2)

Section:	10A	Procedure after arrest	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) A person arrested under section 10-

(a) may be taken forthwith to a police station and there dealt with in accordance with the Police Force Ordinance (Cap 232); or

(b) may be taken to the offices of the Commission.

(2) A person arrested under section 10 who is taken to the offices of the Commission may be-

(a) detained there if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary for the purpose of further inquiries;

(b) released from custody-

(i) on his depositing such reasonable sum of money as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or

(ii) on his entering into such recognizance, with such sureties, if any, as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or

(iii) on his depositing such a sum of money and entering into such a recognizance.

(3) A person who has deposited a sum of money for the purposes of subsection (2) and has thereupon been released from custody shall-

(a) attend at the offices of the Commission at such time as an officer of the rank of Senior Commission Against Corruption Officer or above has specified and, having so attended, shall further attend at such other times thereafter as such an officer may specify; or (Amended 48 of 1996 s. 20)

(b) appear before a magistrate at such time and place as an officer of the rank of Senior Commission Against Corruption Officer or above has specified.

(3A) A person who has been released from custody under subsection (3) and-

(a) who attends at the offices of the Commission at a further time as shall have been specified; and

(b) who on such attendance advises an officer of the rank of Senior Commission Against Corruption Officer or above that he will refuse to attend at any further time, whether specified or not,

shall have the sum of money deposited for the purposes of subsection (2) refunded to him and shall not be bound by any recognizance entered into by him with respect to his attendance. (Added 48 of 1996 s. 20)

(4) A recognizance entered into for the purposes of subsection (2) shall be conditioned-

(a) for the attendance of the person at the offices of the Commission at such time as may be specified therein and at such other time thereafter as an officer of the rank of Senior Commission Against Corruption Officer or above may specify; or

(b) for the appearance of the person before a magistrate at such time and place as may be specified therein.

(5) If any person fails to attend at the offices of the Commission or to appear before a magistrate in accordance with subsection (3) or a recognizance entered into for the purposes of subsection (2), such sum of money may be forfeited or such recognizance estreated by a magistrate on application by the Commissioner.

(6) A person who is detained at the offices of the Commission under subsection (2)(a) shall be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest unless he is sooner released, whether under subsection (2)(b) or otherwise.

(7) (a) A person who is detained at the offices of the Commission under subsection (2)(a) may be taken in the custody of an officer to and from any other place if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary or desirable to do so.

(b) Any person who is being taken to and from any such place in the custody of an officer under paragraph (a) shall be deemed to be in lawful custody.

(8) The Chief Executive may by order make such provision as he considers necessary with respect to the treatment of persons detained at the offices of the Commission, whether under subsection (2)(a) or pursuant to the order of a magistrate under section 20(3) or 79(1) of the Magistrates Ordinance (Cap 227). (Amended 51 of 1987 s. 5; 1 of 2003 s. 3)

(Added 14 of 1976 s. 2. Amended 27 of 1980 s.3)

Section:	10AA	Arrest of persons granted bail		30/06/1997

(1) An officer authorized in that behalf by the Commissioner may arrest without warrant any person who has been released from custody in accordance with section 10A(2), or otherwise admitted to bail following his arrest under section 10 or his appearance on a summons in respect of an offence referred to in that section-

(a) if the officer has reasonable grounds for believing that any condition on or subject to which such person was so released or otherwise admitted to bail has been or is likely to be broken; or

(b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety. (Amended 56 of 1994 s. 10)

(2) Any person arrested under subsection (1) shall be brought within the period of 24 hours after his arrest or as soon as practicable after the expiry of that period before a magistrate, except where he was so arrested within the period of 24 hours immediately preceding an occasion on which he is required by virtue of a condition of his release under section 10A(2) or other bail to appear before any court, in which case he shall be brought before that court.

(3) If it appears to the court before which a person is brought under subsection (2) that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the court may-

(a) remand that person in custody; or

(b) admit that person to bail on the same conditions or on such other conditions as it thinks fit,

but if it does not so appear to that court the court shall admit that person to bail on the same conditions.

(4) Nothing in this section shall derogate from or affect the powers of arrest contained in section 9K of the Criminal Procedure Ordinance (Cap 221). (Amended 56 of 1994 s. 10)

(Added 51 of 1987 s. 6)
[cf. 1967 c. 80 s. 23 U.K.]

Section:	10B	Search warrants		30/06/1997

Without prejudice to section 17(1) of the Prevention of Bribery Ordinance (Cap 201), if a magistrate is satisfied by information on oath that there is reason to believe that there is in any premises or place anything which is or contains evidence of the commission of any of the offences referred to in section 10, he may by warrant directed to any officer authorize such officer, and any other officers assisting him, to enter and search such premises or place.

(Added 14 of 1976 s. 2. Amended 48 of 1996 s. 21)

Section:	10C	Power of search and seizure		30/06/1997

(1) An officer authorized in that behalf by the Commissioner may-

(a) search any person if he reasonably suspects that such person is guilty of any of the offences referred to in section 10;

(b) search the premises or place in which any person was arrested under section 10, or the premises or place in which a person who evades arrest therein under section 10 was to be arrested, for evidence of any of the offences referred to in that section;

(c) seize and detain anything which such officer has reason to believe to be or to contain evidence of any of the offences referred to in section 10;

(d) (Repealed 45 of 1992 s. 2)

(1A)(Repealed 45 of 1992 s. 2)

(2) A person shall not be searched under subsection (1) except by a person of the same sex.

(3) The powers conferred by subsection (1) shall not derogate from the power conferred on any officer by section 17 of the Prevention of Bribery Ordinance (Cap 201) or a warrant issued thereunder.

(Added 14 of 1976 s. 2)

Section:	10D	Power to take finger-prints and photographs		30/06/1997

(1) Where a person has been arrested under section 10 or, has been served with a summons under section 8(2) of the Magistrates Ordinance (Cap 227) in respect of a section 10 offence, any officer may take, or cause to be taken under the supervision of an officer, photographs, finger-prints and the weight and height measurements of that person. (Amended 48 of 1996 s. 22)

(2) The identifying particulars of a person taken under subsection (1) may be retained by the Commissioner, except that if-

(a) a decision is taken not to charge the person with any offence; or

(b) the person is charged with a section 10 offence but discharged by a court before conviction or acquitted at his trial or on appeal,

the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person.

(3) Notwithstanding subsection (2), the Commissioner may retain the identifying particulars of a person who has been previously convicted of any section 10 offence.

(4) In this section-

"identifying particulars" (辨別身分資料) in relation to a person means photographs, finger-prints and the weight and height measurements of that person;

"section 10 offence" (第10條罪行) means any offence for which a person may be arrested under section 10.

(Replaced 21 of 1991 s. 2)

Section:	10E	Taking of non-intimate samples	L.N. 100 of 2001	01/07/2001

(1) In any investigation in respect of an offence committed or believed to have been committed, a non-intimate sample may be taken from a person with or without his consent for forensic analysis only if-

(a) that person is dealt with and detained pursuant to section 10A; and

(b) an officer of the rank of Senior Commission Against Corruption Officer or above ("authorizing officer") authorizes it to be taken.

(2) An authorizing officer may only give an authorization as required under subsection (1)(b) if he has reasonable grounds-

(a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and

(b) for believing that the sample will tend to confirm or disprove the commission of the offence by that person.

(3) An authorizing officer-

(a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;

(b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.

(4) Where an authorization has been given pursuant to subsection (2), an officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken-

(a) of the nature of the offence in which the person is suspected to have committed;

(b) that there are reasonable grounds to believe that the sample will tend to confirm or disprove the commission of the offence by that person;

(c) of the giving of the authorization;

(d) that he may or may not consent to the taking of the sample;

(e) that if he does not consent to the taking of the sample, the sample will still be taken from him by using reasonable force if necessary;

(f) that the sample will be analysed and the information derived from such analysis may provide evidence that might be used in criminal proceedings for such offence or any other offence for which a person may be arrested under section 10;

(g) that he may make a request to an officer for access to the information derived from the analysis of the sample; and

(h) that if he is subsequently convicted of any serious arrestable offence, any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) of the Police Force Ordinance (Cap 232) and may be used for the purposes specified in subsection (2) of that section.

(5) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.

(6) Any consent given for the taking of a non-intimate sample pursuant to this section must be given in writing and signed by the person giving the consent.

(7) A non-intimate sample from a person may only be taken by-

(a) a registered medical practitioner; or

(b) an officer, or a public officer working in the Government Laboratory, who has received training for the purpose.

(8) An officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample from a person pursuant to this section.

(9) In this section, sections 10F and 10G-

"DNA" means deoxyribonucleic acid;

"DNA information" (DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample;

"intimate sample" (體內樣本) means-

(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;

(b) a dental impression;

(c) a swab taken from a private part of a person's body or from a person's body orifice other than the mouth;

"non-intimate sample" (非體內樣本) means-

(a) a sample of head hair;

(b) a sample taken from a nail or from under a nail;

(c) a swab taken from any part, other than a private part, of a person's body or from the mouth but not any other body orifice;

(d) saliva;

(e) an impression of any part of a person's body other than-

(i) an impression of a private part;

(ii) an impression of the face; or

(iii) the identifying particulars described in section 59(6) of the Police Force Ordinance (Cap 232);

"private part" (私處) in relation to a person's body, means the genital or anal area and includes the breasts in the case of a woman;

"serious arrestable offence" (嚴重的可逮捕罪行) means an offence for which a person may be arrested under section 10 and for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years.

(Added 68 of 2000 s. 4)

Section:	10F	Limitations on use of samples and results of forensic analysis	L.N. 100 of 2001	01/07/2001

(1) Without prejudice to subsection (4), no person shall have access to, dispose of or use a non-intimate sample taken pursuant to section 10E except for the purposes of-

(a) forensic analysis in the course of an investigation of any offence for which a person may be arrested under section 10; or

(b) any proceedings for any such offence.

(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of a non-intimate sample taken pursuant to section 10E except-

(a) for the purposes of-

(i) forensic comparison and interpretation in the course of investigation of any offence for which a person may be arrested under section 10;

(ii) any proceedings for such an offence; or

(iii) making the results available to the person to whom the results relate; or

(b) for the purposes of section 59G(1) and (2) of the Police Force Ordinance (Cap 232) where the results are of forensic DNA analysis.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(4) Whether or not a non-intimate sample taken pursuant to section 10E or the results of forensic analysis of the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for an offence for which a person may be arrested under section 10 after-

(a) it is decided that a person from whom the sample was taken shall not be charged with any offence for which a person may be arrested under section 10;

(b) if the person has been charged with one or more such offences-

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.

(Added 68 of 2000 s. 4)

Section:	10G	Disposal of samples and records	L.N. 100 of 2001	01/07/2001

(1) The Commissioner shall take reasonable steps to ensure that-

(a) a non-intimate sample taken pursuant to section 10E; and

(b) a record to the extent that it contains information about the sample and particulars that are identifiable by any person as particulars identifying that information with the person from whom the sample was taken,

which may be retained by him or on his behalf are destroyed as soon as practicable after-

(i) if the person has not been charged with any offence for which a person may be arrested under section 10, the expiry of-

(A) subject to subparagraph (B), 12 months from the date on which the sample was taken ("the relevant period"); or

(B) such further period or periods as may be extended under subsection (2) ("the extended period");

(ii) if the person has been charged with one or more offences for which a person may be arrested under section 10 within the relevant period and the extended period, if any-

(A) the charge or all the charges, as the case may be, is or are withdrawn;

(B) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(C) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal, whichever occurs first.

(2) An officer of the rank of Assistant Director of the Commission Against Corruption or above may extend or further extend the relevant period for not more than 6 months for each extension if he is satisfied on reasonable grounds that it is necessary to the continuing investigation of the offence or offences in relation to which the sample was taken that the sample and the record concerned be retained.

(3) Subsection (1) shall not affect any DNA information which has already been permanently stored in the DNA database pursuant to section 59G(1)(a), (b) or (c) of the Police Force Ordinance (Cap 232).

(4) Without prejudice to the operation of subsections (1) and (2), if-

(a) a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or more offences for which a person may be arrested under section 10; and

(b) there is no other charge against the person-

(i) in relation to an offence which a person may be arrested under section 10; and

(ii) which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction.

(Added 68 of 2000 s. 4)

Section:	11	Standing orders	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) The Commissioner may make orders, which shall be known as Commission standing orders, providing for-
- (a) the control, direction and administration of the Commission;
- (b) the discipline, training, classification and promotion of officers;
- (c) the duties of officers;
- (d) the financial regulation of the Commission;
- (e) such other matters as may, in his opinion, be necessary or expedient for preventing abuse or neglect of duty and for upholding the integrity of the Commission.

(2) The Commissioner may, with the prior approval of the Chief Executive, by standing order modify the application to officers of Public Service (Administration) Order, Government regulations or administrative rules applicable by virtue of section 8(4). (Amended 1 of 2003 s. 3)

(3) No Commission standing order shall be inconsistent with any of the provisions of this Ordinance.

Section:	12	Duties of the Commissioner	14 of 2003	09/05/2003

It shall be the duty of the Commissioner, on behalf of the Chief Executive, to- (Amended 1 of 2003 s. 3)
- (a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;
- (b) investigate-
  - (i) any alleged or suspected offence under this Ordinance;
  - (ii) any alleged or suspected offence under the Prevention of Bribery Ordinance (Cap 201);
  - (iii) any alleged or suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); (Amended 10 of 2000 s. 47)
  - (iv) any alleged or suspected offence of blackmail committed by a prescribed officer by or through the misuse of his office; (Amended 14 of 2003 s. 22)
  - (v) any alleged or suspected conspiracy to commit an offence under the Prevention of Bribery Ordinance (Cap 201);
  - (vi) any alleged or suspected conspiracy to commit an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); and (Amended 10 of 2000 s. 47)
  - (vii) any alleged or suspected conspiracy (by 2 or more persons including a prescribed officer) to commit an offence of blackmail by or through the misuse of the office of that prescribed officer; (Replaced 16 of 1991 s. 3. Amended 14 of 2003 s. 22)
- (c) investigate any conduct of a prescribed officer which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the Chief Executive; (Amended 1 of 2003 s. 3; 14 of 2003 s. 22)
- (d) examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;
- (e) instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- (f) advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (g) educate the public against the evils of corruption; and
- (h) enlist and foster public support in combatting corruption.

Section:	13	Powers of the Commissioner	14 of 2003	09/05/2003

(1) For the purpose of the performance of his functions under this Ordinance the Commissioner may-

(a) authorize in writing any officer to conduct an inquiry or examination;

(b) enter any Government premises and require any prescribed officer to answer questions concerning the duties of any prescribed officer or public servant and require the production of any standing orders, directions, office manuals or instructions relating thereto;

(c) (Repealed 45 of 1992 s. 3)

(d) authorize in writing any person to perform any of his duties and to exercise such powers under this Ordinance and the Prevention of Bribery Ordinance (Cap 201) as he may specify. (Amended 10 of 2000 s. 47)

(2) The Commissioner or any officer authorized for the purposes of this subsection in writing by the Commissioner shall have the following powers, namely-

(a) as regards the performance of any of the Commissioner's functions under this Ordinance, access to all records, books and other documents relating to the work of any Government department in the possession or under the control of any prescribed officer;

(b) in so far as is necessary for the performance of any of the Commissioner's functions under section 12(d) or (f), access to such records, books and other documents in the possession or under the control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of that public body;

(c) as regards any such records, books and other documents, power to photograph or make copies of them. (Replaced 48 of 1996 s. 23)

(3) In this section "documents" (文件) has the meaning assigned to "document" in section 2 of the Prevention of Bribery Ordinance (Cap 201). (Added 48 of 1996 s. 23)

(Amended 14 of 2003 s. 23)

Section:	13A	Resisting or obstructing officers		30/06/1997

Any person who resists or obstructs an officer in the execution of his duty shall be guilty of an offence and shall be liable on conviction to a fine of $5000 and to imprisonment for 6 months.

