

Bill No. 190 of 2014

**THE LOKPAL AND LOKAYUKTAS AND OTHER RELATED LAW
(AMENDMENT) BILL, 2014**

A

BILL

*to amend the Lokpal and Lokayuktas Act, 2013 and further to amend the
Delhi Special Police Establishment Act, 1946.*

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

1. (1) This Act may be called the Lokpal and Lokayuktas and other related law
(Amendment) Act, 2014.

Short title
and com-
mencement.

5 (2) It shall come into force on such date as the Central Government may, by notification
in the Official Gazette, appoint.

CHAPTER I

AMENDMENT OF THE LOKPAL AND LOKAYUKTAS ACT, 2013

1 of 2014.

2. In the Lokpal and Lokayuktas Act, 2013 (hereinafter referred to as the principal Act),
in section 4,—

Amendment
of section 4.

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(a) in sub-section (1),—

(i) for clause (c), the following clause shall be substituted, namely:—

“(c) the Leader of Opposition recognised as such in the House of
the People or where there is no such Leader of Opposition, then, the
Leader of the single largest Opposition Party in that House —Member;”;

(ii) after clause (e), the following proviso shall be inserted, namely:—

“Provided that the eminent jurist shall be nominated for a period of three years and shall not be eligible for re-nomination.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) No appointment of a Chairperson or a Member or the nomination of an eminent jurist shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee.”;

(c) in sub-section (3), after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that no appointment of a person in the Search Committee or the proceedings of the Search Committee shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee or absence of a person in the Search Committee, as the case may be.”.

Amendment
of section 10.

3. In section 10 of the principal Act,—

(a) in sub-section (1), for the words "in the rank of Secretary to the Government of India", the words "in the rank of Additional Secretary to the Government of India" shall be substituted;

(b) in sub-section (2), for the words "not below the rank of Additional Secretary to the Government of India", the words "not below the rank of Joint Secretary to the Government of India" shall be substituted.

Amendment
of section 16.

4. In section 16 of the principal Act, in sub-section (1), for clause (f), the following clause and *Explanation* shall be substituted, namely:—

"(f) the headquarters of the Lokpal shall be in the National Capital Region and the benches thereof shall sit at such other places as the Lokpal may, by regulations, specify.

Explanation.—The expression "National Capital Region" shall have the meaning assigned to it in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985".

Amendment
of section 23.

5. In section 23 of the principal Act, in sub-section (1), the words, figures and letter "or section 6A of the Delhi Special Police Establishment Act, 1946" shall be omitted.

Amendment
of section 44.

6. In section 44 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) all his assets, including—

(i) immovable property owned by him, or inherited or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(ii) movable property inherited by him or similarly owned, acquired or held by him;

(b) all his debts and other liabilities, incurred by him directly or indirectly,

under the relevant provisions of the Acts or the rules or regulations, in case of—

(A) public servants referred to in clauses (a), (b) and (c) of sub-section (1) of section 14, in the manner provided in the Representation of the People Act, 1951 and the rules made thereunder;

- 61 of 1951. (B) public servants referred to in clauses (d) and (e) of sub-section (I) of section 14, in the manner provided in the All India Services Act, 1951 and the rules and regulations made thereunder or the rules made under the provisions of article 148 or article 309 of the Constitution, as the case may be;
- 5 (C) public servants referred to in clause (f) of sub-section (I) of section 14, in the manner provided under the relevant Acts and the rules and regulations respectively applicable to them; and
- (D) public servants not specifically covered under (A) to (C), in such manner as may be specified, by regulations by the Lokpal.";
- 10 (b) sub-section (5) shall be omitted;
- (c) for sub-section (6) and the *Explanation*, the following sub-section shall be substituted, namely:—
- 15 "(6) Notwithstanding anything contained in any other law for the time being in force, the competent authority shall, in public interest, ensure that the information referred to in sub-section (2), is published in such manner as may be prescribed, by 31st August of that year."
7. In section 59 of the principal Act, in sub-section (2), for clause (k), the following clause shall be substituted, namely:— Amendment of section 59.
- 20 "(k) the manner of publication of information, in public interest, relating to assets and liabilities of public servants under sub-section (6) of section 44;"
8. In section 60 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:— Amendment of section 60.
- "(da) the manner of furnishing information to the competent authority by public servants under clause (D) of sub-section (2) of section 44;"
- 25 **CHAPTER II**
- AMENDMENT OF THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946**
- 25 of 1946. 9. In the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as the Special Police Act), in section 4BA,— Amendment of section 4BA.
- 30 (a) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—
- "(1) There shall be a Directorate of Prosecution, headed by a Director, for conducting prosecution of cases under this Act.
- (2) The following persons shall be eligible for consideration for appointment as Director of Prosecution, namely:—
- 35 (a) an officer from the Indian Legal Service holding the post of Joint Secretary and who is eligible for appointment as Special Public Prosecutor within the meaning of sub-sections (8) and (9) of section 24 of the Code of Criminal Procedure, 1973;
- 2 of 1974. (b) in the absence of an eligible officer referred to in clause (a), a person who has been in practice as an advocate for not less than fifteen years and has experience in handling cases on behalf of the government relating to offences under the Prevention of Corruption Act, 1988, the Prevention of Money-laundering Act, 2002 and such other laws relating to economic offences.";
- 40 49 of 1988.
15 of 2003. (b) after sub-section (4), the following sub-sections shall be inserted, namely:—
- 45 "(5) In case of difference of opinion between the Director and the Director of Prosecution, the matter shall be referred to the Attorney - General for India for his advice and such advice shall be binding.

