

## **Important recommendations made to the State Government to make the Institution more effective**

### **(i) Proposal to amend the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam 1981**

The Lokayukt and the Up-Lokayukt have the jurisdiction to deal with the cases of allegations only and not for redressal of grievances arising from mal-administration. People are more interested in redressal of their grievances than in punishment of the guilty public servants. Speedy redressal of grievances will definitely help in improving governance. Therefore, a proposal was sent to the State Government vide letter No.3824 dated 05.02.2004 for amendment in the Act along with the proposed statement of objects and reasons and the proposed Bill to expand the jurisdiction of the Lokayukt and Up-Lokayukt to include redressal of grievances as well. *The State Government rejected this proposal vide letter number F-11-1/2001/1-10 dated 01.03.2004.*

### **STATEMENT OF OBJECTS AND REASONS**

At present, the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 provides a machinery to deal with acts which constitute allegations within the meaning of Section 2(b) of the Adhiniyam with a view to mainly punishing the public servants by disciplinary proceedings or otherwise. The Adhiniyam does not make any provision in respect of the vast area of cases arising out of the exercise of executive power which may involve injustice to individuals and for which no remedy is available except through recourse to court. It is well recognized that in order to ensure the highest standards of efficiency and integrity in the public service and for making administration responsive to the people and to promote better governance and generate more faith in the executive government, the Lokayukt and the Up-Lokayukt should be empowered to enquire into the grievances arising out of mal-administration. The present draft bill is designed to provide for this. If the Bill is

enacted, that will be a significant step to implement the Interim Report of the Administrative Reforms Commission of the year 1966. The draft Bill is on the lines of Model Lokayukt Bill prepared by the Working Committee which was constituted in pursuance of the resolution passed at the 6<sup>th</sup> All India Conference of Lokayuktas and Up-Lokayuktas held at New Delhi on 22<sup>nd</sup> and 23<sup>rd</sup> Jan, 2001, which was inaugurated by the Hon'ble Prime Minister. The provisions incorporated in this bill are also in accord with the provisions contained in the Assam Lokayukta and Up-Lokayukta Act, 1985, the Bihar Lokayukta Act, 1973, the Karnataka Lokayukta Act, 1984, the Maharashtra Lokayukta and Up-Lokayuktas Act, 1971, the Orissa Lokpal and Lokayuktas Act, 1995 and the Uttar Pradesh Lokayukta and Up-Lokayuktas Act, 1975.

**MADHYA PRADESH BILL**  
**(No. of 2004)**

An Act further to amend the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-Fifth year of the Republic of India as follows:

**Short title  
and commencement**

- (1) This Act may be called the Madhya Pradesh Lokayukt Evam Up-Lokayukt (Sanshodhan) Adhiniyam, 2004.
- (2) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

**Amendment  
of Section 2**

In section 2 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (No. 37 of 1981) (hereinafter referred to as the Principal Act)

- (i) after clause (b) the following clauses shall be inserted, namely

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

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

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

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

**Amendment  
of Section 7**

In section 7 of the principal Act, after the word "allegation", wherever it occurs, the words "or a complaint involving a grievance" shall be added.

**Amendment  
of Section 8**

In section 8 of the principal Act

(i) after the words "Matter not subject to enquiry:- "(1)" shall be inserted.

(ii) in sub-section (1), in clause (b) the word 'or' shall be omitted and in clause (c) for (.), the word "or" shall be substituted and, thereafter, the following shall be inserted, namely:-

"(d) relating to a grievance, if the complaint is made after the expiry of a period of 12 months limitation from the date on which the action complained against becomes known to the complainant :

Provided that the Lokayukt or Up-Lokayukt in respect of grievance may entertain a complaint made after the expiry of the said period if the complainant shows sufficient cause for not making the complaint within the said period."

(iii) after sub-section (1), the following shall be inserted, namely:-

"(2) In the case of any complaint involving a grievance, nothing in this Act shall be construed

as empowering the Lokayukt or an Up-Lokayukt to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded, as having been improperly exercised."

**Amendment  
of Section 9**

In section 9 of the principal Act-

(i) in sub-section (1) after the words "an allegation" the words "or a grievance" shall be inserted.