(Added 14 of 1976 s. 4. Amended 51 of 1987 s. 7)

Section:	13B	False reports to officers		30/06/1997

Any person who knowingly-

(a) makes or causes to be made to an officer a false report of the commission of any offence; or

(b) misleads an officer by giving false information or by making false statements or accusations,

shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year.

(Added 14 of 1976 s. 4. Amended 51 of 1987 s. 8)

Section:	13C	Falsely pretending to be an officer, etc.		30/06/1997

Any person who falsely pretends-

(a) that he is an officer or has any of the powers of an officer under this Ordinance or the Prevention of Bribery Ordinance (Cap 201) or under any authorization or warrant under either of those Ordinances; or

(b) that he is able to procure an officer to do or refrain from doing anything in connection with the duty of such officer,

shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year.

(Added 14 of 1976 s. 4)

Section:	13D	Disposal of property connected with offences		30/06/1997

Section 102 of the Criminal Procedure Ordinance (Cap 221) shall apply with respect to property in the possession of the Commissioner or any officer as it applies with respect to property in the possession of a court or the police.

(Added 14 of 1976 s. 4)

Section:	13E	Time limit for prosecution of offences under section 13B or 13C		30/06/1997

(1) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), a complaint may be made or an information laid in respect of an offence under section 13B or 13C within 1 year from the time when the matter of such complaint or information respectively arose.

(2) Where a person has, before the commencement of the Independent Commission Against Corruption (Amendment) Ordinance 1980 (27 of 1980), committed an offence under section 13B or 13C and but for subsection (1) would not be liable to prosecution for that offence by reason of section 26 of the Magistrates Ordinance (Cap 227), he shall, notwithstanding subsection (1), not be liable to be prosecuted for that offence.

(Added 27 of 1980 s. 6)

Section:	14	Estimates	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) In each financial year, before a date appointed by the Chief Executive, the Commissioner shall forward to the Chief Executive, for his approval, estimates of the expenditure of the Commission for the next financial year.

(2) The estimates shall be in such form and contain such information as the Chief Executive may require.

(Amended 1 of 2003 s. 3)

Section:	15	Accounts	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) The Commissioner shall maintain proper accounts of such expenditure by the Commission as the Chief Executive may require. (Amended 1 of 2003 s. 3)

(2) As soon as may be convenient after the end of each financial year, the Commissioner shall cause a statement of accounts during the previous financial year to be prepared.

Section:	16	Audit	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) The Director of Audit shall at any time be entitled to have access to all accounts maintained under section 15(1) and he may require such information and explanation thereon as he thinks fit.

(2) The Director of Audit shall audit the statement of accounts prepared under section 15(2) and report thereon to the Chief Executive. (Amended 1 of 2003 s. 3)

Section:	17	Annual report	1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) The Commissioner shall, on or before 31 March in each year, or by such later date as the Chief Executive

may allow, submit to the Chief Executive a report on the activities of the Commission in the previous year.

(2) The Chief Executive shall cause the report to be laid on the table of the Legislative Council.

(Amended 1 of 2003 s. 3)

Section:	17A	Welfare fund		30/06/1997

(1) There shall be established a fund to be known as the "Independent Commission Against Corruption Welfare Fund".

(2) The fund shall consist of-

(a) such donations and voluntary contributions as may be made thereto;

(b) such sums as may, from time to time, be voted thereto by the Legislative Council; and

(c) such sums as may accrue by way of dividend or interest from the investment of the fund or any part thereof.

(3) The fund shall be controlled by the Commissioner and applied to the following purposes-

(a) procuring for officers of the Commission and other persons employed by the Commission or for former officers or persons so employed who have ceased employment or retired on pension, gratuity or other allowance, comforts, conveniences or other benefits not chargeable to the general revenue;

(b) granting loans to officers of the Commission and other persons employed by the Commission or former officers of the Commission and other persons formerly employed by the Commission who have ceased to be employed or retired on pension, gratuity or other allowance;

(c) making grants to persons who were wholly or partially dependent at the time of his death on-

(i) a deceased officer or a deceased former officer of the Commission who had ceased to be employed or had retired on pension, gratuity or other allowance; or

(ii) a deceased person employed by the Commission or a deceased person who was at any time employed by the Commission and who had ceased to be employed or had retired on pension, gratuity or other allowance,

and who are in need of financial assistance, whether towards the payment of funeral expenses of the deceased or otherwise.

(Added 27 of 1980 s. 7)

Section:	18	Saving of certain common law privileges		30/06/1997

Nothing in this Ordinance shall prejudice any claim to privilege which any person may have at common law in relation to any communication, document or other thing made or given to a solicitor or counsel.

(Added 14 of 1976 s. 5)

Section:	18A	Investigation of pre-1977 offences	L.N. 362 of 1997; 1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) Notwithstanding section 12, the Commissioner shall not act as required by paragraphs (a), (b) and (c) of that section in respect of alleged or suspected offences committed before 1 January 1977 except in relation to-

(a) persons not in Hong Kong or against whom a warrant of arrest was outstanding on 5 November 1977;

(b) any person who before 5 November 1977 had been interviewed by an officer and to whom allegations had been put that he had committed an offence;

(c) an offence which the Chief Executive considers sufficiently heinous to warrant action.

(2) A certificate under the hand of the Chief Secretary for Administration stating the fact that the Chief Executive considers an offence sufficiently heinous to warrant action shall be conclusive evidence of that fact. (Amended L.N. 362 of 1997)

(Added 9 of 1978 s. 2. Amended 1 of 2003 s. 3)

Independent Commission Against Corruption Ordinance, Hong Kong

Chapter:	201	PREVENTION OF BRIBERY ORDINANCE	Gazette Number	Version Date

		Long title	30/06/1997

To make further and better provision for the prevention of bribery and for purposes necessary thereto or connected therewith.

[14 May 1971] *L.N. 58 of 1971*

(Originally 102 of 1970)

Section:	1	Short title	30/06/1997

PART I

PRELIMINARY

This Ordinance may be cited as the Prevention of Bribery Ordinance.

Section:	2	Interpretation	14 of 2003	09/05/2003

(1) In this Ordinance, unless the context otherwise requires-

"advantage" (利益) means-

(a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), particulars of which are included in an election return in accordance with that Ordinance; (Amended 33 of 1991 s. 2; 10 of 2000 s. 47)

"agent" (代理人) includes a public servant and any person employed by or acting for another;

"banker's books" (銀行簿冊) means-

(a) any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever;

(b) any cheque, voucher, record card, report, letter or other document whatsoever; and

(c) any copy of anything referred to in paragraph (a) or (b), used in the ordinary business of a bank; (Replaced 28 of 1980 s. 2)

"child" (子女) includes a child who is illegitimate or adopted, a foster child and a step-child;

"Commissioner" (專員) means the Commissioner of the Independent Commission Against Corruption appointed in accordance with the Basic Law and includes the Deputy Commissioner appointed under section 6 of the Independent Commission Against Corruption Ordinance (Cap 204) and the person appointed to act as the Commissioner of the Independent Commission Against Corruption under section 7(2) of that Ordinance; (Replaced 1 of 2003 s. 3)

"company books" (公司簿冊) means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company; (Amended 28 of 1980 s. 2)

"court" (法庭) includes a magistrate hearing proceedings with a view to committal for trial under section 85 of the Magistrates Ordinance (Cap 227);

"document" (文件) includes any register, book, record, tape-recording, any form of computer input or output, and any other material (whether produced mechanically, electrically, or manually or by any other means whatsoever); (Added 28 of 1980 s. 2)

"entertainment" (款待) means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions;

"investigating officer" (調查人員) means any person authorized by the Commissioner to exercise the powers of an investigating officer under this Ordinance; (Added 9 of 1974 s. 2)

"parents" (父母) includes parents-in-law and step-parents;

"prescribed officer" (訂明人員) means-

(a) any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b) the following persons (to the extent that they are not persons included in paragraph (a))-

(i) any principal official of the Government appointed in accordance with the Basic Law;

(ii) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66) and any person appointed under section 5A(3) of that Ordinance;

(iii) Chairman of the Public Service Commission;

(iv) any member of the staff of the Independent Commission Against Corruption;

(v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary; (Added 14 of 2003 s. 13)

"principal" (主事人) includes-

(a) an employer;

(b) a beneficiary under a trust;

(c) a trust estate as though it were a person;

(d) any person beneficially interested in the estate of a deceased person;

(e) the estate of a deceased person as though it were a person; and

(f) in the case of an employee of a public body, the public body;

"public body" (公共機構) means-

(a) the Government;

(b) the Executive Council;

(c) the Legislative Council;

(d) (Repealed 78 of 1999 s. 7)

(da) any District Council; (Added 42 of 1981 s. 27. Amended 8 of 1999 s. 89)

(db) (Repealed 78 of 1999 s. 7)

(e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Chief Executive or the Chief Executive in Council; and (Amended 1 of 2003 s. 3)

(f) any board, commission, committee or other body specified in Schedule 1; (Amended 20 of 1999 s. 2)

"public servant" (公職人員) means any prescribed officer and also any employee of a public body and- (Amended 48 of 1996 s. 2; 14 of 2003 s. 13)

(a) in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body; (Amended 20 of 1999 s. 2)

(aa) in the case of a public body specified in Schedule 2-

(i) an office holder of the public body (other than an honorary office holder);

(ii) any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of the affairs of the public body; (Added 20 of 1999 s. 2)

(b) in the case of a public body which is a club or association, any member of the public body who-

(i) is an office holder of the body (other than an honorary office holder); or

(ii) is vested with any responsibility for the conduct or management of its affairs;

(c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the institution and, subject to subsection (3), any member of any council,

board, committee or other body of the institution, which is itself a public body, or which-

(i) is established by or under the Ordinance relating to the institution;

(ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and

(iii) is not excluded under subsection (3),

whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but-

(A) the holding of a share by a person in a company which is a public body; or

(B) the entitlement of a person to vote at meetings of a club or association which is a public body,

shall not of itself constitute that person a public servant; (Replaced 50 of 1987 s. 2)

"spouse" (配偶) includes a concubine.

(2) For the purposes of this Ordinance-

(a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;

(b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and

(c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

(3) The Chief Executive may by notice in the Gazette- (Amended 1 of 2003 s. 3)

(a) exclude, for the purposes of the definition of "public servant" in subsection (1), any council, board, committee or other body of any educational institution specified in the notice;

(b) exclude from the definition of "public servant" any member of any council, board, committee or other body of any educational institution, who would otherwise by virtue of his membership thereof fall within that definition. (Added 50 of 1987 s. 2)

(Amended 14 of 2003 s. 13)

Section:	3	Soliciting or accepting an advantage	14 of 2003	09/05/2003

PART II

OFFENCES

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence.

(Amended 1 of 2003 s. 3; 14 of 2003 s. 14)

Note:

The Acceptance of Advantages (Chief Executive's Permission) Notice 2007 was given by the Chief Executive and published as G.N. 1133 in the Government of the HKSAR Gazette (No. 7 Vol. 11) on 16 February 2007 for the purpose of this section.

Section:	4	Bribery	22 of 2008	04/07/2008

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (Amended 28 of 1980 s. 3)

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (Amended 28 of 1980 s. 3)

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2A) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's-

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence. (Added 22 of 2008 s. 2)

(2B) If the Chief Executive, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

he shall be guilty of an offence. (Added 22 of 2008 s. 2)

(3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3. Amended 14 of 2003 s. 15)

(4) For the purposes of subsection (3) permission shall be in writing and-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)

Section:	5	Bribery for giving assistance, etc. in regard to contracts	22 of 2008	04/07/2008

(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution, or procuring of-

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution or procuring of, or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

(3) Any person who, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution or procuring of-

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in paragraph (a),

shall be guilty of an offence. (Added 22 of 2008 s. 3)

(4) If the Chief Executive, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution or procuring of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (3)(a), he shall be guilty of an offence. (Added 22 of 2008 s. 3)

Section:	6	Bribery for procuring withdrawal of tenders		30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Section:	7	Bribery in relation to auctions		30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Section:	8	Bribery of public servants by persons having dealings with public bodies	14 of 2003	09/05/2003

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence. (Amended 14 of 2003 s. 16)

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Section:	9	Corrupt transactions with agents		30/06/1997

(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document-

(a) in respect of which the principal is interested; and

(b) which contains any statement which is false or erroneous or defective in any material particular; and

(c) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.

(4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2). (Replaced 28 of 1980 s. 4)

(5) For the purposes of subsection (4) permission shall-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 4)

Section:	10	Possession of unexplained property	22 of 2008	04/07/2008

(1) Any person who, being or having been the Chief Executive or a prescribed officer- (Amended 14 of 2003 s. 17; 22 of 2008 s. 4)

(a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or

(b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(1A)If the accused in any proceedings for an offence under subsection (1) is or has been the Chief Executive, the court, in determining whether the accused has given a satisfactory explanation as provided in that subsection, shall take into account assets that he declared to the Chief Justice pursuant to Paragraph 2, Article 47 of the Basic Law. (Added 22 of 2008 s. 4)

(1B) The Chief Justice shall disclose to a court information about assets declared to him pursuant to Paragraph 2, Article 47 of the Basic Law if the disclosure is required by an order made by the court for the purposes of subsection (1A). (Added 22 of 2008 s. 4)

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources

or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. (Added 9 of 1974 s. 3. Amended 48 of 1996 s. 3)

(3)-(4) (Repealed 56 of 1973 s. 2)

(5) In this section, "official emoluments" (公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

Section:	11	Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.		30/06/1997

(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the advantage without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Section:	12	Penalty for offences	25 of 1998; 1 of 2003	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 25 of 1998 s. 2; 1 of 2003 s. 3

(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable-

(a) on conviction on indictment-

(i) for an offence under section 10, to a fine of $1000000 and to imprisonment for 10 years;

(ii) for an offence under section 5 or 6, to a fine of $500000 and to imprisonment for 10 years; and

(iii) for any other offence under this Part, to a fine of $500000 and to imprisonment for 7 years; and (Replaced 50 of 1987 s. 3)

(b) on summary conviction-

(i) for an offence under section 10, to a fine of $500000 and to imprisonment for 3 years; and

(ii) for any other offence under this Part, to a fine of $100000 and to imprisonment for 3 years, (Replaced 50 of 1987 s. 3)

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify. (Amended 28 of 1980 s. 5)

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of $100000 and to imprisonment for 1 year, and shall be ordered to pay to the Government in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify. (Amended 9 of 1974 s. 4; 28 of 1980 s. 5; 1 of 2003 s. 3)

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Government- (Amended 1 of 2003 s. 3)

(a) a sum not exceeding the amount of the pecuniary resources; or

(b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court. (Added 9 of 1974 s. 4)

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. (Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)

(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. (Added 61 of 1980 s. 2)

Section:	12A	Conspiracy		30/06/1997

Remarks:
Due to technical constraints, sections 12AA, 12AB and 12AC of this Ordinance are placed after section 12A in the BLIS system. The correct sequence of the sections should be "12AA, 12AB, 12AC, 12A".

