

AUTHORITATIVE ENGLISH TEXT

Bill No. 26 of 2012.

THE HIMACHAL PRADESH LOKAYUKTA BILL, 2012

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

**THE HIMACHAL PRADESH LOKAYUKTA
BILL, 2012**

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THE SCHEDULE

THE HIMACHAL PRADESH LOKAYUKTA BILL, 2012

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to re-enact the law to provide for establishment of an independent body of Himachal Lokayukta to inquire into complaints and allegations of corruption against public servants and public functionaries and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

<p>Short title, extent and commencement.</p>	<p>1. (1) This Act may be called the Himachal Pradesh Lokayukta Act, 2012.</p> <p>(2) It extends to the whole of the State of Himachal Pradesh and also applies to the public servants who are posted outside the state of Himachal Pradesh in connection with the affairs of the State.</p> <p>(3) It shall come into force on such date as the State Government may, by notification, appoint.</p>
<p>Definitions.</p>	<p>2. (1) In this Act, unless the context otherwise requires,-</p> <p>(a) “allegation” in relation to a public servant means any affirmation that such public servant-</p> <p>(i) has knowingly and intentionally</p>

abused his position as such to obtain any undue gain or favour to himself or to any other person or to cause undue harm or hardship to any other person as actuated in the discharge of his functions by improper or corrupt motives thereby caused loss to the State or any member or section of the public or lack of integrity in his capacity as such public servant; or

(ii) is guilty of corruption; or

(iii) is in possession of pecuniary resources or property disproportionate to his known source of income and such property is held by the public servant personally or by any member of his family;

Explanation. - For the purpose of this sub-clause, ‘family’ means husband, wife, and dependent minor children including adopted children.

(b) “complaint” means an allegation, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corrupt Act, 1988 or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or Chapter IX of the Indian Penal Code;

(c) “competent authority” in relation to a public servant means,-

(i) in the case of Chief Minister, the Legislative Assembly of the State;

(ii) in the case of member of the Council of Ministers, Minister of State, Deputy Minister Chief Parliamentary Secretary or

	<p>Parliament Secretary, the Chief Minister;</p> <p>(iii) in the case of a Member of the State Legislature, other than a Minister, Chief Parliamentary Secretary, or Parliamentary Secretary, the Speaker of the House;</p> <p>(iv) in the case of a Vice-Chancellor, Pro-Vice-Chancellor of a University substantially funded by the State Government and established under any Act of the State Legislature the Governor as Chancellor of the University;</p> <p>(v) in the case of a member of the All India Service or Head of Department, the Chief Minister;</p> <p>(vi) in the case of a member of Judicial Services including subordinates staff, the High Court;</p> <p>(vii) in the case of other officers in the Department of the State Government, the Minister-in-Charge of the Department under which such officer is serving;</p> <p>(viii) in the case of Chairperson, Vice Chairperson, Member of any Body, Board, Corporation, Authority, Company, Society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or of a State Legislature wholly or substantially financed or controlled by the State Government, the Chief Minister;</p> <p>(ix) in the case of any officer of the Body, Board, Corporation, Authority, Company, Society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature wholly or substantially financed or controlled by the State</p>
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Government, the Head of such Body, Board, Corporation, Authority, Company, Society or autonomous body; and

- (x) in any other case, not falling under sub-clauses (i) to (ix) above, such authority as the State Government may, by notification, specify:**

Provided that if any person referred to in sub-clause (ix) is a Member of the State Legislature, then the competent authority shall be the Speaker of the House;

(d) “corruption” means and includes-

- (i) the allegations of favouritism, nepotism and lack of integrity in his capacity as public servant;**
- (ii) any act made punishable under the Prevention of Corruption Act, 1988;**
- (iii) any act made punishable under the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983;**
- (iv) any act made punishable under Chapter IX of the Indian Penal Code; or**
- (v) victimization of a whistle blower or a witness.**

(e) “Full Bench” means Lokayukta and Up-Lokayuktas taking decisions collectively;

(f) “Governor” means the Governor of Himachal Pradesh;

(g) “Himachal Lokayukta” means an institution of Lokayukta comprising of Lokayukta and Up-Lokayuktas collectively;

(h)“Lokayukta” means a person appointed as Lokayukta under Section 4;

(i) “Up-Lokayuktas” means the persons appointed as Up-Lokayukta under Section 4;

(j) “Minister” means Minister of a State Government but does not include the Chief Minister;

(k)“notification” means the notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(l)“preliminary enquiry” means an enquiry conducted under this Act;

(m)“prescribed” means prescribed by rules made under this Act;

(n)“Public Authority” means any authority or body or institution of self-governance established or constituted-

- i. by or under the Constitution; or**
- ii. by or under any other law made by the State Legislature; or**
- iii. by notification by the Government, and includes any Body owned, controlled or substantially financed by the Government;**

(o) “public servant” means a person who has held or is holding public office and is or has been public servant within the meaning of section 2(c) of the Prevention of Corruption Act, 1988, and shall include,-

(i) the Chief Minister of Himachal Pradesh, all Ministers in the Council of Ministers of Himachal Pradesh, Ministers of State, Deputy Minister, Chief Parliamentary Secretaries, Parliamentary Secretaries and Member of Legislative Assembly;