(ii) after sub-section (1) the following shall be inserted, namely :-

"(1-a) Subject to the provisions of this Act, a complaint may be made, in the case of an allegation, by any person, and in the case of a grievance by a person aggrieved:

Provided that where the person aggrieved is dead or, is for any reason, unable to act for himself, the complaint may be made or continued by his legal representative or by any other person who is authorized by him in writing in this behalf."

(iii) The existing sub-section (1-a) shall be renumbered as (1-b).

**Amendment  
of Section 12**

In section 12 of the principal Act;

(i) after sub-section (2) the following shall be inserted, namely:-

"(2-a) If, after enquiry into any complaint involving a grievance, the Lokayukt or the Up-Lokayukt, as the case may be, is satisfied that any injustice or undue hardship has resulted to the complainant or any other person, the Lokayukt or the Up-Lokayukt shall, by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report;

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

(ii) after sub-section (6) the following sub-section shall be inserted, namely:-

"(6-a) If the Annual Report is not laid in the State Legislature within 4 months from the receipt of the report by the Governor or till the Legislature meets next, whichever is later, the Lokayukt may make the report public in the manner he may choose".

**(ii) Proposal for speedy and better prosecution of cases under the Prevention of Corruption Act**

Under Section 19 of the Prevention of Corruption Act, sanction is needed before the court can take cognizance against a public servant, so long as he continues to hold the post, which he has abused. Sanction is also required under Section 197 of the Criminal Procedure Code in respect of certain offences committed under the Indian Penal Code. In actual practice, provision of sanction is not serving its intended purpose, which is to protect an honest public servant from harassment by frivolous or vexatious prosecution initiated at the instance of some disgruntled complainant or mafia to teach a lesson to the public servant for not having acted as per illegal wishes, but as a tool to protect the corrupt. The Supreme Court has laid down in Vineet Narain's case that sanction should ordinarily be granted within three months. The Court observed, "Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General [AG] or any other Law Officer in the AG's Office". But this time limit is seldom adhered to. Even in cases where sanctioning authority is the Central government, the State government took

years to forward the relevant papers to the Central government for sanction. This has led to a belief amongst the people that the provision of sanction is being used not to protect the honest but to protect the corrupt and consequently to the erosion of the general confidence in the efficacy of the work done by the investigating agency to some extent and also in the resolve of the government to curb corruption. Experience has shown that in some cases where charge-sheet was filed after refusal of sanction, when there remained no longer the necessity for sanction, conviction was the result. Question is when investigation has been done by a Special investigating agency and the work is supervised by an independent institution like the Lokayukt, should there be any necessity for sanction at all? Further question is as to whether the investigating agency is more suited to decide whether a public servant should be put on trial or the executive? Executive authorities should be made free from extraneous influences, so that statutory functionaries are able to work freely, subject to supervision of courts, as per the provisions of law. Investigation of a criminal case including a case under the Prevention of Corruption Act is a statutory function and, therefore, there appears to be no rationale for the executive government to have any say in the matter of investigation. 'Investigation' inter alia includes the formation of opinion by the investigating agency as to whether there is sufficient evidence to warrant the prosecution of a person and also taking of further steps necessary to file the charge-sheet.

India is a signatory to the United Nations Convention against Corruption, which was adopted by the UN General Assembly by its resolution 58/4 of 31<sup>st</sup> October 2003. Article 36 of Convention states:

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.”

Question arises as to whether the need of sanction does not militate against the necessary independence of the agency to be able to carry out its function effectively and without any undue influence. Since, investigation of a case is a statutory function which implies that filing of charge-sheet is also a statutory function, does the need for sanction not operate against the independence of the agency and adversely affect its effectiveness in being able to carry out its function without any undue influence?

Some people say that sanction is necessary at least in those cases where the complaint involves the element of abuse of power. This pre-supposes that the investigating agency cannot be trusted with the capacity to deal with such cases. To enhance the trust of the people in the agency, it needs to be made more efficient, independent, effective and accountable. Need of sanction, instead of serving any useful purpose, defeats justice by delaying the filing of charge-sheet eroding faith of the people in the system. The investigating agency is expected to ascertain the whole procedure, which was expected to be followed by the concerned public servant. Cases have to be decided on the basis of available

evidence and the relevant circumstances, and not on the basis of personal perception of one or the other person, about some administrative angle.