(1) Any person convicted of conspiracy to commit an offence under this Part shall be dealt with and punished in like manner as if convicted of such offence and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

(2) The powers of investigation conferred by Part III of this Ordinance shall apply with respect to a conspiracy to commit an offence under this Ordinance in like manner as they apply to the investigation of any such offence.

(Added 28 of 1980 s. 6)

Section:	12AA	Confiscation of assets	L.N. 362 of 1997; 1 of 2003	01/07/1997

Remarks:
1. Due to technical constraints, sections 12AA, 12AB and 12AC of this Ordinance are placed after section 12A in the BLIS system. The correct sequence of the sections should be "12AA, 12AB, 12AC, 12A".
2. Adaptation amendments retroactively made - see 1 of 2003 s. 3

(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property-

(a) found at the trial to be in his control as provided in section 10; and

(b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

(2) Any application for an order under subsection (1) shall be made by the Secretary for Justice within 28 days after the date of the conviction. (Amended L.N. 362 of 1997)

(3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.

(4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had-

(a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and

(b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.

(5) Nothing in subsection (4) shall be construed as limiting the court's discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).

(6) An order under subsection (1)-

(a) may be made subject to such conditions as the court thinks fit in all the circumstances of the case; and

(b) may be made in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence occurred before the date of commencement of the Prevention of Bribery (Amendment) Ordinance 1987 (50 of 1987).

(7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.

(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Government. (Amended 1 of 2003 s. 3)

(Added 50 of 1987 s. 4)

Section:	12AB	Appeal against confiscation order		30/06/1997

Remarks:
Due to technical constraints, sections 12AA, 12AB and 12AC of this Ordinance are placed after section 12A in the BLIS system. The correct sequence of the sections should be "12AA, 12AB, 12AC, 12A".

(1) Subject to this section, where an order is made under section 12AA in respect of pecuniary resources or property held by a person other than the person convicted, that other person may, within 28 days after the date of making the order, appeal against the order to the Court of Appeal.

(2) On an appeal under this section the Court of Appeal may-

(a) confirm the order, with or without modification; or

(b) quash the order and make such other order (if any) under section 12AA as it thinks appropriate.

(3) Proceedings under this section shall not operate as a stay of execution of an order unless the court which makes the order or the Court of Appeal otherwise orders and any stay of execution may be subject to such conditions as to costs, the giving of security or otherwise as the court or the Court of Appeal thinks fit.

(4) Subject to this section, an appeal shall be brought in such manner and shall be subject to such conditions as are prescribed by rules made under subsection (5).

(5) The Criminal Procedure Rules Committee constituted under section 9 of the Criminal Procedure Ordinance (Cap 221) may make rules of procedure for the purposes of this section. (Amended 13 of 1995 s. 28)

(6) Nothing in this section shall prejudice or affect the right of a convicted person to appeal against his sentence under Part IV of the Criminal Procedure Ordinance (Cap 221).

(Added 50 of 1987 s. 4)

Section:	12AC	Costs in proceedings on confiscation order	25 of 1998	01/07/1997

Remarks:
1. Due to technical constraints, sections 12AA, 12AB and 12AC of this Ordinance are placed after section 12A in the BLIS system. The correct sequence of the sections should be "12AA, 12AB, 12AC, 12A".
2. Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) The court or the Court of Appeal, as the case may be, may, if it thinks fit, award to any person his reasonable costs in respect of any proceedings before it in relation to-

(a) the making of an order under section 12AA; or

(b) an appeal under section 12AB,

where such an order is not made or is quashed.

(2) Any costs awarded under subsection (1)-

(a) shall, except where the amount is fixed by the court or the Court of Appeal, be ascertained by the Registrar of the High Court; and (Amended 25 of 1998 s. 2)

(b) shall be paid from general revenue.

(Added 50 of 1987 s. 4)

Section:	13	Special powers of investigation	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

PART III

POWERS OF INVESTIGATION

(1) Where the Commissioner is satisfied that there is reasonable cause to believe-

(a) that an offence under this Ordinance may have been committed by any person; and

(b) that any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of or relating

to any person named or otherwise identified in writing by the Commissioner are likely to be relevant for the purposes of an investigation of such offence,

he may for those purposes authorize in writing any investigating officer on production by him of the authorization if so required-

(i) to investigate and inspect such accounts, books or documents or other article of or relating to the person named or otherwise identified by the Commissioner;

(ii) to require from any person the production of such accounts, books, documents, or other article of or relating to the person named or otherwise identified by the Commissioner which may be required for the purposes of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article.

(Replaced 48 of 1996 s. 4)

(1A)The Commissioner shall not, without the leave of the Court of First Instance obtained on ex parte application in chambers, issue an authorization under or by virtue of which any particular person who is alleged or suspected to have committed an offence under this Ordinance can be required to comply with any requirement of the description mentioned in subsection (1)(i) and (ii). (Added 48 of 1996 s. 4)

(1B)The Court of First Instance shall not grant leave for the issue of an authorization under subsection (1)(i) and (ii) unless, on consideration of an application under subsection (1A), it is satisfied as to the matters that the Commissioner is required to be satisfied under subsection (1). (Added 48 of 1996 s. 4)

(2) (a) Every authorization given under subsection (1) shall be deemed also to authorize the investigating officer to require from any person information as to whether or not at any bank, company or other place there is any account, book, document or other article liable to investigation, inspection or production under such authorization. (Amended 9 of 1974 s. 5; 50 of 1987 s. 5; 48 of 1996 s. 4)

(b) A requirement under paragraph (a) shall be made in writing and any statement therein as to the existence of the appropriate authorization under subsection (1) shall be accepted as true without further proof of the fact.

(3) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents or other article to an investigating officer authorized under subsection (1), shall, notwithstanding the provisions of other Ordinance or rule of law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance (Cap 112), comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such investigating officer in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year. (Amended 9 of 1974 s. 5; L.N. 374 of 1991; 48 of 1996 s. 4)

(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year.

(Amended 25 of 1998 s. 2)

Section:	13A	Order to make material available and to render assistance	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

(1) The Commissioner or an investigating officer with the approval of the Commissioner or the Deputy Commissioner may, for the purpose of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance, make an ex parte application to the Court of First Instance in chambers for an order under subsection (2) in relation to particular material or material of a particular description held by the Commissioner of Inland Revenue or by any officer of the Inland Revenue Department. (Amended 25 of 1998 s. 2)

(2) Subject to subsection (6), the Court of First Instance may, if on such an application it is satisfied that- (Amended 25 of 1998 s. 2)

(a) there are reasonable grounds for suspecting that an offence under this Ordinance has been committed;

(b) there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation or proceedings for the purpose of which the application is made; and

(c) there are reasonable grounds for believing that it is in the public interest, having regard to-

(i) the seriousness of the offence suspected to have been committed;

(ii) whether or not the suspected offence could be effectively investigated if an order under this subsection is not made;

(iii) the benefit likely to accrue to the investigation or proceedings if the material is so produced or if access to it is given; and

(iv) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Inland Revenue Ordinance (Cap 112),

make an order that the Commissioner of Inland Revenue or any officer of the Inland Revenue Department-

(i) shall-

(A) produce the material for the Commissioner or an investigating officer to take away; or

(B) give them access to it,

within such period as the order may specify;

(ii) shall, in relation to that material, render to the Commissioner or an investigating officer in the exercise of the powers of the Commissioner or an investigating officer or the discharge of the duties of the Commissioner or an investigating officer under this Ordinance such assistance as the Commissioner or an investigating officer, as the case may be, may reasonably require.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the Court of First Instance that a longer or shorter period would be appropriate in the particular circumstances of the application. (Amended 25 of 1998 s. 2)

(4) Where an order is made under subsection (2) the Commissioner of Inland Revenue or any officer of the Inland Revenue Department shall, notwithstanding the provisions of any other law to the contrary including the provisions of section 4 of the Inland Revenue Ordinance (Cap 112) and sections 13 and 14 of this Ordinance, comply with the terms of that order within such period as the order may specify.

(5) For the purposes of the prosecution of an offence under this Ordinance where an order is made under subsection (2), the giving of evidence by the Commissioner of Inland Revenue or any officer of the Inland Revenue Department in relation to particular material or material of a particular description with respect to which the order is made shall not be subject to any obligation as to secrecy or other restriction as to disclosure imposed by section 4 of the Inland Revenue Ordinance (Cap 112) or otherwise.

(6) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.

(7) Where material to which an application under this section relates consists of information recorded otherwise than in legible form-

(a) an order under subsection (2)(i)(A) shall have effect as an order to produce the material in a form in which it can be taken away; and

(b) an order under subsection (2)(i)(B) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) Where an order made under subsection (2)(i) relates to information recorded otherwise than in legible form, the Commissioner or an investigating officer may by notice in writing require the Commissioner of Inland Revenue or an officer of the Inland Revenue Department to produce the material in a form in which it is visible and legible and can be taken away.

(9) The Commissioner or an investigating officer may by notice in writing-

(a) extend the period specified in an order under subsection (2) (and any such extension shall be deemed to be an order made by the Court of First Instance under that subsection); (Amended 25 of 1998 s. 2)

(b) release the Commissioner of Inland Revenue or an officer of the Inland Revenue Department from any obligation under an order of the description mentioned in subsection (8) to produce material in the form in which it was recorded.

(10) The Commissioner or an investigating officer may photograph or make copies of any material produced under this section.

(Added 48 of 1996 s. 5)

Section:	13B	Disclosure of information obtained under section 13A	L.N. 362 of 1997	01/07/1997

Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or

including an order in respect of which a direction is made under subsection (7), in contravention of that order commits an offence and is liable on conviction to a fine of $10000 and to imprisonment for 6 months.
(Added 48 of 1996 s. 5. Amended L.N. 362 of 1997)

Section:	14	Power to obtain information	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

(1A) The Commissioner or an investigating officer may, for the purpose of an investigation into, or proceedings relating to, an offence suspected to have been committed by any person under this Ordinance, make an ex parte application to the Court of First Instance in chambers for an order under subsection (1). (Added 48 of 1996 s. 6. Amended 25 of 1998 s. 2)

(1B) The Court of First Instance shall not make an order under subsection (1) unless on an ex parte application made to it under subsection (1A) it is satisfied that there are reasonable grounds for suspecting that- (Amended 25 of 1998 s. 2)

(a) in the case of an application relating to subsection (1)(c), that the information to be required from the person being the subject of the application is likely to be relevant to the investigation or the proceedings;

(b) in the case of an application relating to subsection (1)(d) or (e), that the person being the subject of the application has or may reasonably have access to information likely to be relevant to the investigation or the proceedings. (Added 48 of 1996 s. 6)

(1) Where on an application under subsection (1A) the Court of First Instance is satisfied that there are reasonable grounds for suspecting that an offence under this Ordinance has been committed it may make an order authorizing the Commissioner by a notice in writing to require- (Replaced 48 of 1996 s. 6. Amended 25 of 1998 s. 2)

(a) such person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing, enumerating-

(i) the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the 3 years immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which, and the person from whom, each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and, where it was acquired by purchase, specifying the consideration paid therefor; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise, at any time during the 3 years immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefor; (Amended 50 of 1987 s. 6)

(ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than 3 years from the date of the notice);

(iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than 3 years from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally; (Amended 28 of 1980 s. 7)

(b) such person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing of any money or other property sent out of Hong Kong by him or on his behalf during such period as may be specified in the notice; (Amended 50 of 1987 s. 14)

(c) any other person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him and further stating, in respect of each such property, the date upon which and the person from whom it was acquired, if the Commissioner believes that such information

may assist the investigation or proceedings; (Amended 50 of 1987 s. 6)

(d) any other person whom the Commissioner believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the investigating officer specified in such notice all information in his possession or to which he may reasonably have access (not being information readily available to the public) respecting such matters as are specified in the notice or, as the Commissioner sees fit, to appear before the investigating officer specified in such notice or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the investigating officer specified in such notice or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which, in the opinion of the investigating officer specified in such notice or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the investigating officer specified in such notice or such other person shall have authority to administer any oath or take any affirmation; (Amended 28 of 1980 s. 7)

(e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the investigating officer specified in such notice any document or a copy, certified by the person in charge, of any document which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public); (Amended 28 of 1980 s. 7)

(f) the manager of any bank to give to the investigating officer specified in such notice copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by subsection (1)(d) include the power to require information from, and to require the attendance for the purpose of answering questions of-

(a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and

(b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say-

(i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;

(ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and

(iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(4) Every person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of other Ordinance or rule of law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance (Cap 112), comply with the terms of that notice within such time as may be specified therein or within such further time as the Commissioner may, in his discretion, authorize, and any person on whom such a notice has been served, who, without reasonable excuse, neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year. (Amended 25 of 1998 s. 2)

(5) A person who wilfully makes any false statement in answer to a notice under subsection (1) shall be guilty of an offence and shall be liable to a fine of $20000 and to imprisonment for 1 year. (Added 9 of 1974 s. 6)

(Amended 9 of 1974 s. 6)

Section:	14A	(Repealed 48 of 1996 s. 17)		30/06/1997

(Repealed 48 of 1996 s. 17)

Notes:

1. Please see the saving provisions contained in s. 18 of 48 of 1996, which section is reproduced as follows-

"18. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 17 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.".

2. For text of s. 14A prior to its repeal by s. 17 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

Section:	14B	(Repealed 48 of 1996 s. 17)		30/06/1997

Section:	14C	Restraining orders	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

(1) If, on application ex parte by or on behalf of the Commissioner, the court is satisfied that-

(a) any property is in the possession of or under the control of or is due to a person (hereinafter in this section and in sections 14D and 14E referred to as the "suspected person"), who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance or against whom a prosecution for such an offence has been instituted, from another person (hereinafter so referred to as the "third party"); or

(b) a third party is holding any property for or on behalf of or to the order of a suspected person,

the court may make an order under this subsection (hereinafter so referred to as a "restraining order").

(2) In making a restraining order the court may-

(a) impose such conditions; or

(b) exempt such property from the operation thereof (including periodic payments of money),

as it thinks fit, but subject as aforesaid, the suspected person and any third party on whom a restraining order is served in accordance with subsection (3) shall not dispose of or otherwise deal with any property specified in the restraining order save in accordance with directions of the court.

(2A) A restraining order shall, if so provided in the order, apply to the income from any property specified therein as it applies to the property itself. (Added 50 of 1987 s. 8)

(3) A restraining order shall be served on the suspected person and any third party to whom it is directed and may be served by delivering it to him or them personally or may, where the court is satisfied that such person cannot be found or is not in Hong Kong, be served in such other manner as the court may direct on application ex parte by or on behalf of the Commissioner. (Amended 15 of 1976 s. 3)

(3A) Where any property specified in a restraining order is immovable property, such order shall be deemed to be an instrument affecting land and shall be registrable as such in the Land Registry under the Land Registration Ordinance (Cap 128) in such manner as the Land Registrar thinks fit. (Added 28 of 1980 s. 10. Amended 8 of 1993 ss. 2 & 3)

(3B) Where any property specified in a restraining order includes any debt or obligation due by a bank or deposit-taking company to the person to whom the notice is given the Commissioner may serve on such bank or deposit-taking company a copy of that restraining order which copy restraining order shall have the effect of directing the bank or deposit-taking company with respect to the person specified in the copy restraining order not to pay,

liquidate, satisfy, settle or discharge that debt or obligation either in whole or in part without the consent of the court. (Added 48 of 1996 s. 7)

(4) Subject to subsection (5), a restraining order with respect to property-

(a) of the description mentioned in subsection (1)(a) shall continue in force for a period of 12 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 12 months at a time;

(b) of the description mentioned in subsection (1)(b) shall continue in force for a period of 6 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 3 months at a time. (Replaced 48 of 1996 s. 7)

(5) Where-

(a) a restraining order is made with respect to a third party or a suspected person against whom a prosecution for an offence under this Ordinance has been instituted; or

(b) a restraining order is in force with respect to a third party or a suspected person against whom a prosecution for such an offence is instituted,

the restraining order shall, except in the case of a prosecution against a third party, continue in force until the proceedings on such prosecution have been finally determined and, if an order is made against that person under section 12(3) or 12AA, until that order has been set aside, complied with or enforced, as the case may be. (Amended 50 of 1987 s. 8)

(5A)Nothing in subsection (4) or (5) shall prevent the court from making a further restraining order in respect of the same property on application ex parte by or on behalf of the Commissioner. (Added 50 of 1987 s. 8)

(6) A suspected person or third party on whom a copy of a restraining order has been served in accordance with subsection (3) or (3B) of this section or section 14D(5) shall be guilty of an offence and shall be liable on conviction to a fine of $50000 or to the value of the property disposed of or otherwise dealt with, whichever is greater, and to imprisonment for 1 year if, during the continuance in force of the order, he knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with directions of the court.