(ii) a Chairman, Vice-Chairman,

	<p>Managing Director, Member of the Board of Directors or Chief Executive Officer, (by whatever name called) of a Government Company within the meaning of section 617 of 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 a company in which not less than fifty-one percent of the paid up share capital is held by the State Government;</p> <p>(iii) a Mayor, Deputy Mayor, Councilor or Commissioner of a Municipal Corporation, declared and constituted under sections 3 and 4 of the Himachal Pradesh Municipal Corporation Act, 1994;</p> <p>(iv) a President, Vice-President, a Member, Executive Officer or Secretary of a Municipal Council or Nagar Panchayat constituted under section 3 of the Himachal Pradesh Municipal Act, 1994;</p> <p>(v) a Vice-Chancellor, Pro-Vice-Chancellor of a University substantially funded by the State Government and established under any Act of the State Legislature;</p> <p>(vi) a Chairman, Vice-Chairman or Member of the Zila Parishad or Panchayat Samiti, Pradhan, Up-Pradhan or Member of a Gram Panchayat constituted under the Himachal Pradesh Panchayati Raj Act, 1994;</p> <p>(vii) a President, Vice-President, Managing Director or Member of any Managing Committee or</p>
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Board of Director of an Apex Society or such other Co-operative Societies incorporated or registered under the law relating to Co-operative Societies for the time being inforce, as may be notified by the State Government;

(viii) a Chairman, Vice-Chairman, Managing Director or the Chief Executive Officer (by whatever name called) of any statutory or non-statutory body incorporated or set up by the State Government;

(ix) in the service or pay of Government, a Government Company, Local Body, substantially State funded University, Zila Parishad, Panchayat Samiti, Apex Society, statutory or non-statutory body referred to in sub-clauses (ii) to (viii) of this clause;

(x) holding any other post or office under the control of the State Government or an authority referred to in sub-clause(ix) and notified by the State Government in the Official Gazette from time to time; and

(xi) Members of Judicial Services and other staff of courts;

Explanation:- For the purpose of this clause, the public servants shall not include the Chief Justice and Judges of Himachal Pradesh High Court.

(p) “Rule” means rules made under Section 30 of the Act;

(q) “regulation” means regulation made under section 31 of the Act;

(r) “Schedule” means a schedule appended to this

	<p>Act;</p> <p>(s)“State Government” means the Government of Himachal Pradesh;</p> <p>(t) “Special Court” means the court of a Special Judge appointed under section 19 of the Act;</p> <p>(u) “Whistle blower” means any person, who provides factual information with substance about corruption in a public authority by any public servant or is a witness or victim in a case of corruption before the Himachal Lokayukta ;</p> <p>(2) The words and expression used herein and not defined in this Act, but, defined in the Prevention of Corruption Act, 1988 as amended from time to time, H.P. Prevention of Specific Corrupt Practices Act, 1983 as amended from time to time shall have the meanings, respectively, assigned to them in that Act.</p> <p>(3) Reference to any Act includes amendments made to that Act from time to time.</p>
<p>Establishment of Himachal Lokayukta.</p>	<p style="text-align: center;">CHAPTER-II</p> <p style="text-align: center;">ESTABLISHMENT OF HIMACHAL LOKAYUKTA</p> <p>3. (1)The State Government shall, by notification establish Himachal Lokayukta and appoint Lokayukta and Up Lokayuktas in the following manner, namely:-</p> <p>(a) a Lokayukta, who is or has been a Judge of the Supreme Court or Chief Justice of a High Court; and</p> <p>(b) two Up-Lokayuktas out of which one Up-Lokayukta shall be a person of impeccable integrity, outstanding ability having twenty five years outstanding service in public administration and other Up-Lokayukta shall be a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty five years in the matters relating to public service, anti-corruption policy, law or public administration:</p> <p>Provided that the Lokayukta appointed prior to</p>

	<p>commencement of this Act shall continue to be the Lokayukta till the completion of his term.</p> <p>(2) a person shall not be eligible to become Lokayukta or a Up-Lokayukta-</p> <ul style="list-style-type: none"> (a) if he is not a citizen of India; (b) if against him charges were ever framed by any Court of Law for any offence involving moral turpitude; (c) if he has been convicted and sentenced for a term of two years or more; (d) if he is less than fifty-five years of age on the date of assuming office; (e) if he is a Member of Parliament, Legislature or a Local Body; (f) if he has been awarded a major penalty during his service of the Union or State: <p>Provided that Lokayukta shall not hold any office of trust or profit (other than his office as the Lokayukta or a Up-Lokayukta) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office shall, if-</p> <ul style="list-style-type: none"> i. he holds any office of trust or profit, resign from such office; or ii. he is carrying any business, sever his connection with the conduct and management of such business; or iii. he is practising any profession, cease to practise such profession. <p>(3) The seat of the Himachal Lokayukta shall be at Shimla.</p>
<p>Appointment of Lokayukta</p>	<p>4. (1) The Lokayukta and Up-Lokayuktas shall be appointed by the Governor by warrant under his hand</p>