Besides, the delay in granting sanction or refusal of sanction does not wipe out the stigma which attaches to a public servant on the registration of a criminal case against him by the investigating agency. The sanctioning authority does not act as an appellate or revisional authority over the work of the investigating agency. Absence of sanction in a case where sanction is required only prevents the court from taking cognizance of a case so long as the necessity of sanction continues. When the public servant ceases hold the post, which he had abused, sanction is no longer needed under Section 19 of Prevention of Corruption Act and, therefore, then the court can take cognizance of the case. The very fact that the refusal of sanction does not affect the validity of the conclusion reached by the investigating agency, lack of sanction does not wipe out the stigma which is attached to the public servant, as the criminal case continues to exist against him and validity of the finding arrived at by the prosecuting agency also continues to exist because they would cease to exist only when the final report is filed by the investigating agency and is accepted by the court.

Good work done by the investigating agency may be robbed of its true worth, if the public prosecutor is lacking in proficiency and sincerity. In order to ensure professional efficiency without interference, his work needs be supervised closely. As such superintendence over the work of such public prosecutors should vest in an independent institution like Lokayukt.

*Therefore, a proposal was sent to the State Government vide letter No. 3824/04 dated 5.2.2004 to avoid delay in disposal of cases due to the necessity for sanction under Section 19 of the Prevention of Corruption Act and Section 197 of Criminal Procedure Code and also for expanding the jurisdiction of the Lokayukt to the superintendence in respect of the prosecution of cases instituted by the Special Police Establishment in order that the quality of prosecution improves. Along with the proposal, a copy of proposed*

*amendment bill and also of statement of objects and reasons were forwarded but this proposal was rejected by the State Government vide letter No.F-11-1/2001/1-10 dated 14.03.2005.*

### **STATEMENT OF OBJECTS AND REASONS**

1. Amendments by sub-clauses (i) and (ii) in clause 2 of the proposed Amendment Bill seek to restore the position as it obtained prior to the amendment by the Madhya Pradesh Special Police Establishment (Amendment) Act No. 25 of 2003 in sub-section (1) and sub-section (1-a) of Section 4 of the Madhya Pradesh Special Police Establishment Act, 1947. The amendments made by the (Amendment) Act No. 25 of 2003 have given rise to widespread misgivings among the people that the amendments were effected in order to extend control of the executive over the Madhya Pradesh Special Police Establishment so that the executive may influence the work of Special Police Establishment by diluting the supervision by the Lokayukt. In order to generate and strengthen the faith of the people in the rule of law, it is necessary to remove the cause of misgiving.
2. Section 19 of the Prevention of Corruption Act, 1988 provides that no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of one of the authorities specified therein. Similar sanction is required in respect of the offences alleged to have been committed by a public servant under the provisions of the Indian Penal Code under section 197 of the Code of Criminal Procedure, 1973. There are only a few offences under the Indian Penal Code in respect of which the Madhya Pradesh Special Police Establishment is empowered to investigate. Experience has shown that the requirement of sanction does not serve any useful purpose in respect

of the cases, which have been investigated by the Madhya Pradesh Special Police Establishment, since in such cases prosecution is not launched unless it is ordered or approved by the Lokayukt. The purpose of sanction is to protect a public servant to discharge his official duties without fear of unnecessary harassment by frivolous prosecution which may be initiated by or at the instance of a person who is inspired to bring prosecution for some ulterior purpose and not to achieve some public purpose. When investigation has been conducted by a special agency like the Madhya Pradesh Special Police Establishment which is immune from any executive influence and whose work is supervised by the Lokayukt who has been so far either a former judge of the Supreme Court of India or a former Chief Justice of a High Court, there would hardly be any case where on objective consideration of the material on record, the competent authority would come to a decision other than that reached by the Lokayukt. After the investigating officer has submitted his report, the matter is examined by Public Prosecutor, then by DIG, then by IG, and then by DG(SPE) and thereafter by the Legal Adviser in the Office of Lokayukt, the Legal Adviser being a member of the higher judicial service of State of Madhya Pradesh, of the rank of District Judge on deputation, and thereafter by the Lokayukt. So, the requirement of sanction results in undue delay in filing prosecution without serving any public purpose. Rather, the requirement of sanction is detrimental to public purpose, since it has given rise to a widespread feeling that the delay or refusal in sanction is designed to protect a corrupt public servant. A similar provision exists in section 14 of the Karnataka Lokayukta Act, 1984, which reads as under:-