(7) In this section and in sections 14D and 14E, "court" means the Court of First Instance. (Added 48 of 1996 s. 7. Amended 25 of 1998 s. 2)

(Added 9 of 1974 s. 7. Amended 48 of 1996 s. 7)

Notes:

1. Please see the saving provisions contained in s. 18 of 48 of 1996, which section is reproduced as follows-

"18. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 17 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.".

2. For text of s. 14C prior to its amendment by s. 7 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

Section:	14D	Variation and revocation of restraining orders		30/06/1997

(1) The Commissioner may at any time apply ex parte to the court for the variation or revocation of a restraining order. (Amended 48 of 1996 s. 8)

(2) A person on whom a restraining order has been served in accordance with section 14C(3) or subsection (5) of this section may at any time apply to the court for an order revoking or varying the order.

(3) The applicant under subsection (2) shall give to the Commissioner such notice of the day fixed for the hearing of the application as a judge of the court may order.

(4) On the hearing of an application under subsection (2), the court may-

(a) revoke the order if it is satisfied that undue hardship will be caused by its continuance in operation;

(b) vary the order in such manner as it thinks fit.

(5) Where a restraining order has been revoked or varied under this section, notice of such revocation or the order as so varied, as the case may be, shall be served on the third party to whom it is directed and on the suspected person.

(Added 9 of 1974 s. 7)

Section:	14E	Application for directions		30/06/1997

(1) The suspected person or a third party on whom a restraining order has been served in accordance with section 14C(3) or 14D(5) may at any time apply to the court for directions.

(2) The parties to any such application shall be-

(a) the suspected person and the third party; and

(b) the Commissioner.

(3) A person applying for directions under subsection (1) shall give to each other party to the application such notice of the day fixed for the hearing of the application as a judge of the court may order.

(4) On the hearing of an application under subsection (1), the court may give such directions as it thinks fit.

(Added 9 of 1974 s. 7)

Section:	15	Legal advisers and privileged information		30/06/1997

(1) Save as is provided in this section, nothing in this Ordinance shall require the disclosure by a legal adviser of any privileged information, communication, book, document or other article.

(2) Subject to subsection (4), the information referred to in section 13(2) and in section 14(2) may be required from a legal adviser as from any other person, notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(3) Subject to subsection (4), a legal adviser may be required by notice under section 14(1)(d)-

(a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connection with-

(i) the transfer by such person of any moneys out of Hong Kong; or

(ii) the investment by such a person within or outside Hong Kong of any moneys; and (Amended 50 of 1987 s.14)

(b) if so, to furnish information in his possession with respect thereto, being information as to-

(i) the date of the transfer or investment;

(ii) the amount of the transfer or investment;

(iii) in the case of a transfer, the name and address of the bank and the name and number (if any) of the account to which the money was transferred;

(iv) in the case of an investment, the nature of the investment,

notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(4) Nothing in subsection (2) or (3) shall require a legal adviser to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, begun or in contemplation, before a court or to enable him to give legal advice to his client.

(5) In this section "legal adviser" (法律顧問) means counsel or a solicitor.

(6) The protection conferred by this section on a legal adviser shall extend to a clerk or servant of or employed by a legal adviser.

Section:	16	Power to obtain assistance		30/06/1997

(1) Any investigating officer conducting an investigation into an offence alleged or suspected to have been committed under this Ordinance may apply to any public servant for assistance in the exercise of his powers or the discharge of his duties under this Ordinance.

(2) Any public servant who when requested under subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year.

(Replaced 48 of 1996 s. 9)

Section:	17	Further powers of search	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

(1) Any investigating officer may, for the purposes of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance, make an ex parte application to a court for the issue of a warrant under subsection (1A). (Replaced 48 of 1996 s. 10)

(1A) Where on an application under subsection (1) the court is satisfied that there is reasonable cause to believe that in any premises or place there is anything which is or contains evidence of an offence under this Ordinance, the court may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer, to enter such premises or place, by force if necessary, and search the same. (Added 48 of 1996 s. 10)

(1B) Notwithstanding subsections (1) and (1A), where the Commissioner is satisfied that there is reasonable cause to believe-

(a) that in any premises or place there may be anything which is or contains evidence of an offence under this Ordinance; and

(b) that the making of an ex parte application under subsection (1) would seriously impede an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance,

the Commissioner may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer to enter such premises or place, by force if necessary, and search the same. (Added 48 of 1996 s. 10)

(2) Without prejudice to any other law relating to entry and search, the chambers of counsel or the office of a solicitor are not subject to entry and search under this section or any warrant issued under this section except in the course of investigating an offence under this Ordinance alleged or suspected to have been committed by that counsel or that solicitor, as the case may be, or by his clerk or any servant employed by him in such chambers or office.

(3) Any person who obstructs or resists the Commissioner or any investigating officer in the exercise of the powers of entry and search under this section shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year. (Amended 9 of 1974 s. 9; 28 of 1980 s. 12; 48 of 1996 s. 10)

(4) In this section "court" (法庭) means a magistrate and the Court of First Instance. (Added 48 of 1996 s. 10. Amended 25 of 1998 s. 2)

Section:	17A	Surrender of travel document	10 of 2005	08/07/2005

(1) A magistrate may, on the application ex parte of the Commissioner, by written notice require a person who is the subject of an investigation in respect of an offence reasonably suspected to have been committed by him under this Ordinance to surrender to the Commissioner any travel document in his possession. (Amended 50 of 1987 s. 9; 48 of 1996 s. 11)

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(3A) Subject to subsection (6), a person to whom a notice under subsection (1) is addressed shall not leave Hong Kong, whether or not the notice has been served on him under subsection (2), before the expiry of a period of 6 months from the date of the notice unless-

(a) an application made under section 17B(1) for the return of a travel document is granted; or

(b) an application made under section 17BA(1) for permission to leave Hong Kong is granted. (Added 10 of 2005 s. 41)

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may be arrested and taken before a magistrate by a police officer or by a person appointed in that behalf by the Commissioner. (Amended 10 of 2005 s. 41)

(5) Where a person is taken before a magistrate under subsection (4), the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely kept-

(a) until the expiry of the period of 28 days from the date of his committal to prison as aforesaid; or

(b) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Commissioner of Correctional Services to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Correctional Services so to do), (Amended L.N. 30 of 1982)

whichever occurs first.

(5A) Subject to subsection (6), a travel document surrendered to the Commissioner in compliance with a notice under subsection (1) may be detained for a period of 6 months from the date of the notice unless an application made under section 17B(1) for the return of the travel document is granted. (Added 10 of 2005 s. 41)

(6) The period of 6 months referred to in subsections (3A) and (5A) may be extended for a further period of 3 months if a magistrate, on application by the Commissioner, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such extension: (Amended 50 of 1987 s. 9; 10 of 2005 s. 41)

Provided that a magistrate shall not hear an application under this subsection unless reasonable notice of the application has been given by the Commissioner to the person to whom the relevant notice is addressed. (Added 50 of 1987 s. 9. Amended 10 of 2005 s. 41)

(6A) All proceedings before a magistrate under this section shall be conducted in chambers. (Added 15 of 1976 s. 5)

(6B) A notice under subsection (1) which has been served in accordance with subsection (2) and complied with shall not thereafter be revoked or withdrawn. (Added 50 of 1987 s. 9)

(7) In this section and in section 17B, "travel document" (旅行證件) means a passport or other document establishing the identity or nationality of a holder. (Amended 50 of 1987 s. 9)

(Added 56 of 1973 s. 3. Amended 9 of 1974 s. 10)

Section:	17B	Return of travel documents	10 of 2005	08/07/2005

(1) A person who has surrendered a travel document under section 17A may at any time make application in writing, either to the Commissioner or to a magistrate or both for its return, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section-

(a) the applicant may be required to-

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to the conditions that-

(a) the applicant shall further surrender his travel document to the Commissioner at such time as may be specified; and

(b) the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified. (Replaced 10 of 2005 s. 42)

(6) An application under this section may be granted either without conditions or subject to the conditions that- (Amended 10 of 2005 s. 42)

(a) the applicant shall further surrender his travel document to the Commissioner at such time as may be specified; and

(b) the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified. (Amended 10 of 2005 s. 42)

(7) Where a travel document is returned to the applicant under this section subject to a condition imposed under subsection (5)(a) or (6)(a), then after the time specified under that subsection, the provisions of section 17A(3A) shall continue to apply in respect of the applicant and the provisions of section 17A(5A) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section. (Replaced 10 of 2005 s. 42)

(8) Proceedings before a magistrate under this section-

(a) shall be conducted in chambers; and

(b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) shall apply, with the necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section shall be specified by notice in writing served personally on the applicant.

(Replaced 48 of 1996 s. 12)

Section:	17BA	Permission to leave Hong Kong	10 of 2005	08/07/2005

(1) Without prejudice to section 17B, a person on whom a notice under section 17A(1) is served may at any time make application in writing to the Commissioner or to a magistrate or both for permission to leave Hong Kong, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section-

(a) the applicant may be required to-

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant shall appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong thereafter as may be further specified.

(7) Where a person is permitted to leave Hong Kong under this section subject to a condition imposed under subsection (5) or (6), then after the time specified under that subsection or (if applicable) after the last of such times, the provisions of section 17A(3A) shall continue to apply in respect of the person as if the person had not been permitted to leave Hong Kong under this section.

(8) Proceedings before a magistrate under this section-

(a) shall be conducted in chambers; and

(b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way

within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) shall apply, with the necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section shall be specified by notice in writing served personally on the applicant.

(Added 10 of 2005 s. 43)

Section:	17C	Further provisions relating to security, appearance, etc.	10 of 2005	08/07/2005

(1) Where a person granted an application under section 17B fails to comply with the requirement of any condition imposed under that section- (Amended 48 of 1996 s. 13)

(a) he may be arrested and dealt with in the same manner that a person who fails to comply with a notice under section 17A(1) may be arrested and dealt with under section 17A(4) and (5); and

(b) any deposit made or recognizance entered into under section 17B may be forfeited by a magistrate on application by the Commissioner or under section 65 (which relates to the enforcement of recognizances) of the Magistrates Ordinance (Cap 227).

(1A) Where a person granted an application under section 17BA fails to comply with the requirement of any condition imposed under that section, any deposit made or recognizance entered into under that section may be forfeited by a magistrate on application by the Commissioner or under section 65 of the Magistrates Ordinance (Cap 227). (Added 10 of 2005 s. 44)

(2) Without prejudice to section 65 of the Magistrates Ordinance (Cap 227), where a magistrate declares or orders the forfeiture of a recognizance under this section, such declaration or order may, on the application of the Commissioner, be registered in the Court of First Instance, and thereupon the provisions of sections 110, 111, 112, 113 and 114 (which relate to the enforcement of recognizances) of the Criminal Procedure Ordinance (Cap 221) shall apply to and in relation to that recognizance. (Amended 25 of 1998 s. 2)

(3) (Repealed 44 of 1992 s. 4)

(Added 50 of 1987 s. 10)

Section:	18	(Repealed 44 of 1992 s. 5)		30/06/1997

Section:	19	Custom not to be a defence		30/06/1997

PART IV

EVIDENCE

In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Section:	20	Admissibility of accused's declarations and statements		30/06/1997

In any proceedings against a person for an offence under this Ordinance-

(a) if such person tenders himself as a witness then any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served on him under section 14 shall be regarded as a former statement made by him relative to the subject-matter of the proceedings and sections 13 and 14 of the Evidence Ordinance (Cap 8) shall apply with respect to that witness;

(b) the fact of the person's failure in any respect to comply with the terms of a notice served on him under section 14 may be adduced in evidence and made the subject of comment by the court and the prosecution.

(Replaced 48 of 1996 s. 14)

Section:	21	Evidence of pecuniary resources or property		30/06/1997

(1) In any proceedings against a person for an offence under Part II (other than section 10), the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court-

(a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and

(b) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of subsection (1) a person accused of an offence under Part II (other than section 10) shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Section:	21A	Certificate as to official emoluments, etc.	14 of 2003	09/05/2003

(1) In any proceedings against a person for an offence under this Ordinance, a certificate purporting- (Amended 50 of 1987 s. 12)

(a) to certify-

(i) the rate of, and the total amount of, official emoluments and the allowances, other than such emoluments, paid to any prescribed officer in relation to the discharge by him of his duties as a prescribed officer; (Amended 14 of 2003 s. 18)

(ii) that any person was or was not serving at any specified time or during any specified period as a prescribed officer or ceased to be a prescribed officer at or before any specified time; or (Amended 14 of 2003 s. 18)

(iii) that a prescribed officer held or did not hold at any specified time any specified office; and (Amended 14 of 2003 s. 18)

(b) to be signed by the Chief Secretary for Administration,

shall be admitted in such proceedings by any court on its production without further proof.

(2) On the production of a certificate under subsection (1) the court before which it is produced shall, until the contrary is proved, presume-

(a) that the facts stated therein are true; and

(b) that the certificate was signed by the Chief Secretary for Administration.

(3) In this section, "official emoluments" (公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

(Added 69 of 1978 s. 2. Amended L.N. 362 of 1997)

Section:	22	Person giving or receiving bribe not to be regarded as an accomplice	25 of 1998	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

Notwithstanding any Ordinance, rule of law or practice to the contrary, no witness shall, in any proceedings for an offence under Part II, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of any payment or delivery of any advantage by or on behalf of the person accused to him.

(Amended 25 of 1998 s. 2)

Section:	23	Power to secure evidence of parties to offences	L.N. 362 of 1997; 25 of 1998	01/07/1997

Remarks:
Adaptation amendments retroactively made - see 25 of 1998 s. 2

In or for the purpose of any proceedings for an offence under Part II, the court may, at the request in writing of the Secretary for Justice, inform any person accused or suspected of such offence or of any other offence under Part II that, if he gives full and true evidence in such proceedings and, where such proceedings are proceedings held with a view to committal for trial under section 85 of the Magistrates Ordinance (Cap 227), in the trial before the High Court of all things as to which he is lawfully examined, he will not be prosecuted for any offence disclosed by his evidence; and upon such person giving evidence in any such proceedings no prosecution against him for any offence disclosed by his evidence therein shall be instituted or carried on unless the court before which he gives evidence considers that he has wilfully withheld evidence or given false testimony and so certifies to the Secretary for Justice in writing.

