

THE DELHI LOKAYUKTA AND UPALOKAYUKTA BILL, 1995

(As passed by the Delhi Legislative Assembly on 9th August, 1995)

Bill No. 7 of 1995

THE DELHI LOKAYUKTA AND UPALOKAYUKTA BILL, 1995

A

BILL

to make provision for the establishment and functioning of the Institution of Lokayukta to inquire into the allegations against public functionaries in the National Capital Territory of Delhi and for matters connected therewith.



Be it enacted by the Legislative Assembly of the National Capital Territory of Delhi in the Forty-sixth Year of the Republic of India as follows:-

**Short title, extent
and commencement.**

1.(1) This Act may be called the Delhi Lokayukta and Upalokayukta Act, 1995.

(2) It extends to the whole of the National Capital Territory of Delhi.

(3) It shall come into force on such date as the Government may,

by notification in the official Gazette, appoint.

Definitions

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

(a) "action" means action by way of prosecution or otherwise taken on the report of the Lokayukta or the Upalokayukta and includes failure to act; and all other expressions connoting such action shall be construed accordingly;

(b) "allegation" in relation to a public functionary means by affirmation that such public functionary in capacity as such-

(i) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries or the class to which he belongs;

(ii) has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person;

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

(iv) is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income whether such pecuniary resources or property are held by the public functionary personally or by any member of his family or by some other person on his behalf;

Explanation- For the purpose of this sub-clause 'family' means husband, wife, sons and unmarried daughters living jointly with him;



(3)

(c) "Chief Minister" means the Chief Minister of Delhi appointed under clause (5) of Article 239 AA of the Constitution;

(d) "competent authority" in relation to a public functionary means-

(A) in the case of-

(i) Chief Minister and Minister, the President;

(ii) a Member of the Legislative Assembly, the Lieutenant Governor, or during the period of operation of the order made under Article 239 AB of the Constitution, the President.

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

(e) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code, 1860 or under the Prevention of Corruption Act, 1988;

(f) "Delhi" means the National Capital Territory of Delhi;

(g) "Government" means the Government of the National Capital Territory of Delhi;

(h) "Legislative Assembly" means the Legislative Assembly of the National Capital Territory of Delhi;

(i) "Lieutenant Governor" means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under Article 239 of the Constitution;

(j) "Lokayukta" means the person appointed as the Lokayukta under Section 3;

(k) "Minister" means a Member (other than the Chief Minister) of the Council of Ministers appointed under clause (5) of Article 239 AA of the Constitution;



(1) "prescribed" means prescribed under the rules made under this Act;

(m) "public functionary" means a person who is or has been at any time-

(i) the Chief Minister or a Minister;

(ii) a Member of Legislative Assembly;

(iii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Legislative Assembly;

(iv) a Chairman, Vice-Chairman or Managing Director or a Member of a Board of Directors (by whatever name they be called) in respect of -

(1) an Apex Co-operative Society or any Co-operative Society constituted or registered under the Delhi Co-operative Societies Act, 1972, which is subject to the control of the Government;

(2) a Government Company within the meaning of section 617 of the Companies Act, 1956, engaged in connection with the affairs, and is under the control of the Government;

(3) a Local Authority established under any law in relation to Delhi;

Provided that the provisions of this Act shall not be applicable to any authority of a Local Authority constituted under an enactment relatable to Entry No.18 of the State List of the Seventh Schedule of the Constitution;

(4) a Corporation engaged in connection with the affairs, and under the control, of the Government;



(5) any Commission or body set up by the Government which is owned and controlled by it;

(v) a Member of the Municipal Corporation of Delhi as defined in clause 2(27) of The Municipal Corporation Act, 1957 (as amended in 1993);

(n) "rule" means a rule made under this Act;

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

**Appointment of
Lokayukta and
Upalokayukta**

3.(1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Lieutenant Governor shall, with the prior approval of the President, appoint a person to be known as the Lokayukta and one or more persons to be known as Upalokayukta:

Provided that-

(a) the Lokayukta shall be appointed after consultation with the Chief Justice of the High Court of Delhi and the Leader of the Opposition in the Legislative Assembly and if there be no such Leader, a person selected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;

(b) the Upalokayukta shall be appointed in consultation with the Lokayukta.

(2) A person shall not be qualified for appointment as-

(a) the Lokayukta, unless he is or has been Chief Justice of any High Court in India, or a Judge of a High Court for seven years;

(b) an Upalokayukta, unless he is or has been a Secretary to the Government or a District Judge in Delhi for seven years or has held the post of a Joint Secretary to the Government of India.