<p>and Up-Lokayuktas.</p>	<p>and seal after obtaining the recommendations of the Selection Committee.</p> <p>(2) The Selection Committee shall consist of –</p> <p>(i) the Chief Minister of Himachal Pradesh, Chairman</p> <p>(ii) the Leader of the Opposition in the Legislative Assembly of Himachal Pradesh, Member</p> <p>(iii) the Chief Justice of Himachal Pradesh, High Court. Member</p> <p>Explanation. - For the purpose of this section, where the Leader of Opposition in the Legislative Assembly has not been recognized, the leader of the single largest group in opposition in the Legislative Assembly shall be deemed to be the leader of the opposition.</p> <p>(3) The Selection Committee shall select the Lokayukta and other Up-Lokayuktas of the Himachal Lokayukta out of a short list prepared by the Search Committee.</p>
<p>Search Committee.</p>	<p>5. (1) The Search Committee shall consist of three Members to be nominated by the Selection Committee out of the persons having impeccable integrity, outstanding ability having special knowledge and expertise in the matters relating to public service, law or public administration.</p> <p>(2) The Members of the Search Committee shall be eligible for such honorarium subject to such condition as may be prescribed.</p> <p>(3) The Search Committee shall invite applications, seek nominations from such eminent persons or such class of persons or organizations, whom it deem fit and may include name of a person for consideration as Lokayukta or Up-Lokayukta.</p> <p>(4) The names of such persons with complete bio-data shall be put on a public web-site and also published in two prominent newspapers by the Search Committee giving at least 15 days time for inviting any information or objections.</p> <p>(5) The Search Committee shall formulate its own procedure for the purpose of short listing the names to be recommended for the Selection Committee in a</p>

	<p>transparent manner. The Committee shall use all means for the purpose of obtaining the information and background and achievements of such candidates. Such information shall inter-alia, contain details of any allegations faced under any law, details of his work against corruption in the past, and reasons that why the person is suitable for the job and any other material as the Search Committee may decide.</p> <p>(6) The Search Committee shall recommend three names for each post. The Committee, before sending the short list to the Selection Committee, shall get the names of the short listed persons put on a public web-site to enable general public to submit any relevant information about such persons.</p>
<p>Selection of Lokayukta and Up-Lokayuktas by the Selection Committee.</p>	<p>6. (1) The Selection Committee shall, after considering all the relevant information about the short listed candidates, select the Lokayukta and the Up-Lokayuktas of the Himachal Lokayukta preferably through consensus.</p> <p>(2) The Selection Committee after selecting the persons to be recommended as Lokayukta or Up-Lokayuktas of the Himachal Lokayukta shall ascertain their willingness to serve as such before recommending the names to the Governor.</p> <p>(3) The Government shall fill up a vacancy of the Lokayukta or Up-Lokayukta, as the case may be within one month from the date the Lokayukta or Up-Lokayukta completes his term:</p> <p>Provided that if the vacancy arises due to unforeseen reasons, it shall be filled within three months from the date of arising of such vacancy.</p>
<p>Term of office of Lokayukta and Up-Lokayuktas.</p>	<p>7. (1) The Lokayukta and every Up-Lokayukta shall hold office for a single term of five years from the date on which he enters upon his office or until he attains the age of 70 years, whichever is earlier:</p> <p>Provided that a sitting Up-Lokayukta appointed as a Lokayukta shall hold office for the balance term or up-to 70 years whichever is earlier, but the total term as</p>

	<p>Up-Lokayukta and Lokayukta shall not exceed five years:</p> <p>Provided further that the Lokayukta or the Up-Lokayukta may, by writing under his hand addressed to the Governor, resign his office.</p> <p>(2) The Lokayukta and every Up-Lokayukta shall, before entering upon his office, make and subscribe before the Governor an oath or affirmation in the form set out in the Schedule.</p> <p>(3) In the event of occurrence of any vacancy in the office of the Lokayukta by reason of his death, resignation or otherwise, the Governor may , by notification, authorize the senior most Up-Lokayukta to act as the Lokayukta until the appointment of a new Lokayukta:</p> <p>Provided that when the Lokayukta is unable to discharge his functions due to leave or otherwise, the Governor may, by notification authorize the senior most Up-Lokayukta to discharge the functions of the Lokayukta until he resumes his duties.</p>
<p>Salaries, allowances and other conditions of service of Lokayukta and Up-Lokayuktas.</p>	<p>8. (1) The Lokayukta and the Up-Lokayukta shall be paid salary equal to that of the Chief Justice of the High Court and that of the Judge of the High Court, respectively, and allowances and other conditions of service shall be such, as may be prescribed:</p> <p>Provided that the salary, allowances and other facilities provided to the existing Lokayukta shall not be varied to his disadvantage on becoming a Lokayukta:</p> <p>Provided further that if the Lokayukta or a Up-Lokayukta is, at the time of his appointment, in receipt of pension (other than a disability pension) in respect of any previous service under the Government of India or the State Government, his salary in respect of service as the Lokayukta or as a Up-Lokayukta, as the case may be, be reduced-</p>