(Amended L.N. 362 of 1997; 25 of 1998 s. 2)

Section:	24	Burden of proof		30/06/1997

In any proceedings against a person for an offence under this Ordinance, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

Section:	25	(Repealed 48 of 1996 s. 17)		30/06/1997

Section:	26	(Repealed 48 of 1996 s. 17)		30/06/1997

Section:	27	Frivolous, false or groundless complaints to be reported to the Secretary for Justice	L.N. 362 of 1997	01/07/1997

PART V

MISCELLANEOUS

At the conclusion of proceedings for an offence under this Ordinance, the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Secretary for Justice.

(Amended L.N. 362 of 1997)

Section:	28	Costs on acquittal	25 of 1998 s. 2	01/07/1997

Remarks:
Amendments retroactively made - see 25 of 1998 s. 2

Where a person is acquitted after trial before the High Court or the District Court for an offence under Part II, the court may award costs to that person, such costs to be taxed and paid out of the general revenue.

(Amended 25 of 1998 s. 2)

Section:	29	Offence of making a false report of the commission of offence, etc.		30/06/1997

Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Ordinance, knowingly-

(a) makes or causes to be made a false report of the commission of an offence under this Ordinance to any investigating officer specified in an authorization given under section 13; or

(b) misleads any investigating officer specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of $20000 and to imprisonment for 1 year.

(Amended 9 of 1974 s. 12)

Section:	30	Offence to disclose identity, etc. of persons being investigated		30/06/1997

(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under Part II is taking place, without lawful authority or reasonable excuse, discloses to-

(a) the person who is the subject of the investigation (the "subject person") the fact that he is so subject or any details of such investigation; or

(b) the public, a section of the public or any particular person the identity of the subject person or the fact that the subject person is so subject or any details of such investigation,

shall be guilty of an offence and shall be liable on conviction to a fine of $20000 and to imprisonment for 1 year. (Replaced 48 of 1996 s. 15)

(1A) (Repealed 48 of 1996 s. 16)

(2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation-

(a) a warrant has been issued for the arrest of the subject person;

(b) the subject person has been arrested whether with or without warrant;

(c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice served on him under section 14(1)(a) or (b);

(d) a restraining order has been served on any person under section 14C(3);

(e) the residence of the subject person has been searched under a warrant issued under section 17; or

(f) the subject person has been required to surrender to the Commissioner any travel document in his possession by a notice served on him under section 17A. (Replaced 48 of 1996 s. 16)

(3) Without affecting the generality of the expression "reasonable excuse" in subsection (1) a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection if, but only to the extent that, the disclosure reveals-

(a) any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Commissioner, the Deputy Commissioner or any officer of the Commission; or

(b) a serious threat to public order or to the security of Hong Kong or to the health or safety of the public. (Replaced 48 of 1996 s. 16)

(Amended 9 of 1974 s. 13)

Section:	30A	Protection of informers		30/06/1997

(1) Save as provided in subsection (2)-

(a) no information for an offence under this Ordinance shall be admitted in evidence in any civil or criminal proceeding; and

(b) no witness in any civil or criminal proceeding shall be obliged-

(i) to disclose the name or address of any informer who has given information to the Commissioner with respect to an offence under this Ordinance or of any person who has assisted the Commissioner in any way with respect to such an offence; or

(ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person,

if, in either case, such informer or person is not himself a witness in such proceeding,

and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) If in any proceeding before a court for an offence under this Ordinance the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not

believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Commissioner, the court may permit inquiry and require full disclosure concerning the informer or such person.

(Added 28 of 1980 s. 13)

Section:	31	Consent of Secretary for Justice required for prosecution of offences under Part II	L.N. 362 of 1997	01/07/1997

(1) No prosecution for an offence under Part II shall be instituted except with the consent of the Secretary for Justice.

(2) Notwithstanding subsection (1) of this section a person may be charged with an offence under Part II and may be arrested therefor, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the consent of the Secretary for Justice to the institution of a prosecution for the offence has not been obtained, but no such person shall be remanded in custody or on bail for longer than 3 days on such charge unless in the meantime the consent of the Secretary for Justice aforesaid has been obtained. (Amended 56 of 1973 s. 4)

(3) When a person is brought before a magistrate before the Secretary for Justice has consented to the prosecution, the charge shall be explained to the person accused but he shall not be called upon to plead and the provision of the law for the time being in force relating to criminal procedure shall be modified accordingly.

(4) Neither section 7 of the Legal Officers Ordinance (Cap 87) nor section 43 of the Interpretation and General Clauses Ordinance (Cap 1) shall apply to or in respect of the giving by the Secretary for Justice of his consent to the institution of a prosecution for an offence against section 10. (Added 56 of 1973 s. 4)

(Amended L.N. 362 of 1997)

Section:	31A	Time limit for prosecution of offences		30/06/1997

Remarks:
Due to technical constraints, sections 31AA and 31AB of this Ordinance are placed after section 31A in the BLIS system. The correct sequence of the sections should be "31AA, 31AB, 31A".

(1) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), a complaint may be made or an information laid in respect of an offence under section 3, 14(5), 14A(5), 14C(6) or 33A within 2 years from the time when the matter of such complaint or information respectively arose.

(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap 227), a complaint may be made or an information laid in respect of an offence under section 13(3), 13(4), 29 or 30(1) within 1 year from the time when the matter of such complaint or information respectively arose.

(3) Where a person has, before the commencement of the Prevention of Bribery (Amendment) Ordinance 1980 (28 of 1980), committed an offence under section 3, 13(3), 13(4), 14(5), 14A(5), 14C(6), 29 or 30(1) and, but for this section, would not be liable to be prosecuted for that offence by virtue of section 26 of the Magistrates Ordinance (Cap 227), he shall, notwithstanding this section, not be liable to be prosecuted for that offence.

(Added 28 of 1980 s. 14)

Section:	31AA	Referral of matter involving offence suspected to have been committed by Chief Executive	22 of 2008	04/07/2008

Remarks:
Due to technical constraints, sections 31AA and 31AB of this Ordinance are placed after section 31A in the BLIS system. The correct sequence of the sections should be "31AA, 31AB, 31A".

(1) Notwithstanding section 30, where the Commissioner has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, the Commissioner may refer the matter to the Secretary for Justice for him to consider whether to exercise his power under subsection (2).

(2) Notwithstanding section 30, where as a result of a referral made under subsection (1), the Secretary for Justice has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, he may refer the matter to the Members of the Legislative Council for them to consider whether to take any action under

Article 73(9) of the Basic Law.

(Added 22 of 2008 s. 5)

Section:	31AB	Disclosure of information received under section 31AA by Members of Legislative Council etc.	22 of 2008	04/07/2008

Remarks:
Due to technical constraints, sections 31AA and 31AB of this Ordinance are placed after section 31A in the BLIS system. The correct sequence of the sections should be "31AA, 31AB, 31A".

(1) Notwithstanding section 30, a Member of the Legislative Council may disclose any information received under section 31AA to the Secretary General for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(2) Notwithstanding section 30, the Secretary General may, with the prior approval of the President of the Legislative Council, disclose any information received under subsection (1) to any member of the staff employed in the Legislative Council Secretariat if the Secretary General is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(3) The President of the Legislative Council shall not approve a disclosure under subsection (2) unless the President is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(4) Where in relation to a matter referred to the Members of the Legislative Council under section 31AA(2), a motion has been initiated jointly by one-fourth of all the Members of the Legislative Council under Article 73(9) of the Basic Law charging the Chief Executive with serious breach of law or dereliction of duty, section 30(1) shall not apply as regards the disclosure by any person of any information relating to the matter provided by the Secretary for Justice to the Members of the Legislative Council under section 31AA(2).

(5) In this section, "Secretary General" (秘書長) has the meaning assigned to it in section 2 of The Legislative Council Commission Ordinance (Cap 443).

(Added 22 of 2008 s. 5)

Section:	32	Alternative convictions, and amending particulars		30/06/1997

(1) If, on the trial of any person for any offence under Part II, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part II, the accused may, notwithstanding the absence of consent under section 31 in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly. (Amended 56 of 1973 s. 5)

(2) If on the trial of any person for any offence under Part II there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of consent under section 31 in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness. (Amended 56 of 1973 s. 5)

(3) If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

(4) Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.

Section:	33	Effect of conviction of an offence under this Ordinance	L.N. 320 of 1999	01/01/2000

Any person convicted of an offence under Part II of this Ordinance shall, by reason of such conviction, be disqualified for a period of 5 years from the date of such conviction from-

(a) being elected as a Member of the Legislative Council; or
(b) being or being elected or appointed as a member of the Executive Council and any other public body, other than a public body specified in Schedule 1. (Amended 20 of 1999 s. 4; 78 of 1999 s. 7)

(Replaced 134 of 1997 s. 85)

Section:	33A	Power of court to prohibit employment of convicted person	L.N. 362 of 1997	01/07/1997

(1) Where a person has been convicted of an offence under Part II, a court may, on the application of the prosecution or on its own motion, where it considers it to be in the public interest so to do, order that the convicted person be prohibited from taking or continuing employment, whether temporary or permanent and whether paid or unpaid-

(a) in the case where the convicted person was employed by a corporation or a public body at the time of or prior to his conviction, as a director or manager or in such other capacity concerned with, whether directly or indirectly, the management of that corporation or any public body or any corporation that is a subsidiary of that corporation or any public body within the meaning of section 2 of the Companies Ordinance (Cap 32); or
(b) in the case where the convicted person was practising any profession or was otherwise self-employed at the time of or prior to his conviction, in the practice of his profession or in the business, or class of business, in which he was so employed, as the case may be;
(c) in other cases, as a partner or as a manager of or in such other capacity concerned with, whether directly or indirectly, the management of such partnership, firm or person or such class of partnership, firm or person; and
(d) for such period not exceeding 7 years,

as the court may determine.

(2) A person in respect of whom an order under subsection (1) has been made may at any time during the continuance in force of the order apply to the court for the order to be varied or cancelled.

(3) On an application under subsection (2) the court shall consider all the circumstances including any changes in the applicant's circumstances since the making of the order and whether it would be in the public interest for the order to be varied or cancelled.

(4) Not less than 7 days before the hearing of an application under subsection (2) the person applying shall give written notice to the Secretary for Justice of his intentions and on any hearing of an application the Secretary for Justice shall have the right to appear and be heard. (Amended L.N. 362 of 1997)

(5) Any person in respect of whom an order under subsection (1) has been made who contravenes the order commits an offence and is liable to a fine of $50000 and to imprisonment for 12 months.

(Added 28 of 1980 s. 16)

Section:	34	Extension of certain provisions in relation to offences under repealed Ordinance		30/06/1997

(1) The provisions contained in Part III shall apply to and in respect of offences suspected or alleged to have been committed under the repealed Prevention of Corruption Ordinance (Cap 215, 1964 Ed.) as they apply to and in respect of offences suspected or alleged to have been committed under this Ordinance.

(2) The references in sections 27, 29 and 30 to this Ordinance shall be deemed to include a reference to the repealed Prevention of Corruption Ordinance (Cap 215, 1964 Ed.).

Section:	35	Amendment of Schedules	L.N. 157 of 1999	17/06/1999

Remarks:
Adaptation amendments retroactively made - see 1 of 2003 s. 3

The Chief Executive in Council may by order published in the Gazette amend the Schedules.

(Amended 20 of 1999 s. 5; 1 of 2003 s. 3)

Schedule:	1	PUBLIC BODIES	L.N. 36 of 2009	01/06/2009

[sections 2(1) & 35]
(Amended 20 of 1999 s. 6)

1. Hong Kong Telecom International Limited. (Replaced 20 of 1999 s. 6)
2 China Light and Power Company Limited.
3. (Repealed 20 of 1999 s. 6)
4. The Chinese University of Hong Kong. (Replaced 20 of 1999 s. 6)
5. Hong Kong Arts Development Council. (Replaced 26 of 1995 s. 19)
6. (Repealed L.N. 198 of 1999)
7. Fish Marketing Organization.
8. Hong Kong and China Gas Company Limited.
9. Hong Kong and Yaumati Ferry Company Limited.
10. Hong Kong Air Cargo Terminals Limited.
11. Hong Kong Building and Loan Agency.
12. Hong Kong Commercial Broadcasting Company Limited.
13. Hong Kong Electric Company Limited.
14. Hong Kong Export Credit Insurance Corporation.
15. Hong Kong Housing Authority.
16. Hong Kong Housing Society.
17. (Repealed 50 of 1987 s. 13)
18. The Hong Kong Polytechnic University. (Replaced 94 of 1994 s. 23)
19. Hong Kong Productivity Council.
20. Hong Kong Settlers Housing Corporation Limited.
21. Hong Kong Telephone Company Limited.
22. Hong Kong Tourism Board. (Replaced 3 of 2001 s. 45)
23. Hong Kong Trade Development Council.
24. Hong Kong Tramways Limited.
25. Kowloon Motor Bus Company (1933) Limited.
26. (Repealed L.N. 249 of 1990)
27. Ocean Park Corporation. (Amended 35 of 1987 s. 40)
28. Peak Tramways Company Limited.
29. Asia Television Limited. (Replaced L.N. 31 of 1983)
30. Hong Kong Jockey Club. (Amended 20 of 1999 s. 6)
31. The Hong Kong Jockey Club (Charities) Limited. (Replaced L.N. 512 of 1994)
32. "Star" Ferry Company Limited.
33. Television Broadcasts Limited.
34. The Community Chest of Hong Kong.
35. University of Hong Kong.
36. Vegetable Marketing Organization.
37. MTR Corporation Limited. (Added 36 of 1975 s. 31. Amended 13 of 2000 s. 65)
38. (Repealed 5 of 2001 s. 40)
39. The Hong Kong Examinations and Assessment Authority. (Added 23 of 1977 s. 17. Amended 23 of 2002 s. 26)
40. Consumer Council. (Added 56 of 1977 s. 22)
41. (Repealed 20 of 1999 s. 6)
42. The Vocational Training Council. (Added 6 of 1982 s. 25)
43. The Kowloon-Canton Railway Corporation. (Added 73 of 1982 s. 39)
44. New Lantao Bus Company (1973) Limited. (Added L.N. 160 of 1983)
45. Hong Kong Baptist University. (Added 50 of 1983 s. 34. Amended 93 of 1994 s. 39)
46. City University of Hong Kong. (Added 65 of 1983 s. 25. Amended 92 of 1994 s. 32)
47. The Hong Kong Academy for Performing Arts. (Added 38 of 1984 s. 28)
48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)
50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)

Schedule:	1	PUBLIC BODIES	L.N. 36 of 2009	01/06/2009

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48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)
50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)