***"Section 14. Initiation of prosecution.-*** *If after investigation into any complaint the Lokayukta or an Up-lokayukta is satisfied that the public servant has committed any criminal offence and should be prosecuted in a court of law for such offence, then, he may pass an*

*order to that effect and initiate prosecution of the public servant concerned and if prior sanction of any authority is required for such prosecution, then, notwithstanding anything contained in any law, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order."*

Sub-section 1(c) is sought to be added in order that prosecution of the cases under the Prevention of Corruption Act may be supervised more closely in order that the prosecution becomes more effective and trial becomes more speedy. At present, more than 500 cases under the Prevention of Corruption Act are pending before the Special Courts in the State of Madhya Pradesh. Many of those cases are quite old. One reason for delay is that attendance of witnesses is not ensured on the date of hearing. Frequent adjournments is another cause. If, besides investigation the work of prosecution is also supervised by the Lokayukt, it will help in ensuring better co-ordination in the work of the investigating agency and the prosecuting agency, resulting in more expeditious disposal of cases.

**MADHYA PRADESH BILL**  
**(No. of 2004)**

The Madhya Pradesh Special Police Establishment (Amendment) Bill, 2004.

An Act further to amend the Madhya Pradesh Special Police Establishment Act, 1947.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-Fifth year of the Republic of India as follows:

- |                               |   |
|-------------------------------|---|
| <b>Short title</b>            | (1) This Act may be called the Madhya Pradesh Special Police Establishment (Amendment) Act, 2004.               |
| <b>Amendment of Section 4</b> | (2) In Section 4 of the Madhya Pradesh Special Police Establishment Act, 1947 (No.17 of 1947)                   |
|                               | (i) In sub-section (1) for the words "The Superintendence of investigation by the Madhya Pradesh Special Police |

Establishment" the words "The superintendence of Madhya Pradesh Special Police Establishment" shall be substituted;

(ii) In sub-section (1-a) for the words "and may issue general direction for regulating practice and procedure of investigation to be adopted by the Special Police Establishment" the words "and may issue general directions for regulating practice and procedure to be adopted by the Special Police Establishment" shall be substituted;

(iii) After sub-section (1-a) of Section 4, the following shall be inserted;

"(1-b) "If on investigation by the Special Police Establishment the Lokayukt is satisfied that any public servant has committed a criminal offence and accordingly orders or approves his prosecution in a Court of law for such offence, then notwithstanding the provisions of section 19 of the Prevention of Corruption Act, 1988 and section 197 of the Code of Criminal Procedure, 1973, previous sanction, if any, required for cognizance to be taken by Court, shall be deemed to have been granted.

(1-c) Notwithstanding anything contained in asny other law, the superintendence of prosecution of cases instituted by the Special Police Establishment shall vest in the Lokayukt appointed under section 3 of the Madhya Pradesh Lokayukt and Up-Lokayukt Adhiniyam, 1981 (No.37 of 1981)."

**(iii) Suggestion to mitigate the hardship of the genuine complainants who do not want to pay bribe**

When a complainant makes a complaint before the Special Police Establishment that the concerned public servant is demanding bribe, which is an offence under the Prevention of Corruption Act, after being satisfied that the case is a fit one to lay trap, trap is laid after following the proper procedure including the procurement of the presence of two Gazetted officers who are provided by the Collector as witnesses. Trap money is to be arranged by the complainant

himself. This trap money becomes case property and cannot be refunded to the complainant until the conclusion of the judicial proceedings. Judicial proceedings take several years to come to a final termination with the result that the trap money remains immobilized for that length of time. Thus, the complainants experience serious economic hardship. Sometimes they arrange money by taking loan on interest and if it is so, they have to pay interest thereon. Many people, therefore, believe that it is better to pay bribe than to suffer this hardship. Evil of corruption cannot be tackled effectively unless appropriate steps are taken to remove such hardship, which they face only because they do not want to pay bribe. One solution of the problem would be that a fund is created by the State Government from which an amount equal to the amount of bribe is paid to the complainant after the trap proceedings have been successful, and when the trap money is returned by the Court on the termination of the judicial proceedings that trap money may be deposited in that fund. Suggestion to that effect was made by the Lokayukt Organization to the State government vide letter No.3808 dated 4.2.2004. *The State Government was pleased to reject the same vide letter No.15-2/2004 dated 21.10.2004.*