	<p>(a) by the amount of that pension; and</p> <p>(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.</p> <p>(2) The Lokayukta and the Up-Lokayukta shall not be eligible for any pension for holding the office as such:</p> <p>Provided that the salary and other condition of service of the Lokayukta or an Up-Lokayukta shall not be varied to his disadvantage after his appointment.</p>
<p>Restriction on employment by Lokayukta and Up-Lokayuktas after ceasing to hold office.</p>	<p>9. The Lokayukta and the Up-Lokayuktas, after ceasing to hold office, shall be ineligible for diplomatic assignment, appointment to any position in the Government of India or the Government of any State or any such body which is funded by any of the Governments.</p>
<p>Secretary, other officers and staff of the Himachal Lokayukta</p>	<p>10. (1) There shall be a Secretary to the Himachal Lokayukta from All India Service in the rank of Secretary to the State Government, to be appointed by the State Government in consultation with the Himachal Lokayukta.</p> <p>(2) The officers and other staff of the Himachal Lokayukta shall be taken by the Himachal Lokayukta on secondment basis from the State Government or from organization controlled by the State Government:</p> <p>Provided that the existing staff of the Himachal Lokayukta shall continue to be the employees of the Himachal Lokayukta.</p> <p>(3) The Himachal Lokayukta may make its regulations with the prior approval of the State Government relating to creation of posts, salary, allowances and other conditions of</p>

	<p>service of Secretary and other officers and employees of the Himachal Lokayukta .</p>
	<p style="text-align: center;">CHAPTER-III</p> <p style="text-align: center;">POWERS AND FUNCTIONS OF HIMACHAL LOKAYUKTA</p>
<p>Powers and functions of the Himachal Lokayukta.</p>	<p>11. The Himachal Lokayukta shall have the following powers and functions, namely :-</p> <p style="padding-left: 40px;">(a) to initiate suo-moto action under the Act including matters relating to allegations of corruption;</p> <p style="padding-left: 40px;">(b) to receive complaints against public servants;</p> <p style="padding-left: 40px;">(c) to receive complaints against any officer and other employees of the Himachal Lokayukta;</p> <p style="padding-left: 40px;">(d) to take prosecutors and senior counsels on retainerhip;</p> <p style="padding-left: 40px;">(e) to exercise superintendence over the investigation of offences involving any act of corruption under this Act;</p> <p style="padding-left: 40px;">(f) to give directions to the investigation officers for the proper investigation of such offences;</p> <p style="padding-left: 40px;">(g) after completion of investigation in any case involving an act of corruption, to direct prosecution or departmental proceedings;</p> <p style="padding-left: 40px;">(h) to initiate prosecution before a Special Court;</p> <p style="padding-left: 40px;">(i) to recommend staying, cancellation or modification of lease, license, permission, contract or agreement, if it was obtained by corrupt means and to recommend blacklisting of a firm, company, contractor or any other person, involved in an act of corruption. The concerned authority shall send its compliance report to the Himachal Lokayukta within three</p>

	<p>months specifying detailed reasons, wherever they choose not to accept any of the recommendation;</p> <p>(j) to initiate the process to get the property and assets acquired by corrupt means attached and confiscated in accordance with law;</p> <p>(k) to take appropriate action in accordance with this Act to ensure due compliance of its orders;</p> <p>(l) to make recommendations to public authorities, to make changes in their work practices to reduce the scope for corruption and whistleblower victimization;</p> <p>(m) to require any Public Authority to render any specific help required by the Himachal Lokayukta ; and</p> <p>(n) to authorize issue of letter of request in relation to any case pending investigation under this Act.</p>
	<p style="text-align: center;">CHAPTER-IV</p> <p style="text-align: center;">INQUIRY AND INVESTIGATION BY THE HIMACHAL LOKAYUKTA</p>
<p>Inquiry by Himachal Lokayukta.</p>	<p>12 (1) Subject to the other provisions of this Act, the Himachal Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of any public servant.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the Himachal Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the State Legislature in respect of anything said or a vote given by him in the State Legislature or any Committee thereof covered under clause (2) of Article 194 of the Constitution.</p>

(3) The Himachal Lokayukta may also inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption against a person referred to in sub-section(1):

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

Explanation. - . The Himachal Lokayukta shall not inquire into any matter.-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850; or

(c) which is not connected with the discharge of functions as public servant of the person against whom allegation is made; or

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

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

(5) The Himachal Lokayukta shall put on its website the cases received during the previous month, cases disposed of during the month with brief details of each case and cases pending at the end of month.

(6) The Himachal Lokayukta shall maintain complete transparency and shall ensure that complete record of any investigation or inquiry conducted under this Act, is made public by putting on a public website.