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

(4) The Upalokayukta shall be subject to the administrative control of the Lokayukta and in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special directions as he may consider necessary to the Upalokayukta and may withdraw to himself or may, subject to the provisions of Section 7, make over any case from himself to an Upalokayukta or from one Upalokayukta to another Upalokayukta for disposal:

Provided that nothing in this sub-section shall be construed to authorise the Lokayukta to question any finding, conclusion, recommendation of an Upalokayukta.

Lokayukta or
Upalokayukta to
hold no other
office.

4. The Lokayukta or Upalokayukta shall not be a member of Parliament or a member of the Legislature of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be carrying on any business or practise any profession; and accordingly before he enters upon his office, a person appointed as the Lokayukta or Upalokayukta, as the case may be, shall-

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

(b) if he holds any office of 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 practising any profession, suspend practice of such profession.

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

5.(1) Every person appointed as Lokayukta or Upalokayukta shall hold office for a term of five years from the date on which he enters upon his office and not be eligible for re-appointment thereafter:

Provided that-

- (a) Lokayukta or Upalokayukta may, by writing under his hand addressed to the Lieutenant Governor, resign his office and such resignation shall be effective as soon as it is accepted by the Lieutenant Governor;
- (b) Lokayukta or Upalokayukta may be removed from his office in the manner specified in Section 6.

(2) In the event of occurrence of any vacancy in the office of the Lokayukta by reason of his death, resignation, removal or otherwise, the Upalokayukta or if there are more than one then such one of them as the Lieutenant Governor may, by order, direct, shall notwithstanding anything contained in clause (a) of sub-section (2) of Section 3, act as Lokayukta until the date a new Lokayukta appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(3) When the Lokayukta is unable to discharge his functions owing to absence, illness or any other cause, the Upalokayukta or if there are more than one then such one of them as the Lieutenant Governor



may, by order, direct, shall, notwithstanding anything contained in clause (a) of sub-section (2) of Section 3, discharge his functions until the date the Lokayukta resumes his duties.

(4) The Upalokayukta shall, during and in respect of the period while he is so acting as or discharging the functions of Lokayukta, have all the powers and immunities of the Lokayukta and be entitled to salary, allowances and perquisites as are specified in the Second Schedule in relation to Lokayukta.

(5) A vacancy occurring in the office of the Lokayukta or an Upalokayukta by reason of his death, resignation, removal or otherwise shall be filled in as soon as possible but not later than six months from the date of occurrence of such vacancy.

(6) On ceasing to hold office, the Lokayukta or Upalokayukta shall be ineligible for further appointment as the Lokayukta or Upalokayukta or in any employment under Government or for any employment under any such Government Company, local authority, corporation under the administrative control of the Government or statutory commissions set up by the Government as is referred to in sub-clause (iv) of clause (m) of Section 2.

(7) There shall be paid to the Lokayukta and Upalokayukta such salaries as are specified in the Second Schedule.

(8) The allowances and pension payable to, and other conditions of service of, Lokayukta or Upalokayukta shall be such as may be prescribed:

Provided that-

- (a) in prescribing the allowances and pension payable to and other conditions of service of, Lokayukta, regard shall be had to the allowances and pensions payable to and other conditions of service of Chief Justice or a Judge of a High Court, as the case may be;





(b) in prescribing the allowances and pension payable to and other conditions of service of Upalokayukta regard shall be had to the allowances and pension payable to, and other conditions of service of a District Judge in Delhi or a Secretary to the Government or a Joint Secretary to the Government of India, as the case may be:

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

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

**Removal of
Lokayukta or
Upalokayukta**

6.(1) The Lokayukta or Upalokayukta shall not be removed from his office except by an order of the Lieutenant Governor passed, with the prior approval of the President and after an address by the Legislative Assembly supported by a majority of the total membership of the Legislative Assembly and by a majority of not less than two thirds of the members thereof present and voting has been presented to the Lieutenant Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokayukta or Upalokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 (51 of 1968), in relation to the removal of a Judge and accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to

the removal of the Lokayukta or Upalokayukta as they apply in relation to the removal of Judge.

7. Subject to the provisions of this Act, on receiving complaint or other information or suo moto -

Matters which may be inquired into by Lokayukta or Upalokayukta.

(a) The Lokayukta may proceed to inquire into an allegation made against a public functionary in relation to whom either the President or Lieutenant Governor is the competent authority;

(b) the Upalokayukta may proceed to inquire into an allegation made against any public functionary other than that referred to in clause (a):

Provided that the Lokayukta may inquire into an allegation made against any public functionary referred to in clause (b).

Explanation- For the purposes of this section, the expressions 'may proceed to inquire' and 'may inquire' include investigation by any person or agency put at the disposal of the Lokayukta and Upalokayukta in pursuance of sub-section (2) of Section 13.

Matter not subject to inquiry.