51. Urban Renewal Authority. (Replaced 63 of 2000 s. 38)
52. Securities and Futures Commission. (Added 10 of 1989 Schedule 2)
53. The Open University of Hong Kong. (Replaced 50 of 1997 s. 29)
54. (Repealed 11 of 2004 s. 17)
55. Travel Industry Council of Hong Kong. (Added L.N. 62 of 1990)
56. (Repealed 20 of 1999 s. 6)
57. Hong Kong Council for Accreditation of Academic and Vocational Qualifications. (Replaced 6 of 2007 s. 50)
58. The Hospital Authority (including any committee established by the Hospital Authority). (Added 68 of 1990 s. 24)
59. The Airport Authority. (Replaced 71 of 1995 s. 49)
60. Metro Broadcast Corporation Limited. (Added L.N. 184 of 1991)
61. Hong Kong Academy of Medicine. (Added 55 of 1992 s. 16)
62. Lingnan University. (Added 72 of 1992 s. 29. Replaced 54 of 1999 s. 29)
63. Citybus Limited. (Added L.N. 330 of 1992)
64. New Hong Kong Tunnel Company Limited. (Added L.N. 382 of 1992)
65. Tate's Cairn Tunnel Company Limited. (Added L.N. 382 of 1992)
66. (Repealed 5 of 2001 s. 40)
67. (Repealed 134 of 1997 s. 85)
68. Tradelink Electronic Commerce Limited. (Replaced L.N. 125 of 1998)
69. Travel Industry Compensation Fund Management Board. (Added 51 of 1993 s. 8)
70. Western Harbour Tunnel Company Limited. (Added 72 of 1993 s. 71)
71. Wharf Cable Limited. (Added L.N. 384 of 1993)
72. The Legislative Council Commission. (Added 14 of 1994 s. 24)
73. The Hong Kong Institute of Education. (Added 16 of 1994 s. 25)
74. Hong Kong Quality Assurance Agency. (Added L.N. 409 of 1994)
75. Equal Opportunities Commission. (Added 67 of 1995 s. 91)
76. The Security and Guarding Services Industry Authority. (Added 97 of 1994 s. 34)
77. Legal Aid Services Council. (Added 17 of 1996 s. 14)
78. Route 3 (CPS) Company Limited. (Added 33 of 1995 s. 65)
79. Privacy Commissioner for Personal Data. (Added 81 of 1995 s. 72)
80. Authorized Persons Registration Committee. (Added 54 of 1996 s. 27)
81. Structural Engineers Registration Committee. (Added 54 of 1996 s. 27)
82. Contractors Registration Committee. (Added 54 of 1996 s. 27)
83. The Estate Agents Authority. (Added 48 of 1997 s. 57)
84. Long Win Bus Company Limited. (Replaced 20 of 1999 s. 6)

84A. Long-term Prison Sentences Review Board. (Added 86 of 1997 s. 44. Amended 20 of 1999 s. 6)

85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)
91. The Stock Exchange of Hong Kong Limited. (Added 20 of 1999 s. 6)
92. Hong Kong Futures Exchange Limited. (Added 20 of 1999 s. 6)
93. Hong Kong Securities Clearing Company Limited. (Added 20 of 1999 s. 6)
94. The SEHK Options Clearing House Limited. (Added 20 of 1999 s. 6)
95. HKFE Clearing Corporation Limited. (Added 20 of 1999 s. 6)
96. Hong Kong Exchanges and Clearing Limited. (Added 12 of 2000 s. 23)
97. Hong Kong Science and Technology Parks Corporation. (Added 5 of 2001 s. 40)
98. The Ombudsman. (Added 30 of 2001 s. 24)

*99. A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap 571). (Added L.N. 226 of 2002 and 5 of 2002 s. 407)

100. Construction Workers Registration Authority. (Added 18 of 2004 s. 66)
101. Hong Kong Deposit Protection Board. (Added 7 of 2004 s. 55)
102. Geotechnical Engineers Registration Committee. (Added 15 of 2004 s. 61)

103. Hong Kong Sports Institute Limited. (Added L.N. 4 of 2005)
104. Construction Industry Council. (Added 12 of 2006 s. 84)
105. Construction Industry Training Board. (Added 12 of 2006 s. 84)
106. Financial Reporting Council. (Added 18 of 2006 s. 79)
107. Commissioner on Interception of Communications and Surveillance. (Added 20 of 2006 s. 68)
108. Hong Kong IEC Limited. (Added L.N. 233 of 2006)
109. Independent Police Complaints Council. (Added 33 of 2008 s. 47)
110. West Kowloon Cultural District Authority (including any committees established under the West Kowloon Cultural District Authority Ordinance (Cap 601)). (Added 27 of 2008 s. 42)
111. Any entity established under section 5(2)(h) of the West Kolwoon Cultural District Authority Ordinance (Cap 601). (Added 27 of 2008 s. 42)
112. Wave Media Limited. (Added L.N. 245 of 2008)

(Replaced L.N. 272 of 1974)

Note:

*** The Investor Compensation Company Limited has been recognised as an investor compensation company (please see G.N. 1220 of 2003).**

Schedule:	2	PUBLIC BODIES SPECIFIED FOR PURPOSES OF DEFINITION OF "PUBLIC SERVANT"	L.N. 204 of 2006	01/12/2006

[sections 2(1) & 35]

1. The Stock Exchange of Hong Kong Limited.
2. Hong Kong Futures Exchange Limited.
3. Hong Kong Securities Clearing Company Limited.
4. The SEHK Options Clearing House Limited.
5. HKFE Clearing Corporation Limited.
6. Hong Kong Exchanges and Clearing Limited. (Added 12 of 2000 s. 23)

*7. A company recognized as an investor compensation company under section 79(1) of the Securities and Futures Ordinance (Cap 571). (Added L.N. 226 of 2002)

8. Financial Reporting Council. (Added 18 of 2006 s. 80)

(Schedule 2 added 20 of 1999 s. 7)

Note:

*** The Investor Compensation Company Limited has been recognised as an investor compensation company (please see G.N. 1220 of 2003).**

The Act with Instructions for the Parliamentary Ombudsmen, Sweden

The Act with Instructions for the Parliamentary Ombudsmen (Lag [1986:765] med instruktion för Riksdagens ombudsmän - "JO-instruktionen")

issued 13 November 1986

In accordance with the decision of the Riksdag the following has been determined.

Tasks

1. In accordance with 8.11 of the Riksdag Act, there are four Ombudsmen, a Chief Parliamentary Ombudsman and three Parliamentary Ombudsmen. In addition to this, there may be Deputy Ombudsmen.

The Chief Parliamentary Ombudsman and the Parliamentary Ombudsmen are to supervise, to the extent laid down in Article 2, that those who exercise public authority are to obey the laws and other statutes and fulfil their obligations in other respects. Act (1995:404).

2 . Those supervised by the Ombudsmen are

1. state and municipal authorities,
2. officials and other employees of these authorities,
3. other individuals whose employment or assignment involves the exercise of public authority, insofar as this aspect of such activity is concerned,
4. officials and those employed by public enterprises, while carrying out, on behalf of such an enterprise, activities in which through the agency of the enterprise the Government exercises decisive influence

Where officers in the armed forces are concerned, however, this supervision extends only to commissioned officers with the rank of second lieutenant or above, and to those of corresponding rank.

The supervision of the Ombudsmen does not extend to

1. Members of the Riksdag,
2. The Riksdag Board of Administration, the Riksdag's Election Review Board, the Riksdag's Complaints Board or the Clerk of the Chamber,
3. Members of the Governing Board of the Riksbank, members of the Executive Board of the Riksbank, except to the extent of their involvement in exercise of the powers of the Riksbank to make decisions in accordance with the Act on the Regulation of Currency and Credit (1992:1602),
4. the Government or Ministers,
5. the Chancellor of Justice, and
6. members of policy-making municipal bodies.

An Ombudsman is not subject to the supervision of any other Ombudsman.

The term official is used in this act, unless otherwise indicated by the context, to refer to those who are subject to the supervision of the Ombudsmen.

3 . The Ombudsmen are to ensure in particular that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government about objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

In supervision of municipal authorities the Ombudsmen are to take into consideration the forms taken by municipal self-determination.

4 . The Ombudsmen are to contribute to remedying deficiencies in legislation. If, during the course of their supervisory activities, reason is given to raise the question of amending legislation or of some other measure by the state, the Ombudsmen may then make such representations to the Riksdag or the Government.

The Parliamentary Ombudsmen are to consult the Chief Parliamentary Ombudsman before making the representations referred to in the above paragraph.

5 . Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary. The Ombudsmen are to consult the Chief Parliamentary Ombudsman on the inspections and other inquiries they intend to carry out.

6. The Ombudsmen conclude cases with an adjudication, which states an opinion as to whether a measure taken by an authority or an official is in breach of the law or some other statute, or is otherwise erroneous or inappropriate. The Ombudsmen may also make statements intended to promote uniform and appropriate application of the law.

In the role of extra-ordinary prosecutor, an Ombudsman may initiate legal proceedings against an official who, in disregarding the obligations of his office or his commission, has committed a criminal offence other than an offence against the Freedom of the Press Act or right to freedom of expression. If an inquiry into a case gives an Ombudsman reason to believe that such a criminal offence has been committed, the stipulations in the law concerning preliminary inquiries, prosecution and waiver of prosecution are to apply, together with those regarding the powers otherwise afforded to prosecutors in criminal cases subject to public prosecution. Cases brought before a district court are to be pursued to the Supreme Court only if there are exceptional grounds for doing so.

If proceedings can be taken by means of disciplinary measures against an official who, in disregarding the obligations of his office or his commission, has committed an error, the Ombudsmen may report the matter to those empowered to decide on such measures. In the case of an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, or as a veterinary surgeon, who has displayed gross incompetence in his professional activities or shown himself in some other way to be obviously unsuitable to practise, the Ombudsmen may submit a report to those who have the authority to decide on the revocation of the qualification or the authorisation.

A similar request for limitation of the scope of the qualification may be made when somebody with such qualifications has abused his powers in some other way. If an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, has displayed incompetence in his professional activities or shown himself in some other way unsuitable to practise his profession, the Ombudsman may request the imposition of a probationary period of those who have the authority to make such a decision.

Should the Ombudsmen consider it necessary that the official be dismissed or temporarily deprived of his office because of criminal acts or gross or repeated misconduct, the Ombudsman may report the matter to those empowered to decide on such a measure. When an Ombudsman has made a report of the kind referred to in the two preceding paragraphs, he is to be given the opportunity to supplement his own inquiry into the case, and to submit an opinion on any inquiry into the case carried out by some other person, as well as the right to be present if oral questioning occurs. This is not to apply, however, if the case concerns temporary deprival of office. Act (1998:540)

7. If an authority has decided against an official in a case involving application of special regulations in the law or other statutes concerning officials and matters of discipline, or dismissal or temporary deprival of office because of criminal acts or misconduct, an Ombudsman may refer the case to a court of law for amendment of the decision. This is also to apply to the decision of an authority in a case concerning disciplinary measures against medical or hospital staff, veterinary surgeons, those serving in the armed forces or subject to discipline according to the Act on Discipline within Total Defence etc. (1994:1811) as well as the decision of an authority in cases concerning probationary periods or issues concerning certification of the kind referred to in the third paragraph of Article 6. More detailed regulations about such referral are issued in the form of law or some other statute.

   If an official, in accordance with the stipulations in force, has applied to a court for amendment of a decision of the kind referred to in the above paragraph, and if the decision was made as a result of a report from an Ombudsman, the Ombudsman is to act on behalf of the public against the official during the dispute. This is also to apply if the Ombudsman has sought amendment of the decision.

   The stipulations of laws or other statutes applying to employers are, where disputes referred to in this paragraph are concerned, to apply correspondingly to the Ombudsmen. The stipulations in 4.7 and 5.1 of the Act on Litigation in Labour Disputes (1974:371) are not, however, to apply in cases where the action is being brought by an Ombudsman. Act (1998:540).

8 . The Ombudsmen should not intervene against a subordinate official with no independent powers, unless there are exceptional reasons for doing so.

9 . The powers of the Ombudsmen to initiate legal proceedings against a member of the Supreme Court or the Supreme Administrative Court or to press for the dismissal or deprival of office of such an official, or for the requirement that the official submit to medical examination are laid down in the Instrument of Government.

10. The Ombudsmen are obliged to initiate and prosecute those legal proceedings which the Committee on the Constitution has decided to institute against a Minister, in accordance with 12.3 of the Instrument of Government, and also legal proceedings against officials within the Riksdag or its agencies decided by committees of the Riksdag, in accordance with the regulations, but not, however, legal proceedings against an Ombudsman.

    The Ombudsmen are also obliged to assist committees of the Riksdag in preliminary inquiries concerning those officials cited in the previous paragraph.

11. The Ombudsmen are to submit, by 15 November at the latest, each year a printed report on the discharge of their office covering the period from 1 July of the preceding year until the following 30 June. This report is to contain an account of the actions which have been taken by virtue of paragraph 1 of Article 4, paragraphs 2 - 4 of Article 6, and Article 7, together with other significant decisions published by the Ombudsmen. The report is also to contain a survey of their activities in other respects.

Organisation

12 . In accordance with 8.11 of the Riksdag Act, the Chief Parliamentary Ombudsman is the administrative head and decides on the overall direction activities are to take. In his administrative directives he is to issue regulations about the organisation of these activities and the allocation of cases among the Ombudsmen.

    The Chief Parliamentary Ombudsman is responsible for ensuring that internal audits of the Institution take place. Internal audits are to comprise independent review of the Institution's internal management and monitoring procedures and its compliance with the requirements relating to its financial accounting. This audit is to conducted in compliance with good practice for internal auditing.

    The Parliamentary Ombudsmen adopt the audit plan for their operations after consultation with the National Audit Office.

13 . The activities of the Ombudsmen are to be administered by an Ombudsmen's secretariat (Ombudsmannaexpedition), which is to employ an Administrative Director, Heads of Division and other administrative staff as laid down by the Riksdag. To the extent needed, and insofar as funds are available, the Chief Parliamentary Ombudsman may appoint other staff, experts and referees. The Chief Parliamentary Ombudsman is to decide on the duties assigned to the staff.

    The Administrative Director is to direct the work of the secretariat, as subordinate to the Chief Parliamentary Ombudsman, and is otherwise to afford the Ombudsmen such assistance as they may require.

14 . In addition to these instructions and those laid down in his administrative directives, the Chief Parliamentary Ombudsman is to issue the rules and regulations needed for the work of the secretariat.

    The Chief Parliamentary Ombudsman is to consult the Committee on the Constitution on organisational issues of importance.

    Before consultation with the Committee on the Constitution, an Ombudsman is to consult the Chief Parliamentary Ombudsman.

15 . Irrespective of the import of the administrative directives, the Chief Parliamentary Ombudsman may make a specific decision allocating a particular case or group of cases to himself or one of the other Ombudsmen.

In addition, the Chief Parliamentary Ombudsman may in the administrative directives or through some other decision authorise

- officials within the Ombudsmen's secretariat to take measures in preparing a case,
- officials to carry out inspections, without, however, the right while doing so to make comments or other pronouncements on behalf of the Ombudsman, and also
- the Administrative Director to make administrative decisions, but not however concerning the appointment of heads of division.

The Chief Parliamentary Ombudsman is to decide whether a Deputy Ombudsman is to serve as an Ombudsman. A Deputy Ombudsmen may be appointed to serve if an Ombudsman is prevented by a considerable period of illness or on some other special grounds from performing his duties, or if a need arises for the services of a Deputy Ombudsman for some other reason. Act (1995:404).

16 . When the Chief Parliamentary Ombudsman is on holiday or is prevented from discharging his duties, of the other Ombudsman the one with the longest period of service is to act as his deputy. If two or more of the Ombudsmen have served for the same length of time, the oldest is to take precedence. Act (1995:404).

Complaints

17.Complaints should be made in writing. The written complaint should indicate which authority the complaint is made about, the action which the complainant is referring to, the date of the action, together with the name and address of the complainant. If the complainant possesses a document which is of significance in dealing with and assessing the case, this should be appended.

A person who has been deprived of his liberty may write to the Ombudsmen, without being prevented by the restrictions on sending letters and other documents which may apply to him.

At the complainant's request, confirmation is to be issued by the secretariat of receipt of the complaint.

General regulations about the treatment of cases

18. If an issue arising from a complaint is of such a nature that it can appropriately be investigated and appraised by an authority other than the Ombudsman, and if that authority has not previously reviewed the matter, the Ombudsman may refer the complaint to the authority for action. Complaints may, however, only be referred to the Chancellor of Justice after prior agreement.