(6) The annual performance appraisal report of the Director of Prosecution shall be recorded and maintained in the Ministry of Law and Justice, in such manner as may be prescribed."

Insertion of new section 7. **10.** After section 6A of the Special Police Act, the following section shall be inserted, namely:— 5

Power to make rules. "7. (1) The Central Government may, by notification in the Official Gazette, make rules for 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 manner of recording and maintenance of the annual performance appraisal reports under sub-section (6) of section 4BA; 10

(b) any other matter which is required 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 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 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." 15 20

STATEMENT OF OBJECTS AND REASONS

The Lokpal and Lokayuktas Act, 2013 (1 of 2014), providing for the establishment of a body of Lokpal for the Union and making enabling provision for establishment of Lokayukta for States to inquire into allegations of corruption against certain public functionaries, was enacted and brought into force with effect from 16th January, 2014.

2. Sub-section (1) of section 4 of the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act) provides for a Selection Committee for making recommendations to the President for appointment of the Chairperson and Members of the Lokpal. As per the existing provision in clause (c) of sub-section (1) of section 4, the Leader of Opposition in the House of the People is one of the Members of the said Selection Committee. Sub-section (1) of section 4 does not contain any provision as to how the eminent jurist is to be recommended for nomination by the President under clause (e) of sub-section (1) or how the Search Committee shall be constituted by the Selection Committee under sub-section (3), when there is no Leader of Opposition recognised as such in the House of the People. Therefore, it is considered appropriate to amend clause (c) of sub-section (1) of section 4 of the Lokpal Act and make enabling provision for inclusion of the Leader of the single largest Opposition Party in the House of the People as a Member of the said Committee. Further, sub-section (1) of section 4 does not specify any tenure for the eminent jurist. It is, therefore, proposed to insert a proviso to sub-section (1) so as to lay down that the eminent jurist shall be nominated for a period of three years and shall not be eligible for re-nomination.

3. It is also proposed to amend sub-section (2) of section 4 so as to provide that no appointment of a Chairperson or a Member or the nomination of an eminent jurist shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee, on the lines of the recent amendment made in the Delhi Special Police Establishment Act, 1946. Similarly, it is proposed to add a proviso to sub-section (3) of section 4 so as to provide that no appointment of a person in the Search Committee or the proceedings of the Search Committee shall be invalid merely by reason of any vacancy or absence of a Member in the Selection Committee or absence of a person in the Search Committee, as the case may be.

4. It is proposed to amend section 44, with consequential amendments in sections 59 and 60 on account of the following reasons, namely:—

(a) Section 14 of the Act defines “public servant”, which, *inter alia*, includes Prime Minister, Ministers and the Members of either House of Parliament. Section 44 of the Act makes provision for declaration of assets and liabilities by the public servants. In this regard, the Representation of the People Act, 1951 (43 of 1951) makes detailed provisions which provide for conduct of elections of the Members of Parliament, their qualifications and disqualifications for the membership of the Houses, corrupt practices and other offences, etc. The said Act and the rules framed thereunder make elaborate provisions for filing of affidavits giving full details of the movable and immovable property and the consequences of filing false affidavits, etc. In view of this, it is proposed to provide that the provisions of the Representation of the People Act should be applicable to them as regards the manner of filing of information regarding their assets and liabilities, instead of making a different provision under the Lokpal Act. This will bring coherency between the Lokpal Act and the Representation of People Act.

(b) In case of Government servants, there is a requirement of filing of property returns both at the time of joining service and annually, giving details of property transactions, under the rules framed under article 148 and article 309 of the Constitution

and the Acts of Parliament such as the All India Services Act, 1951 (61 of 1951). The existing rules which regulate the property transactions of the Government servants are much elaborate and comprehensive in comparison to what is intended to be provided under section 44 of the Lokpal Act. Hence there is need for harmonising the said Act and the Rules with the provisions of the Lokpal Act.

(c) In addition to the categories of public servants covered in (a) and (b) above, there are public servants in statutory and autonomous bodies whose conduct is regulated in terms of relevant Acts applicable to them and the rules and regulations made thereunder, and this also requires to be harmonised with the provisions of the Lokpal Act.

(d) For the remaining categories of public servants not specifically covered under clauses (a) to (c) above (*e.g.* NGOs, etc.), the power to frame appropriate regulations for matters relating to furnishing of information about assets and liabilities by them should appropriately vest in the Lokpal which may either extend any set of rules or regulations applicable to government servants for such categories of public servants, or provide for a separate set of regulations, under its powers to make regulations.