8. The Lokayukta or an Upalokayukta shall not inquire into any matter -

(i) which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952); or

(ii) relating to an allegation against a public functionary, if the complaint is made after expiration of a period of five years from the date on which the conduct complained against is alleged to have been committed.



Provisions
relating to
complaints,

9.(1) Every complaint involving an allegation shall be made in such form as may be prescribed and shall be accompanied by a deposit of Rs.500/-(Five hundred rupees). The complainant shall also swear an affidavit in such form as may be prescribed before any office authorised by the Lokayukta in this behalf.

(2) Notwithstanding anything contained in Section 10 or any other provision of this Act, every person who wilfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with rigorous imprisonment which may extend to three years or with fine which may extend to five thousand rupees or with both and the court may order that out of the amount of fine such sum as it may deem fit be paid by way of compensation to the person against whom such complaint was made:



Provided that no court shall take cognisance of an offence punishable under this section except on a complaint made by or under the authority of the Lokayukta or Upalokayukta, as the case may be:

Provided further that the complaint made under the signature and seal of Lokayukta or Upalokayukta shall be deemed as formally proved and the evidence of Lokayukta and Upalokayukta shall not be necessary for the purpose.

Procedure in
respect of
inquiry.

10. The Lokayukta or Upalokayukta shall, in each case before it, decide the procedure to be followed for making the inquiry and in so doing ensure that the principles of natural justice are satisfied.

Applicability of
Evidence Act and
Code of Criminal
Procedure.

11.(1) The provisions of the Evidence Act, 1872 (1 of 1872), and the Code of Criminal Procedure, 1973 (2 of 19974), shall as nearly as may be, apply to the procedure of inquiry before Lokayukta or Upalokayukta in the matter of-

(i) summoning and enforcing the attendance of any person

and his examination on oath;

(ii) requiring the discovery and production of documents and proof thereof;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for examination of witnesses or documents; and such other matters as may be prescribed:

Provided that no proceeding before the Lokayukta or Upalokayukta shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied.

(2) Any proceeding before the Lokayukta or Upalokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1960 (45 of 1960).

(3) The Lokayukta or Upalokayukta shall be deemed to be court within the meaning of the Contempt of Court Act, 1971 (60 of 1971).

12.(1) If, after inquiry into the allegations, the Lokayukta or an Upalokayukta is satisfied that such allegation is established, he shall, by report in writing, communicate his findings and recommendations alongwith the relevant documents, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upalokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta or the Upalokayukta is satisfied with the action taken or proposed to be taken on his recommendations, he



Report of
Lokayukta and
Upalokayukta.

shall close the case under information to the complainant, the public functionary and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Lieutenant Governor and also inform the complainant concerned.

(4) The Lokayukta and the Upalokayukta shall present annually a consolidated report on the performance of their functions under this Act, to the Lieutenant Governor.

(5) If in any special report under sub-section (3) or the annual report under sub-section (4) any adverse comment is made against any public functionary, such report shall also contain the substance of the defence adduced by such public functionary and the comments made thereon by or on behalf of the Government or the public authority concerned, as the case may be.

(6) On receipt of a special report under sub-section (3), or the annual report under sub-section (4), the Lieutenant Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the Legislative Assembly.

(7) Subject to the provisions of section 10, the Lokayukta may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by him, or by an Upalokayukta, 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.

Staff of
Lokayukta and
Upalokayukta.

13.(1) The Government shall in consultation with the Lokayukta, provide officers and other employees to assist the Lokayukta and Upalokayukta in the discharge of their functions under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Lokayukta or an Upalokayukta may, for the purpose of conducting inquiries under this Act, utilise the services of -

- (i) any officer on investigation agency of the Government or the Central Government, with the concurrence of that Government, or
- (ii) any other person or agency.

Secrecy of
information.

14.(1) Any information obtained by the Lokayukta or the Upalokayukta or members of their staff in the course of or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872(1 of 1872), no court shall be entitled to compel the Lokayukta or an Upalokayukta or any public functionary to give evidence relating to such information or produce the evidence so reported or collected.

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

- (a) for purposes of the inquiry or in any report to be made thereon or for any action or proceedings to be taken on such report; or
- (b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 (19 of 1923), or any offence of giving or fabricating false evidence under the Indian Penal Code or for purposes of any proceedings under section 15; or
- (c) for such other purposes as may be prescribed.



(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta or an Upalokayukta, as the case may be, with respect to any document or information

specified in the notice or any class of documents so specified that in the opinion of the Government the disclosure of the documents or information or documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act, shall be construed as authorising or requiring the Lokayukta, the Upalokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

Protection.

15.(1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or Upalokayukta or against any member of the staff of the office of the Lokayukta or any officer, agency or person referred to in sub-section (2) of section 13, in respect of anything which is done or intended to be done in good faith under this Act.