If a complaint concerns an official who is a member of the Swedish Bar Association, and if the issue raised by the complaint is such that it can, in accordance with the fourth

paragraph of 8.7 of the Code of Judicial Procedure, be appraised by a body within the Bar Association, the Ombudsman may refer the complaint to the Association for action.

19. The Ombudsmen shall inform a complainant without delay as to whether his complaint has been rejected, filed, referred to some other agency, in accordance with Article 18, or has been made the subject of an inquiry.

20. The Ombudsmen should not initiate inquiries into circumstances which date back two or more years, unless there are exceptional grounds for doing so.

21. The Ombudsmen are to carry out the investigative measures required in appraising complaints and other cases.

When the Ombudsmen, in accordance with the stipulations of the Instrument of Government, request information and statements in cases other than those in which it has been decided to institute a preliminary inquiry, they may do so on penalty of fine not exceeding 10,000 Swedish Crowns. The Ombudsmen may impose such a penalty, if incurred.

If there are ground for suspecting that an official subject to the regulations about disciplinary measures in the Act on Official Employment (1994:260), is guilty of misconduct for which disciplinary measures should be invoked, and there is reason to fear that a written caution, as laid down in the article 17 of that Act, cannot be issued to him within two years of the misconduct, the Ombudsmen may issue a corresponding caution. This provision is also to apply to those who, by virtue of other statutes, are also subject to regulations on disciplinary measures and to cautions and corresponding notification.

When an Ombudsman is present at the deliberations of a court or other public authority, he does not have the right to express an opinion. Act (1997:561).

22 . An Ombudsman may authorise some other person to administer an inquiry which he has decided to initiate and to institute and prosecute legal proceedings he has decided on, unless these measures concern a member of the Supreme Court or the Supreme Administrative Court.

A decision to appeal a judgement or a decision to a superior court may only be made by an Ombudsman.

In cases referred to in Article 7, the Ombudsman may appoint an official on the Ombudsmen's staff to prosecute the legal proceedings on behalf of the Ombudsman.

In cases referred to in the third and fourth paragraphs of Article 6, the Ombudsmen may authorise officials on the Ombudsmen's staff to undertake action required.

23. Cases are concluded after oral presentation, for which an official on the staff of the ombudsmen's secretariat or specially appointed for the task is responsible. Decisions to reject a case or file it, can, however, be made without such presentation. The Ombudsman may also conclude other cases without oral presentation if there are exceptional grounds for doing so.

Documents that have been submitted to the Parliamentary Ombudsman in connection with a case may not be returned until the case has been concluded. If in such a case an authority is deprived of the original document, this may be returned subject to the submission of a certified copy of the document. Act (1994:1649)

24. A journal is to be kept for all cases and for the actions taken in connection with them.

    Documentary records for every decision are to be kept at the Ombudsmen's secretariat showing who made the decision, who was responsible for the oral presentation and the date and content of the decision.

    A register is to be kept of specially designated decisions. Written records are to be kept during inspections and when needed for other reasons.

Miscellaneous regulations

25. When the annual report is submitted to the Riksdag, journals, written records and registers covering the same period are to be presented at the same time to the Committee on the Constitution.

26. The Ombudsmen's secretariat is to be open to the public during the hours decided on by the Chief Parliamentary Ombudsman.

27. Documents are to be issued free of charge, unless otherwise justified for special reasons.

    If a charge is to be made, it should be fixed according to the regulations in force for public authorities in general.

    No appeal may be made against a decision to impose a charge.

    The revenue from charges is at the disposal of the Parliamentary Ombudsmen.

28. The Chief Parliamentary Ombudsman appoints officials within the Ombudsmen's secretariat and other staff, insofar as he has not delegated these tasks, as laid down in Article 15, to the Administrative Director.

29. Regulations concerning appeal against decisions in matters of appointment to posts or otherwise affecting staff within the Ombudsmen's secretariat, are laid down in the Regulations for Appeal for the Riksdag and its Agencies.

The Bihar Special Courts Bill, 2009

THE BIHAR SPECIAL COURTS BILL, 2009

A

BILL

PREAMBLE :— TO PROVIDE FOR THE CONSTITUTION OF SPECIAL COURTS FOR THE SPEEDY TRIAL OF CERTAIN CLASS OF OFFENCES AND FOR CONFISCATION OF THE PROPERTIES INVOLVED.

WHEREAS corruption is perceived to be amongst the persons holding public offices and public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar;

AND WHEREAS the Government has sufficient reasons to believe that large number of persons, who have held or are holding public offices and are public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

AND WHEREAS it is obligation of the State to prosecute persons involved in such corrupt practices and confiscate their ill gotten assets.

AND WHEREAS the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;

AND WHEREAS it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judges/Additional Sessions Judges and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial.

BE it enacted by the Legislature of State of Bihar in the Sixtieth Year of the Republic of India as follows: —

CHAPTER I

PRELIMINARY

1. Short title extent and Commencement :-

(*1*) This Act may be called the Bihar Special Courts Act, 2009.

(*2*) It shall extend to the whole of the State of Bihar.

(3) It shall come into force at once.

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

(a) ''Act'' means Prevention of Corruption Act, 1988.

(b) "authorised officer" means any serving officer belonging to Bihar Superior Judicial Service and who is or has been Session Judge/Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of section 13;

(c) "Code" means the Code of Criminal Procedure, 1973; (2 of 1974)

(*d*) "declaration" in relation to an offence, means a declaration made under section-5 in respect of such offence;

(e) "offence" means an offence of criminal misconduct which attracts application of Section-13(1)(e) of the Act either independently or in combination with any other provision of the Act or any of the provision of Indian Penal code. (49 of 1988)

(f) "Special Court" means a Special Court established under section 3; and

(g) words and expressions used herein and not defined but defined in the Code or the Act shall have the meanings respectively assigned to them in the Code or the Act.

CHAPTER II

ESTABLISHMENT OF SPECIAL COURTS

3. **Establishment of Special Courts-** (*1*) The State Government shall, for the purpose of speedy trial of offence, by notification, establish as many Courts as considered adequate to be called Special Courts.

(*2*) A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the Patna High Court

(*3*) No person shall be qualified for nomination as a Judge of a Special Court unless he is a member of Bihar Superior Judicial Service and is or has been a Sessions Judge/Additional Sessions Judge in the State.

4. **Cognizance of cases by Special Courts-** A Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under section 10.

5. **Declaration of cases to Be dealt with under This Act-** (*1*) If the State Government is of the opinion that there is *prima-facie* evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 in the State of Bihar, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

(*2*) Such declaration shall not be called in question in any Court.

6. **Effect of declaration.—**(*1*) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(*2*) Where any declaration made under section-5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.

7. **Jurisdiction of Special Court as to Trial of Offences-** A Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under section 5, either as principal, conspirator or abettor and

All of them can be jointly tried therewith at one trial in accordance with the Code.

8. **Procedure And powers of Special Courts-** (*1*) A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.

(*2*) Save as expressly provided in this Act, the provisions of the Code and of the Prevention of Corruption Act, 1988(49 of 1988) shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the persons conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(*3*) A Special Court may pass, upon any person convicted by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.

9. **Appeal against orders of Special Courts-** (*1*) Notwithstanding anything in the Code, an appeal shall lie from any judgment and sentence of a Special Court to the High Court of Patna both on facts and law.

(*2*) Except as aforesaid, no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court.

(*3*) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment and sentence of a Special Court.

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied for reasons to be recorded in writing that the appellant had sufficient cause for not preferring the appeal within the period.

10. **Transfer of Cases-** Notwithstanding the other provisions of this Act, it would be open to the High Court of Patna to transfer cases from one Special Court to another.

11. **Special Court not bound to Adjourn a Trial-** (*1*) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.

(*2*) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institutions or transfer, as the case may be.

12. **Presiding Judge may act on evidence recorded By his Predecessor-** A Judge appointed under section 3 to preside over a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

CHAPTER III

CONFISCATION OF PROPERTY

13. Confiscation of property.—(*1*) Where the State Government, on the basis of *prima-facie* evidence, have reasons to believe that any person, who has held or is holding public office and is or has been a public servant. has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.

(*2*) An application under sub-section (1)—

(a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

14. **Notice for Confiscation-** (*1*) Upon receipt of an application made under section 13 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be

ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government .

(*2*) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(*3*) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the trial before the special court provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the special court under this Act.

15. **Confiscation of property in certain cases-** (*1*) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case here the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money or properties in question have been acquired illegally.

(*2*) Where the authorised officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).

(*3*) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property

or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(*4*) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share. (1 of 1956)

(*5*) Every proceeding for confiscation of money or property or both under his Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section(1) of section-14.

(*6*) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.

16. **Transfer To be null And void-**Where, after the issue of a notice under section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently confiscated to the State Government under section 15, then, the transfer of such money or property or both shall be deemed to be null and void.

17. **Appeal-** (*1*) Any person aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

(*2*) Upon any appeal preferred under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.

(*3*) An appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

18. **Power to take possession-** (*1*) Where any money or property or both have been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by him in this behalf, within thirty days of the service of the order:

Provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

(*2*) If any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary.

(*3*) Notwithstanding anything contained in sub-section (2) the authorised officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any police officer to assist and it shall be the bounden duty of such officer to comply with such requisition.

19. **Refund of Confiscated money or property-**Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent per annum thereon calculated from the date of confiscation.

CHAPTER IV

MISCELLANEOUS

20. **Notice or Order not to be invalid for error in description-** No notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if

such property or person is identifiable from the description so mentioned.

21. **Act to be in addition to any other law-**The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

22. **Bar to other Proceedings-**Save as provided in sections 9 and 17 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated under section 15.

23. **Protection of action taken in good faith-**No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

24. **Power to Make rules:-** The State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

25. **Notifications under section 3 and declarations under section 5 to be laid-**Every notification made under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be, after they are made, before the State Legislature.

26. **Overriding effect:-**
Notwithstanding anything in the Prevention of Corruption Act, 1988 and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

49 of 1988.
Ordinance No. 38 of 1944.

Bribery Act, 2010

The United Kingdom

Bribery Act 2010

CHAPTER 23

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ELIZABETH II c. 23

Bribery Act 2010

2010 CHAPTER 23

An Act to make provision about offences relating to bribery; and for connected purposes. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

General bribery offences

1 Offences of bribing another person

(1) A person ("P") is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage—

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed

(1) A person ("R") is guilty of an offence if any of the following cases applies.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

(3) Case 4 is where –

(a) R requests, agrees to receive or accepts a financial or other advantage, and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly –

(a) by R, or

(b) by another person at R's request or with R's assent or acquiescence.

(6) In cases 3 to 6 it does not matter –

(a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,

(b) whether the advantage is (or is to be) for the benefit of R or another person.

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

3 Function or activity to which bribe relates

(1) For the purposes of this Act a function or activity is a relevant function or activity if –

(a) it falls within subsection (2), and

(b) meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection –

(a) any function of a public nature,

(b) any activity connected with a business,

(c) any activity performed in the course of a person's employment,

(d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it—
  (a) has no connection with the United Kingdom, and
  (b) is performed in a country or territory outside the United Kingdom.

(7) In this section "business" includes trade or profession.

4 Improper performance to which bribe relates

(1) For the purposes of this Act a relevant function or activity—
  (a) is performed improperly if it is performed in breach of a relevant expectation, and
  (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1) "relevant expectation"—
  (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
  (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

(1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

(3) In subsection (2) "written law" means law contained in—
  (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
  (b) any judicial decision which is so applicable and is evidenced in published written sources.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it—
  (a) has no connection with the United Kingdom, and
  (b) is performed in a country or territory outside the United Kingdom.

(7) In this section "business" includes trade or profession.

4 Improper performance to which bribe relates

(1) For the purposes of this Act a relevant function or activity—
  (a) is performed improperly if it is performed in breach of a relevant expectation, and
  (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1) "relevant expectation"—
  (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
  (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

(1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

(3) In subsection (2) "written law" means law contained in—
  (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
  (b) any judicial decision which is so applicable and is evidenced in published written sources.

Bribery of foreign public officials

6 Bribery of foreign public officials

(1) A person ("P") who bribes a foreign public official ("F") is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official.

(2) P must also intend to obtain or retain—
  (a) business, or
  (b) an advantage in the conduct of business.

(3) P bribes F if, and only if—
  (a) directly or through a third party, P offers, promises or gives any financial or other advantage—
    (i) to F, or
    (ii) to another person at F's request or with F's assent or acquiescence, and
  (b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.

(4) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes—
  (a) any omission to exercise those functions, and
  (b) any use of F's position as such an official, even if not within F's authority.

(5) "Foreign public official" means an individual who—
  (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),
  (b) exercises a public function—
    (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
    (ii) for any public agency or public enterprise of that country or territory (or subdivision), or
  (c) is an official or agent of a public international organisation.

(6) "Public international organisation" means an organisation whose members are any of the following—
  (a) countries or territories,
  (b) governments of countries or territories,
  (c) other public international organisations,
  (d) a mixture of any of the above.

(7) For the purposes of subsection (3)(b), the written law applicable to F is—
  (a) where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,
  (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,

(c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(8) For the purposes of this section, a trade or profession is a business.

Failure of commercial organisations to prevent bribery

7 Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending—

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

(a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or

(b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.

(5) In this section—

"partnership" means—

(a) a partnership within the Partnership Act 1890, or

(b) a limited partnership registered under the Limited Partnerships Act 1907,

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

"relevant commercial organisation" means—

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business.

8 Meaning of associated person

(1) For the purposes of section 7, a person ("A") is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C does not matter.

(3) Accordingly A may (for example) be C's employee, agent or subsidiary.

(4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

9 Guidance about commercial organisations preventing bribery

(1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 7(1).

(2) The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Secretary of State must consult the Scottish Ministers before publishing anything under this section.

(4) Publication under this section is to be in such manner as the Secretary of State considers appropriate.

(5) Expressions used in this section have the same meaning as in section 7.

Prosecution and penalties

10 Consent to prosecution

(1) No proceedings for an offence under this Act may be instituted in England and Wales except by or with the consent of—
  (a) the Director of Public Prosecutions,
  (b) the Director of the Serious Fraud Office, or
  (c) the Director of Revenue and Customs Prosecutions.

(2) No proceedings for an offence under this Act may be instituted in Northern Ireland except by or with the consent of—
  (a) the Director of Public Prosecutions for Northern Ireland, or
  (b) the Director of the Serious Fraud Office.

(3) No proceedings for an offence under this Act may be instituted in England and Wales or Northern Ireland by a person—
  (a) who is acting—
    (i) under the direction or instruction of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions, or
    (ii) on behalf of such a Director, or

(b) to whom such a function has been assigned by such a Director,

except with the consent of the Director concerned to the institution of the proceedings.

(4) The Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions must exercise personally any function under subsection (1), (2) or (3) of giving consent.

(5) The only exception is if—

(a) the Director concerned is unavailable, and

(b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(6) In that case, the other person may exercise the function but must do so personally.

(7) Subsections (4) to (6) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions under subsection (1), (2) or (3) of giving consent to be exercised by a person other than the Director concerned.

(8) No proceedings for an offence under this Act may be instituted in Northern Ireland by virtue of section 36 of the Justice (Northern Ireland) Act 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) except with the consent of the Director of Public Prosecutions for Northern Ireland to the institution of the proceedings.

(9) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under subsection (2) or (8) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Act of 2002 (powers of Deputy Director to exercise functions of Director).

(10) Subsection (9) applies instead of section 36 of the Act of 2002 in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, subsections (2) and (8) above of giving consent.

11 Penalties

(1) An individual guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

(2) Any other person guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.