	<p align="center">(7) Himachal Lokayukta shall ensure effective implementation of the Right to Information Act, 2005, in his office.</p>
<p>Complaints and preliminary inquiry and investigation.</p>	<p>13. (1) Any person may make a complaint under this Act to Himachal Lokayukta in the form of a statement supported by an affidavit in such form and in such manner as may be prescribed.</p> <p>(2) The Himachal Lokayukta shall, on receipt of a complaint under sub-section (1), first decide whether to proceed in the matter or close the same, and if the Himachal Lokayukta decide to proceed further, it shall order the preliminary inquiry against any public servant by its investigation wing or any agency (including any special investigation agency) to ascertain whether there exist a prima-facie case for proceeding in the matter.</p> <p>(3) During the preliminary inquiry referred to in sub-section (2), the investigation wing or any agency, as the case may be, may conduct a preliminary inquiry and on the basis of material, information and documents collected, shall submit a report to the Himachal Lokayukta within sixty days or further extended period from the date of receipt of the reference.</p> <p>(4) The Himachal Lokayukta shall consider every report received under sub-section (3), after giving an opportunity of being heard to the public servant, and shall decide as to whether there exists a prima-facie case, and make recommendations to proceed with one or more of the following actions, namely:-</p> <ul style="list-style-type: none"> (a) investigation by its investigation wing or any investigating agency; (b) to direct the departmental proceedings or any other appropriate action against the concerned public servants by the Competent Authority; and (c) closure of the proceedings against the public servant and take action to proceed against the complainant under this Act.

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

Provided that the Himachal Lokayukta may extend the said period by a further period of six months for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including any special agency) shall, in respect of cases referred to it by the Himachal Lokayukta, submit the investigation report to the Himachal Lokayukta.

(7) The Himachal Lokayukta shall consider the report received under sub-section(6) and after giving an opportunity of being heard to the public servant may decide as to –

(a) file charge- sheet or closure report before the Special Court against the public servant; or

(b) direct to initiate the departmental proceedings or any other appropriate action against the public servant by the Competent Authority.

(8) The Himachal Lokayukta shall forward the investigation report to the Competent Authority, if it is decided to file charge-sheet before the Special Court, who shall grant or seek the prosecution sanction or send a report in writing within 120 days from the date of receipt of investigation report, failing which the prosecution sanction shall be deemed to have been granted. After receipt of prosecution sanction or report in writing, the Himachal Lokayukta shall direct-

(a) its prosecution wing to initiate prosecution in the Special Court in respect of the cases investigated by its Investigation Wing or any other investigation agency

	<p style="text-align: center;">(including any special agency); or</p> <p>(b) any other agency in respect of the cases investigated by such agency on the direction of Himachal Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forwards a copy of charge-sheet filed by it under this clause to the Himachal Lokayukta for the purposes of superintendence.</p> <p>(9) The Himachal Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deem fit.</p> <p>(10) The Himachal Lokayukta, if satisfied that during the investigation any preventive action is necessary in public interest to prevent the ongoing incidence of corruption, it may make any recommendation to the public authority concerned to stay the implementation and enforcement of any decision or take such action as may be recommended by it. The public authority shall either comply with the recommendation of the Himachal Lokayukta or reject the same within 30 days of the recommendation thereof.</p> <p>(11) The website of the Himachal Lokayukta shall display to the public the status of complaints pending before it.</p> <p>(12) In case of a person serving in connection with the affairs of the Union of India, no investigation will be started without the approval of the Central Government.</p>
<p>Persons likely to be prejudicially affected to be heard.</p>	<p>14. If at any stage of the proceeding, the Himachal Lokayukta -</p> <p>(a) considers it necessary to inquire into the conduct of any person other than the accused; or</p>

	<p>(b) is of opinion that the reputation of any person other than the accused is likely to be prejudicially affected by the preliminary inquiry,</p> <p>the Himachal Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence.</p>
<p>Himachal Lokayukta may require any public servant or any other person to furnish any information etc.</p>	<p>15. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Himachal Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.</p>
	<p style="text-align: center;">CHAPTER-V</p> <p style="text-align: center;">INVESTIGATION WING OF THE HIMACHAL LOKAYUKTA</p>
<p>Investigation Wing.</p>	<p>16 (1) Notwithstanding anything contained in any law for the time being in force, the Himachal Lokayukta shall have an Investigation Wing for the purpose of conducting fair, impartial and transparent investigation of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988, Chapter-IX of the Indian Penal Code or the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983. The State Government shall provide such number of investigation officers and other staff, as may be required by the Himachal Lokayukta for the purpose of conducting inquiry or investigation under this Act.</p> <p>(2) No investigation shall be conducted by an officer of the Investigation Wing below the rank of Inspector of Police.</p> <p>(3) The manner and procedure of conducting an</p>

<p>Himachal Lokayukta Police Station</p> <p>Complaint Authority</p>	<p>inquiry under this Act shall be such as may be specified by Regulations.</p> <p>(4) The Investigating Officers of the Himachal Lokayukta authorized to investigate offences under the Prevention of Corruption Act, 1988, Chapter-IX of the Indian Penal Code or the Himachal Pradesh Prevention of Specific Corrupt Practices Act., 1983 shall have all the powers which are vested in a Police Officer while investigating offences under the Code of Criminal Procedure.</p> <p>17. Places recommended by the Himachal Lokayukta shall be notified as Himachal Lokayukta Police Stations within the meaning and under Section 2 clause (s) of Code of Criminal Procedure, 1973 as amended from time to time for registration of the cognizable offences triable under the Prevention of Corruption Act, 1988 as amended from time to time, Chapter-IX of the Indian Penal Code, 1860 as amended from time to time and the H.P. Prevention of Specific Corrupt Practices Act, 1983as amended from time to time.</p> <p>18 (1) A part time Complaint Authority with two members would be established in the Himachal Lokayukta with the concurrence of the State Government to entertain complaints against any officer or staff of the Himachal Lokayukta .</p> <p>(2) The Member of such authority shall have knowledge of law or public administration.</p> <p>(3) Complaints shall be inquired and decided within two months. The officer or staff of the Himachal Lokayukta shall be given proper opportunity to tender his defence. If the officer or staff member is found guilty of misbehavior or dishonest or corruption, the authority may order his dismissal, removal or reduction in rank including order for his reversion back to the Department concerned.</p>
	<p style="text-align: center;">CHAPTER-VI</p> <p style="text-align: center;">SPECIAL COURTS</p>