(2) Save and otherwise provided in this Act, no proceedings, decision, order or any report of the Lokayukta or Upalokayukta, as the case may be, including any recommendation made thereunder, shall be liable to be challenged, reviewed, quashed, modified or called in question in any manner whatsoever in any court or tribunal.

**Lokayukta
to make
suggestions.**

16. The Lokayukta, if in the discharge of his functions under this Act, notices a practice or procedure which in his opinion afforded an opportunity for corruption or maladministration, he may bring to the notice of the Government and may suggest such improvement in the said practice or procedure as he may deem fit.

17. For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokayukta or an Upalokayukta to inquire into an allegation against-

- (a) any member of the Judicial Services who is under the administrative control of the High Court under Article 235 of the Constitution;



- (b) any person who is a member of a Civil Service of the Union or an All India Service or Civil Service of a State or holds a Civil post under the Union or a State in connection with the affairs of Delhi.

Provision of this Act to be in addition to any other law for the time being in force.

18. 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.

Power to delegate.

19. The Lokayukta or Upalokayukta may by a general or special order in writing, direct that any power conferred or duties imposed on him by or under this Act (except the power to make inquiry or to report to the competent authority) may also be exercised or discharged by such of the officers, employees, agencies referred to in section 13 as may be specified in the order.

Power to make rules.

20.(1) The Lieutenant Governor may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

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

- (a) the authorities for the purposes required to be prescribed under sub-clause (B) of clause (d) of section 2;
- (b) the allowances and pension payable to and other conditions of service of, the Lokayukta and Upalokayukta;
- (c) the forms in which complaints may be made or as the case may be, affidavits may be sworn;



(d) secrecy of information for purposes required to be prescribed under clause (c) of sub-section (2) of section 14;

(e) any other matter which is to be or may be prescribed in respect of which this Act makes no provision or makes insufficient provision and provision is in the opinion of the Lieutenant Governor necessary for the proper implementation of this Act.

(3) Every rule made under this Act and every order issued under section 21 shall be laid as soon as may be after it is made or issued before the Legislative Assembly 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 and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the House agrees in making any modification in the rule or order or the House agrees that the rule or order should not be made or issued, the rule or order, 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 or order.

Power of
Lt. Governor to
remove
difficulties.

21. If any difficulty arises in giving effect to the provisions of this Act, the Lieutenant Governor may, by order as occasion requires, do anything which appears to him to be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiration of two years from the date of the commencement of this Act.



(18)

THE FIRST SCHEDULE

[See Section 3(3)]

I, _____, having been appointed 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, favour, affection or ill-will.

DELHI

Dated the

Signature



THE SECOND SCHEDULE

[See Section 5(7)]

After appointment there shall be paid to the Lokayukta and Upalokayukta, in respect of time spent on actual service, salary at the following rates per mensem, that is to say-

LOKAYUKTA- Rupees 9,000.00 plus such perquisites and allowances as are payable to-

- (i) a Chief Justice of a High Court in case Lokayukta is appointed from amongst Chief Justices of High Courts in India;
- (ii) a Judge of a High Court in case Lokayukta is appointed from amongst Judges of High Courts in India.

UPALOKAYUKTA- Rupees 8,000.00 plus such perquisites and allowances as are payable to-

- (i) a Secretary to the Government in case Upalokayukta is appointed from amongst the Secretaries to the Government;
- (ii) a District Judge in Delhi in case Upalokayukta is appointed from amongst District Judges in Delhi;
- (iii) a Joint Secretary to the Government of India in case Upalokayukta is appointed from amongst the Joint Secretaries to the Government of India:

Provided that if the Lokayukta or an Upalokayukta at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Government or under the Government of a State or any of its predecessor



188

(20)

Governments, his salary in respect of service as the Lokayukta, or as the case may be, Upalokayukta, shall 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.

I hereby certify that this Bill has been passed by the Legislative Assembly of the National Capital Territory of Delhi on 9th August, 1995.

Chd
CHARTI LAL GOEL,
Speaker,
Legislative Assembly of the
National Capital Territory of Delhi.

Dated: 21-8-1995

I reserve the Bill for consideration of the President.

P.K. Dave
(P.K. Dave)
Lt. Governor, Delhi.

Date: 5.10.95

I assent to this Bill

S. D. Sharma

**Shanker Dayal Sharma
PRESIDENT OF INDIA**

Dated.....3rd Jan 1996.....

Attested

R. T. L. D'SOUZA 18/3/96.

R. T. L. D'SOUZA

Under Secretary (L. A.)

Law, Justice & Legislative Affairs

Govt. of N.C.T. of Delhi