(b) to whom such a function has been assigned by such a Director,

except with the consent of the Director concerned to the institution of the proceedings.

(4) The Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions must exercise personally any function under subsection (1), (2) or (3) of giving consent.

(5) The only exception is if—

(a) the Director concerned is unavailable, and

(b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(6) In that case, the other person may exercise the function but must do so personally.

(7) Subsections (4) to (6) apply instead of any other provisions which would otherwise have enabled any function of the Director of Public Prosecutions, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions under subsection (1), (2) or (3) of giving consent to be exercised by a person other than the Director concerned.

(8) No proceedings for an offence under this Act may be instituted in Northern Ireland by virtue of section 36 of the Justice (Northern Ireland) Act 2002 (delegation of the functions of the Director of Public Prosecutions for Northern Ireland to persons other than the Deputy Director) except with the consent of the Director of Public Prosecutions for Northern Ireland to the institution of the proceedings.

(9) The Director of Public Prosecutions for Northern Ireland must exercise personally any function under subsection (2) or (8) of giving consent unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of the Act of 2002 (powers of Deputy Director to exercise functions of Director).

(10) Subsection (9) applies instead of section 36 of the Act of 2002 in relation to the functions of the Director of Public Prosecutions for Northern Ireland and the Deputy Director of Public Prosecutions for Northern Ireland under, or (as the case may be) by virtue of, subsections (2) and (8) above of giving consent.

11 Penalties

(1) An individual guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

(2) Any other person guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.

(4) The reference in subsection (1)(a) to 12 months is to be read—

(a) in its application to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, and

(b) in its application to Northern Ireland,

as a reference to 6 months.

Other provisions about offences

12 Offences under this Act: territorial application

(1) An offence is committed under section 1, 2 or 6 in England and Wales, Scotland or Northern Ireland if any act or omission which forms part of the offence takes place in that part of the United Kingdom.

(2) Subsection (3) applies if—

(a) no act or omission which forms part of an offence under section 1, 2 or 6 takes place in the United Kingdom,

(b) a person's acts or omissions done or made outside the United Kingdom would form part of such an offence if done or made in the United Kingdom, and

(c) that person has a close connection with the United Kingdom.

(3) In such a case—

(a) the acts or omissions form part of the offence referred to in subsection (2)(a), and

(b) proceedings for the offence may be taken at any place in the United Kingdom.

(4) For the purposes of subsection (2)(c) a person has a close connection with the United Kingdom if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British National (Overseas),

(d) a British Overseas citizen,

(e) a person who under the British Nationality Act 1981 was a British subject,

(f) a British protected person within the meaning of that Act,

(g) an individual ordinarily resident in the United Kingdom,

(h) a body incorporated under the law of any part of the United Kingdom,

(i) a Scottish partnership.

(5) An offence is committed under section 7 irrespective of whether the acts or omissions which form part of the offence take place in the United Kingdom or elsewhere.

(6) Where no act or omission which forms part of an offence under section 7 takes place in the United Kingdom, proceedings for the offence may be taken at any place in the United Kingdom.

(7) Subsection (8) applies if, by virtue of this section, proceedings for an offence are to be taken in Scotland against a person.

(8) Such proceedings may be taken—

(a) in any sheriff court district in which the person is apprehended or in custody, or

(b) in such sheriff court district as the Lord Advocate may determine.

(9) In subsection (8) "sheriff court district" is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.

13 Defence for certain bribery offences etc.

(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for—

(a) the proper exercise of any function of an intelligence service, or

(b) the proper exercise of any function of the armed forces when engaged on active service.

(2) The head of each intelligence service must ensure that the service has in place arrangements designed to ensure that any conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).

(3) The Defence Council must ensure that the armed forces have in place arrangements designed to ensure that any conduct of—

(a) a member of the armed forces who is engaged on active service, or

(b) a civilian subject to service discipline when working in support of any person falling within paragraph (a),

which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(b).

(4) The arrangements which are in place by virtue of subsection (2) or (3) must be arrangements which the Secretary of State considers to be satisfactory.

(5) For the purposes of this section, the circumstances in which a person's conduct is necessary for a purpose falling within subsection (1)(a) or (b) are to be treated as including any circumstances in which the person's conduct—

(a) would otherwise be an offence under section 2, and

(b) involves conduct by another person which, but for subsection (1)(a) or (b), would be an offence under section 1.

(6) In this section—

"active service" means service in—

(a) an action or operation against an enemy,

(b) an operation outside the British Islands for the protection of life or property, or

(c) the military occupation of a foreign country or territory,

"armed forces" means Her Majesty's forces (within the meaning of the Armed Forces Act 2006),

"civilian subject to service discipline" and "enemy" have the same meaning as in the Act of 2006,

"GCHQ" has the meaning given by section 3(3) of the Intelligence Services Act 1994,

"head" means—

(a) in relation to the Security Service, the Director General of the Security Service,

(b) in relation to the Secret Intelligence Service, the Chief of the Secret Intelligence Service, and

(c) in relation to GCHQ, the Director of GCHQ,

"intelligence service" means the Security Service, the Secret Intelligence Service or GCHQ,

"relevant bribery offence" means—

(a) an offence under section 1 which would not also be an offence under section 6,

(b) an offence under section 2,

(c) an offence committed by aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b),

(d) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence falling within paragraph (a) or (b), or

(e) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence falling within paragraph (a) or (b).

14 Offences under sections 1, 2 and 6 by bodies corporate etc.

(1) This section applies if an offence under section 1, 2 or 6 is committed by a body corporate or a Scottish partnership.

(2) If the offence is proved to have been committed with the consent or connivance of—

(a) a senior officer of the body corporate or Scottish partnership, or

(b) a person purporting to act in such a capacity,

the senior officer or person (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) But subsection (2) does not apply, in the case of an offence which is committed under section 1, 2 or 6 by virtue of section 12(2) to (4), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with the United Kingdom (within the meaning given by section 12(4)).

(4) In this section—

"director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,

"senior officer" means—

(a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate, and

(b) in relation to a Scottish partnership, a partner in the partnership.

15 Offences under section 7 by partnerships

(1) Proceedings for an offence under section 7 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and

(b) the following provisions apply as they apply in relation to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980,

(ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)),

(iii) section 70 of the Criminal Procedure (Scotland) Act 1995.

(3) A fine imposed on the partnership on its conviction for an offence under section 7 is to be paid out of the partnership assets.

(4) In this section "partnership" has the same meaning as in section 7.

Supplementary and final provisions

16 Application to Crown

This Act applies to individuals in the public service of the Crown as it applies to other individuals.

17 Consequential provision

(1) The following common law offences are abolished—

(a) the offences under the law of England and Wales and Northern Ireland of bribery and embracery,

(b) the offences under the law of Scotland of bribery and accepting a bribe.

(2) Schedule 1 (which contains consequential amendments) has effect.

(3) Schedule 2 (which contains repeals and revocations) has effect.

(4) The relevant national authority may by order make such supplementary, incidental or consequential provision as the relevant national authority considers appropriate for the purposes of this Act or in consequence of this Act.

(5) The power to make an order under this section—

(a) is exercisable by statutory instrument,

(b) includes power to make transitional, transitory or saving provision,

(c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including any Act passed in the same Session as this Act).

(6) Subject to subsection (7), a statutory instrument containing an order of the Secretary of State under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument containing an order of the Secretary of State under this section which does not amend or repeal a provision of a public general Act or of devolved legislation is subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Subject to subsection (9), a statutory instrument containing an order of the Scottish Ministers under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(9) A statutory instrument containing an order of the Scottish Ministers under this section which does not amend or repeal a provision of an Act of the Scottish Parliament or of a public general Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) In this section—

"devolved legislation" means an Act of the Scottish Parliament, a Measure of the National Assembly for Wales or an Act of the Northern Ireland Assembly,

"enactment" includes an Act of the Scottish Parliament and Northern Ireland legislation,

"relevant national authority" means—

(a) in the case of provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, the Scottish Ministers, and

(b) in any other case, the Secretary of State.

18 Extent

(1) Subject as follows, this Act extends to England and Wales, Scotland and Northern Ireland.

(2) Subject to subsections (3) to (5), any amendment, repeal or revocation made by Schedule 1 or 2 has the same extent as the provision amended, repealed or revoked.

(3) The amendment of, and repeals in, the Armed Forces Act 2006 do not extend to the Channel Islands.

(4) The amendments of the International Criminal Court Act 2001 extend to England and Wales and Northern Ireland only.

(5) Subsection (2) does not apply to the repeal in the Civil Aviation Act 1982.

19 Commencement and transitional provision etc.

(1) Subject to subsection (2), this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(2) Sections 16, 17(4) to (10) and 18, this section (other than subsections (5) to (7)) and section 20 come into force on the day on which this Act is passed.

(3) An order under subsection (1) may—

(a) appoint different days for different purposes,

(b) make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.

(4) The Secretary of State must consult the Scottish Ministers before making an order under this section in connection with any provision of this Act which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.

(5) This Act does not affect any liability, investigation, legal proceeding or penalty for or in respect of—

(a) a common law offence mentioned in subsection (1) of section 17 which is committed wholly or partly before the coming into force of that subsection in relation to such an offence, or

(b) an offence under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 committed wholly or partly before the coming into force of the repeal of the Act by Schedule 2 to this Act.

(6) For the purposes of subsection (5) an offence is partly committed before a particular time if any act or omission which forms part of the offence takes place before that time.

(7) Subsections (5) and (6) are without prejudice to section 16 of the Interpretation Act 1978 (general savings on repeal).

20 Short title

This Act may be cited as the Bribery Act 2010.

SCHEDULES

SCHEDULE 1

Section 17(2)

CONSEQUENTIAL AMENDMENTS

Ministry of Defence Police Act 1987 (c. 4)

1 In section 2(3)(ba) of the Ministry of Defence Police Act 1987 (jurisdiction of members of Ministry of Defence Police Force) for "Prevention of Corruption Acts 1889 to 1916" substitute "Bribery Act 2010".

Criminal Justice Act 1987 (c. 38)

2 In section 2A of the Criminal Justice Act 1987 (Director of SFO's pre-investigation powers in relation to bribery and corruption: foreign officers etc.) for subsections (5) and (6) substitute—

"(5) This section applies to any conduct—

(a) which, as a result of section 3(6) of the Bribery Act 2010, constitutes an offence under section 1 or 2 of that Act under the law of England and Wales or Northern Ireland, or

(b) which constitutes an offence under section 6 of that Act under the law of England and Wales or Northern Ireland."

International Criminal Court Act 2001 (c. 17)

3 The International Criminal Court Act 2001 is amended as follows.

4 In section 54(3) (offences in relation to the ICC: England and Wales)—

(a) in paragraph (b) for "or" substitute ", an offence under the Bribery Act 2010 or (as the case may be) an offence", and

(b) in paragraph (c) after "common law" insert "or (as the case may be) under the Bribery Act 2010".

5 In section 61(3)(b) (offences in relation to the ICC: Northern Ireland) after "common law" insert "or (as the case may be) under the Bribery Act 2010".

International Criminal Court (Scotland) Act 2001 (asp 13)

6 In section 4(2) of the International Criminal Court (Scotland) Act 2001 (offences in relation to the ICC)—

(a) in paragraph (b) after "common law" insert "or (as the case may be) under the Bribery Act 2010", and

(b) in paragraph (c) for "section 1 of the Prevention of Corruption Act 1906 (c.34) or at common law" substitute "the Bribery Act 2010".

Serious Organised Crime and Police Act 2005 (c. 15)

7 The Serious Organised Crime and Police Act 2005 is amended as follows.

8 In section 61(1) (offences in respect of which investigatory powers apply) for paragraph (h) substitute—

"(h) any offence under the Bribery Act 2010."

9 In section 76(3) (financial reporting orders: making) for paragraphs (d) to (f) substitute—

"(da) an offence under any of the following provisions of the Bribery Act 2010—

section 1 (offences of bribing another person),

section 2 (offences relating to being bribed),

section 6 (bribery of foreign public officials),".

10 In section 77(3) (financial reporting orders: making in Scotland) after paragraph (b) insert—

"(c) an offence under section 1, 2 or 6 of the Bribery Act 2010."

Armed Forces Act 2006 (c. 52)

11 In Schedule 2 to the Armed Forces Act 2006 (which lists serious offences the possible commission of which, if suspected, must be referred to a service police force), in paragraph 12, at the end insert—

"(aw) an offence under section 1, 2 or 6 of the Bribery Act 2010."

Serious Crime Act 2007 (c. 27)

12 The Serious Crime Act 2007 is amended as follows.

13 (1) Section 53 of that Act (certain extra-territorial offences to be prosecuted only by, or with the consent of, the Attorney General or the Advocate General for Northern Ireland) is amended as follows.

(2) The existing words in that section become the first subsection of the section.

(3) After that subsection insert—

"(2) Subsection (1) does not apply to an offence under this Part to which section 10 of the Bribery Act 2010 applies by virtue of section 54(1) and (2) below (encouraging or assisting bribery)."

14 (1) Schedule 1 to that Act (list of serious offences) is amended as follows.

(2) For paragraph 9 and the heading before it (corruption and bribery: England and Wales) substitute—

"Bribery

9 An offence under any of the following provisions of the Bribery Act 2010—

(a) section 1 (offences of bribing another person);

(b) section 2 (offences relating to being bribed);

(c) section 6 (bribery of foreign public officials)."

(3) For paragraph 25 and the heading before it (corruption and bribery: Northern Ireland) substitute—

"Bribery

25 An offence under any of the following provisions of the Bribery Act 2010—

(a) section 1 (offences of bribing another person);

(b) section 2 (offences relating to being bribed);

(c) section 6 (bribery of foreign public officials)."

SCHEDULE 2

Section 17(3)

REPEALS AND REVOCATIONS

Short title and chapter	*Extent of repeal or revocation*
Public Bodies Corrupt Practices Act 1889 (c. 69)	The whole Act.
Prevention of Corruption Act 1906 (c. 34)	The whole Act.
Prevention of Corruption Act 1916 (c. 64)	The whole Act.
Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.))	Section 22.
Electoral Law Act (Northern Ireland) 1962 (c. 14 (N.I.))	Section 112(3).
Increase of Fines Act (Northern Ireland) 1967 (c. 29 (N.I.))	Section 1(8)(a) and (b).
Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.))	In Schedule 2, the entry in the table relating to the Prevention of Corruption Act 1906.
Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))	In Schedule 8, paragraphs 1 and 3.
Civil Aviation Act 1982 (c. 16)	Section 19(1).
Representation of the People Act 1983 (c. 2)	In section 165(1), paragraph (b) and the word "or" immediately before it.
Housing Associations Act 1985 (c. 69)	In Schedule 6, paragraph 1(2).
Criminal Justice Act 1988 (c. 33)	Section 47.
Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I.17))	Article 14.
Enterprise and New Towns (Scotland) Act 1990 (c. 35)	In Schedule 1, paragraph 2.
Scotland Act 1998 (c. 46)	Section 43.

Short title and chapter	*Extent of repeal or revocation*
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Sections 108 to 110.
Criminal Justice (Scotland) Act 2003 (asp 7)	Sections 68 and 69.
Government of Wales Act 2006 (c. 32)	Section 44.
Armed Forces Act 2006 (c. 52)	In Schedule 2, paragraph 12(l) and (m).
Local Government and Public Involvement in Health Act 2007 (c. 28)	Section 217(1)(a). Section 244(4). In Schedule 14, paragraph 1.
Housing and Regeneration Act 2008 (c. 17)	In Schedule 1, paragraph 16.

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