<p>Constitution of Special Courts.</p>	<p>19 (1) The State Government shall on the recommendations of Himachal Lokayukta designate Special Courts in consultation with the High Court to hear and decide the cases under the Prevention of Corruption Act, 1988, Chapter-IX of the Indian Penal Code, the Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or under this Act.</p> <p>(2) The Special Courts designated under subsection (1) shall decide the trial within a period of one year from the date of filing of challan in the Court:</p> <p>Provided that if the trial is not decided within a period of one year, the Special Court shall record reasons therefor and decide the trial within a further period of not more than three months or such further extended period but not exceeding a total period of two years for reasons to be recorded in writing.</p>
<p>Letter of requests in certain cases.</p>	<p>20 (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, if in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Himachal Lokayukta authorized in this behalf that any evidence is required in connection with the preliminary inquiry or investigation of an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in another State and the Special Court, on being satisfied that such evidence is required, it may issue a letter of request to a court or an authority in another State competent to deal with such request to-</p> <ul style="list-style-type: none"> (i) examining the facts and circumstances of the case; (ii) take such steps as the Special Court may specify in such letter of request; and (iii) forward all the evidence so taken or collected to the Special Court issuing such letters of request.

	<p>(2) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the inquiry or investigation.</p>
	<p>CHAPTER-VII</p> <p>PROSECUTION WING OF THE HIMACHAL LOKAYUKTA</p>
<p>Prosecution Wing.</p>	<p>21 The Himachal Lokayukta shall have a prosecution wing comprising of prosecution officers and other staff to be provided by the State Government on secondment basis from organization controlled by the State Government for the purpose of prosecution of public servant in relation to any complaint under this Act. The prosecution wing shall file a case before the Special Court after the approval of the Himachal Lokayukta or any other officer authorized by Himachal Lokayukta for granting such approval in relation to any offence punishable under the Prevention of Corruption Act, 1988, Chapter-IX of the Indian Penal Code, or the H.P. Prevention of Specific Corrupt Practices Act, 1983.</p> <p>Explanation: The superintendence, protection, management, monitoring and control of all the officers and staff of the Himachal Lokayukta including that of Investigation and Prosecution Wings shall be under the supervision of the Himachal Lokayukta .</p>
	<p>CHAPTER-VIII</p> <p>CIVIL COURTS AND OTHER POWERS TO THE HIMACHAL LOKAYUKTA</p>
<p>Himachal Lokayukta to have powers of Civil Court in certain cases.</p>	<p>22 (1) The Himachal Lokayukta shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely :-</p> <p>(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;</p> <p>(b) requiring the discovery and production of any document;</p>

- (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.

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

(3) If during the course of investigation into a complaint, the Himachal Lokayukta feels that continuance of a Government servant in that position could adversely affect the course of investigations or that the said Government servant is likely to destroy or tamper with the evidence or influence the witnesses or is likely to continue with corrupt practices, the Himachal Lokayukta may issue directions for transfer of that Government servant from that position. The directions so communicated shall be binding.

(4) The Himachal Lokayukta may, at any stage of investigation under this Act, direct by an interim order, appropriate authorities to take such action as is necessary, to prevent the public servant from secreting the assets allegedly acquired by corrupt means in accordance with law

(5) Where, in consequence of information in his possession, the Himachal Lokayukta has reason to believe that any person to whom a summon or notice under this Act, has been or might be issued, may not or would not produce or cause to be produced any property, document or thing which may be necessary or useful for or relevant to any inquiry or other proceedings to be conducted by him, it may, by a search warrant, authorize any officer not below the rank of Inspector of Police to conduct a search or carry out an inspection in accordance therewith and in particular to, enter and search any building or place where he has reason to suspect that such property, or document, is kept:

Provided that the provisions of Code of Criminal

	<p>Procedure, 1973, relating to search and seizure shall apply, so far as may be, to search and seizure under this section:</p> <p>Provided further that a warrant issued under this section shall, for all purposes, be deemed to be a warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973.</p>
	<p>CHAPTER-IX</p> <p>PROCEEDING OF THE HIMACHAL LOKAYUKTA</p>
<p>Proceedings of Himachal Lokayukta.</p>	<p>23 (1) The Himachal Lokayukta, for the purpose of transaction and allocation of business amongst the Lokayukta and the Up-Lokayuktas, may regulate its own procedure.</p> <p>(2) No act or proceeding of Himachal Lokayukta shall be invalid merely by reason of –</p> <p style="padding-left: 40px;">(a) any vacancy in, or any defect in the constitution of Himachal Lokayukta ;</p> <p style="padding-left: 40px;">(b) any defect in the appointment of a person acting as a Lokayukta or a Up-Lokayukta of the Himachal Lokayukta ; or</p> <p style="padding-left: 40px;">(c) any irregularity not affecting the merits of the case.</p> <p>(3) The hearings in any proceedings before the Himachal Lokayukta shall be held in public, except in exceptional circumstance where it is not in public interest to do so and the reasons for the same shall be recorded in writing before those proceedings are held in camera.</p>
	<p>CHAPTER-X</p> <p>ACCOUNTABILITY OF THE HIMACHAL LOKAYUKTA</p>
<p>Removal of Lokayukta and the Up-Lokayuktas of Himachal Lokayukta.</p>	<p>24. (1) The Lokayukta and Up Lokayukta shall not be removed from his office except by an order of the Governor passed after an address by the Himachal Pradesh Legislative Assembly, supported by a majority of the total Members of the Legislative Assembly and by a majority of not less than two thirds of the Members</p>

	<p>thereof, present and voting, has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.</p> <p>(2) the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokayukta and Up Lokayuktas 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 subject to necessary modifications, apply in relation to the removal of the Lokayukta and Up Lokayukta as they apply in relation to the removal of a Judge.</p> <p>(3) If the complaint is frivolous or has been made with malafide intention, the complaint shall be filed by the Himachal Lokayukta in the competent court which may impose a fine upto rupees ten lakhs or an imprisonment upto one year or with both on the complainant.</p> <p>Explanation: Before any action for removal of Lokayukta and Up Lokayukta as provided herein above is taken by the Governor, reasonable opportunity to defend himself shall be afforded to the Lokayukta or Up Lokayukta to meet the basic principle of natural justice.</p>
<p>Budget and reports of Himachal Lokayukta.</p> <p>Annual Report of Lokayukta</p>	<p>25. (1) The Himachal Lokayukta shall prepare its budget for the next financial year showing the estimated receipts and expenditure of the Himachal Lokayukta and forward the same to the State Government. The Himachal Lokayukta may utilize the budget sanctioned by the State Government without any further administrative or financial approval from any Government agency</p> <p>(2) The annual audit of the Himachal Lokayukta shall be conducted by the Comptroller and Auditor General of India.</p> <p>26. (1) The Himachal Lokayukta shall present annually a consolidated report in the prescribed form on its performance to the Governor.</p> <p>(2) On receipt of report under sub-section (1), the Governor shall cause a copy thereof, together with explanatory memorandum, to be laid on the Table of the House.</p>

	CHAPTER-XI INVESTIGATION AND PROSECUTION AGAINST HIGH FUNCTIONARIES
Enquiry against high functionaries.	<p>27. No enquiry, investigation or prosecution shall be initiated against any of the following functionaries without permission of the Full Bench of the Himachal Lokayukta :-</p> <ul style="list-style-type: none"> (i) the Chief Minister and other Members of the Council of Ministers; (ii) Chief Parliamentary Secretaries and Parliamentary Secretaries; (iii) Members of Himachal Pradesh Legislative Assembly; and (iv) any officer of the rank of Secretary and above or Head of Department to the Government of Himachal Pradesh.
Continuation of Enquiry in case of death of complainant.	<p>28. Enquiry, investigation and prosecution shall continue in case the complainant dies or is incapacitated from taking or does not take further steps for substantiating the allegation, the Himachal Lokayukta, as the case may be, for reasons to be recorded in writing, proceed further with the complaint on the basis of the material available.</p>
Withdrawal of complaint.	<p>29. No complaint shall be permitted to be withdrawn unless the Himachal Lokayukta is satisfied that the complaint was made under a bona fide mistake or that the grievance complained of has been adequately redressed.</p>
	CHAPTER-XII POWERS TO MAKE RULES AND REGULATIONS
Power to make rules.	<p>30. (1) The State Government may by notification in the Official Gazette, make rules to carry out the provisions of this Act. The rules may include: The Himachal Lokayukta (Investigation) Rules, 2012, The Himachal Lokayukta (Officers and Employees Condition of Service) Rules, 2012 and The Himachal</p>

	<p>Lokayukta (Condition of Service) Rules, 2012 and Disposal by Destruction of Records in the Institution of the Himachal Lokayukta Rules, 2012.</p> <p>(2) Every rule made under this Act shall be laid, as soon as may be after it is made, on the Table of the House.</p>
<p>Power to make regulations.</p>	<p>31. (1) The Himachal Lokayukta may, by notification, make regulations consistent with this Act to carry out the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the power contained in subsection(1) any such regulations may provide for all or any of the following matters, namely:-</p> <ul style="list-style-type: none"> (a) the conferment of authority on officers at different levels to exercise powers under the Act and to lay down the procedure for any inquiries including those relating to complaints against its officers or members of the staff; (b) periods within which the investigations and inquiries have to be completed; (c) to provide for the taking of certain decisions by the Himachal Lokayukta by circulation; (d) work norms for each category of officers and staff of Himachal Lokayukta ; (e) Code of Conduct for the Himachal Lokayukta organization at all levels; (f) delegation of any of its powers and functions, except those powers and functions which are to be exercised or performed by it, to the authorities and officers subordinate to it; and (g) any other matter on which the Himachal Lokayukta deems fit to frame the regulations.
	<p style="text-align: center;">CHAPTER-XIII</p> <p style="text-align: center;">WHISTLE BLOWERS</p>