It is accordingly proposed to amend sub-section (2) of section 44 to provide for a scheme wherein the filing of information by public servants under the provisions of the section are brought in harmony with the provisions of the respective Acts, Rules or Regulations, as applicable to different categories of public servants. It is also proposed to amend sub-section (6) in order to enable the Central Government to prescribe the manner in which information furnished by public servants of different categories is to be published, keeping public interest in view, by the respective competent authorities. It is also proposed to amend sections 10, 16 and 23 of the Lokpal Act.

5. Section 4BA of the Delhi Special Police Establishment Act, 1946 (25 of 1946), as inserted by the Lokpal and Lokayuktas Act, 2013, provides for the establishment of a Directorate of Prosecution headed by a Director of Prosecution, who will function under the overall supervision and control of the Director of the Delhi Special Police Establishment. The provisions of section 4BA do not lay down any eligibility conditions for appointment to the post of Director of Prosecution. In view of this, it is proposed to substitute sub-sections (1) and (2) of section 4BA with new sub-sections, so as to provide for appropriate eligibility conditions for appointment to the post. It is also proposed to insert two new sub-sections after sub-section (4) of section 4BA so as to ensure functional independence to the Director of Prosecution in the Delhi Special Police Establishment.

6. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;

DR. JITENDRA SINGH

The 15th December, 2014.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill seeks to substitute clause (k) of sub-section (2) of section 59 of the Lokpal and Lokayuktas Act, 2013 (the Lokpal Act), so as to empower the Central Government to make rules for the purpose of prescribing the manner in which the competent authority shall, in public interest, ensure that the information referred to in sub-section (2) of section 44 is published.

2. Clause 8 of the Bill seeks to insert a new clause (da) in sub-section (2) of section 60 of the Lokpal Act, so as to empower the Lokpal to make regulations specifying the manner of furnishing information to the competent authority by public servants under clause (D) of sub-section (2) of section 44.

3. Clause 10 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of Delhi Special Police Establishment Act, 1946. Sub-clause (2) of the said clause specifies that such rules may provide for the manner of recording and maintenance of the annual performance appraisal reports of the Director of Prosecution in the Delhi Special Police Establishment, under sub-section (6) of section 4BA. Sub-clause (3) of clause 10 of the Bill provides that the rules made by the Central Government under the proposed new section 7 are required to be laid before each House of Parliament, as soon as they are made.

4. The matters in respect of which rules or regulations may be made under the proposed amendments are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE LOKPAL AND LOKAYUKTAS ACT, 2013

(1 OF 2014)

Appointment of Chairperson and Members on recommendations of Selection Committee.	* * * * *	<p>4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—</p> <p style="padding-left: 40px;">(c) the Leader of Opposition in the House of the People—Member;</p> <p style="padding-left: 40px;">(e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.</p> <p>(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.</p> <p>(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of atleast seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:</p> <p style="padding-left: 40px;">Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:</p> <p style="padding-left: 40px;">Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.</p>	* * * * *
Secretary, other officers and staff of Lokpal.	* * * * *	<p>10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.</p> <p>(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.</p>	* * * * *
Constitution of benches of Lokpal.	* * * * *	<p>16. (1) Subject to the provisions of this Act,—</p> <p style="padding-left: 40px;">(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.</p>	* * * * *
Power of Lokpal to grant sanction for initiating prosecution.	* * * * *	<p>23. (1) Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 6A of the Delhi Special Police Establishment Act, 1946 or section 19 of the Prevention of Corruption Act, 1988, the Lokpal shall have the power to grant sanction for prosecution under clause (a) of sub-section (7) of section 20.</p>	* * * * *

2 of 1974.
25 of 1946.
49 of 1988.

CHAPTER XIII

DECLARATION OF ASSETS

Declaration of assets.	* * * * *	<p>44. (1) *</p> <p>(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—</p> <p style="padding-left: 40px;">(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;</p>	* * * * *
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(b) his liabilities and that of his spouse and his dependent children.

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(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year.

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

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59. (1) * * * * *

Power to make rules.

(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:—

* * * * *

(j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of section 44;

(k) the form of annual return to be filed by a public servant under sub-section (5) of section 44;

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EXTRACTS FROM THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

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4BA. (1) There shall be a Directorate of Prosecution headed by a Director who shall be an officer not below the rank of Joint Secretary to the Government of India, for conducting prosecution of cases under this Act.

Director of Prosecution.

(2) The Director of Prosecution shall function under the overall supervision and control of the Director.

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LOK SABHA

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BILL

to amend the Lokpal and Lokayuktas Act, 2013 and further to amend the Delhi Special
Police Establishment Act, 1946.

(Dr. Jitendra Singh, Minister for Personnel, Public Grievances and Pensions.)

GMGIPMRND—3696LS(S3)—16-12-2014.