<p>Whistle Blowers.</p>	<p>32. (1) Any person having information of any corruption in any public authority may send such information confidentially to the Himachal Lokayukta and the Himachal Lokayukta shall get an inquiry made into such information and if considered necessary get investigation made under the Prevention of Corruption Act, 1988 or Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 or Chapter-IX of Indian Penal Code.</p> <p>(2) The identity of such whistle blower shall not be disclosed if so desired and the Himachal Lokayukta in genuine and appropriate cases may issue necessary directions to provide full protection to such whistle blowers from any physical victimization, physical threat or administrative harassment.</p> <p>(3) The Himachal Lokayukta shall pass orders on the information received under this section as expeditiously as possible within 15 days of receipt of such information and immediate action shall be taken in cases involving a threat of physical victimization and such orders shall be complied with by the concerned authorities.</p> <p>(4)The investigation in complaints by the whistle blowers facing physical or professional victimization shall be fast tracked on priority basis at the earliest on the receipt of the same. No anonymous or pseudonymous complaints shall be entertained. The complainant shall be required to disclose his identity to Himachal Lokayukta and the Himachal Lokayukta on the request of the complainant shall keep the identity secret.</p>
	<p>CHAPTER-XIV</p> <p>MISCELLENIOUS</p>
<p>Power to remove difficulties.</p>	<p>33. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, in consultation with Himachal Lokayukta , by order, not inconsistent with the provisions of this Act, remove the difficulty:</p> <p style="text-align: center;">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.</p> <p>(2) Every order made under this section shall be laid</p>

	on the Table of the House.
Protection of action taken in good faith.	34. No suit, prosecution or other legal proceedings under this Act shall lie against the Lokayukta, Up-Lokayuktas, officers, employees and any other public servant, agency or any person in respect of anything which is done in good faith or intended to be done under this Act or the rules or regulations made thereunder.
Lokayukta, Up-Lokayuktas, officers and employees of Himachal Lokayukta to be public servants.	35. The Lokayukta, Up-Lokayuktas, officers and other employees of the Himachal Lokayukta shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.
Act to have overriding effect.	36. The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being enforced.
Provisions of this Act to be in addition of other laws.	37. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.
Power to delegate.	38. The Himachal Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may be exercised or discharged by such officers as may be specified in the order.
Repeal and Savings. 17 of 1983	39. (1) The Himachal Pradesh Lokayukta Act, 1983, is hereby repealed. (2) Notwithstanding such repeal anything done or any action taken under the Act so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See section 7(2)]

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

STATEMENT OF OBJECTS AND REASONS

An Act to provide for setting up a regime of corruption free society so that the resources of state including of various authorities, instrumentalities, agencies, undertaking, and bodies either owned, controlled or substantially funded by the Government directly or indirectly are utilized for the purposes for which such resources are earmarked for their optimum use for the general public without any wastage for any oblique purposes, gains and ulterior motives so that there is practical transparency and accountability in the working of such authorities, bodies and institutions owned or controlled by Government.

And whereas there is a need to provide an effective, autonomous and independent authority to take appropriate remedial action against those functionaries of the Government who indulge in mal-practices, abusing and misusing their position and power for their personal gains and wrongful loss to the Government and exploitation of the general public;

And whereas it is expedient to provide safety and protection to the whistle-blowers and others who have given information and assistance in confidence for checking malpractices, exploitation, abuse and misuse of the resources of the State;

And whereas, the existing Himachal Pradesh Lokayukta Act, 1983 was not found to be effective for curbing some of such mal-practices, abuse and misuse of power and authority on the part of public servants;

Now, therefore, it is expedient to re-enact the Himachal Pradesh Lokayukta Bill to establish independent and autonomous Himachal Lokayukta to address and take remedial action to contain corruption and to bring to justice public servants who indulge in corruption.

FINANCIAL MEMORANDUM

The provisions of the Bill, if enacted, shall involve recurring expenditure of approximately 1.26 Crores rupees per annum from the State Ex-checquer

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 30 and 31 of the Bill seeks to empower the State Government and the Himachal Lokayukta to make rules and regulations respectively to carry out the provisions of this Act. The proposed delegation of power is essential and normal in character.

RECOMMENDATION OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA (File No. Home(Vig)A(3)-1/2011

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Lokayukta Bill, 2012, recommends under Article 207 of the Constitution of India, the introduction and consideration of the Bill by the Legislative Assembly.

THE HIMACHAL PRADESH LOKAYUKTA BILL, 2012

A

Bill

to re-enact the law to provide for establishment of an independent body of Himachal Lokayukta to inquire into complaints and allegations of corruption against public functionaries and for matters connected therewith or incidental thereto.

**(PREM KUMAR DHUMAL)
Chief Minister,
Himachal Pradesh.**

**(A.C.Dogra)
Principal Secretary (Law).**

**Shimla:
The 4th April, 2012.**