**(iv) Suggestion to improve procedure with respect to Departmental Enquiries/ Departmental Action pursuant to the recommendations of the Lokayukt Organization**

To curb corruption and improve governance, it is necessary to hold the public servants at fault accountable. At present, after enquiry has been made in a particular case by the Lokayukt Organization, recommendation is made to the Competent Authority under Section 12(1) of the Madhya Pradesh Lokayukt and Up-Lokayukt Act, 1981. It cannot be disputed that making recommendations alone cannot bring any tangible improvement in combating corruption or improving governance. All the recommendations should be implemented in timely manner in both letter and spirit. At present, after the Lokayukt

Organization makes any recommendation, the matter is considered by the disciplinary authority again to decide whether charge-sheet should be served or not. When it is decided to hold disciplinary proceedings, charge-sheet is served and enquiry process starts as per the Madhya Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966. Experience has shown that this procedure has not worked satisfactorily. Issue of charge-sheet is delayed many times inordinately, departmental enquiries go on in a leisurely fashion, presenting officers do not produce the relevant material before the enquiry officer, and some times the inquiry officer bases his recommendations on irrelevant facts ignoring the relevant facts. Many times, public servants retire before charge-sheet has been served on them, and, therefore, inquiry cannot be initiated against them on account of the lapse of more than 4 years from the date of accrual of the cause of action. On 31.05.2007, 446 cases were pending for departmental action or departmental enquiries and 47 of them had been pending for more than a decade. In several cases charge-sheet has not been issued even when recommendations had been made several years back. When the ultimate decision reached by the disciplinary authority is presented before the Lokayukt Organization, it is some times found that the inquiry was, in fact, no inquiry in the eye of law. Then the inquiry procedure starts again. Considerable time passes before the enquiry concludes. All these factors produce a fertile ground for successful challenge of the continuance of the enquiry proceedings on the ground of arbitrariness, malafides and breach of the service rules before the Court. To illustrate the point, in one case (Case No. नि/32/86/83-84/DE-44/85-86) recommendation for initiating action in respect of several officers including Shri R.P. Yadav, Sub-Engineer, P.W.D. for initiation of departmental inquiry was made to the State government vide letter dated 11.03.1986. However, the charge-sheet was issued after about 19 years on 29.01.2005. Cause of action for which the charge-sheet was issued arose in 1980-81, 1981-82 and 1982-83. Writ Petition (WP(S)743/05) was filed in the High Court by Shri R.P. Yadav, to challenge the

initiation of disciplinary proceedings, alleging that the departmental inquiry was arbitrary and illegal as there was a delay of nearly about 21 years in initiation of the inquiry. The inquiry proceedings were quashed by the High Court vide judgment dated 19.01.2007. Not only there was inordinate delay creating a fertile ground for quashing of the proceedings, the reason given before the High Court to explain the delay was also not correct. False impression was created before the High Court, as if the delay had occurred on account of the procurement of the relevant record from the Lokayukt organization. The High Court recorded in its judgment as under:

"5.....Contrary to this, learned counsel for the respondent/State has submitted that the delay in initiation of departmental inquiry is bonafide because the record from the Lokayukt Office has been received subsequently.

6.....The relevant pleadings of the respondents in the return to this effect in this regard is as under:-

The allegations of the petitioner with regard to conducting departmental enquiry after 25 years, in this regard it is most humbly submitted that entire record of the petitioner and some other employees against whom the aforesaid charges were levelled were seized by the Lokayukt, and in collecting the record from the higher authorities the time consumed which is not contrary, arbitrary or infringement of petitioner's fundamental right but is bonafide and looking to the serious charges against the petitioner and others for causing pecuniary loss to the State Exchequer. Petitioner without waiting the fate of the departmental enquiry, straightway take shelter of this Hon'ble Court and as such has not come to the Hon'ble Court with clean hands and as such aforesaid petition is baseless and devoid of substance and without any merit and deserves to be dismissed on the aforesaid facts and circumstances of the case in the interest of justice."

Thus, a wrong impression was created that the records had not been received from the Lokayukt organization in time, whereas in fact the records had been sent to the government along with the recommendation for action in March 1986 itself.

The result is that the sound administrative principle, which is to hold the guilty public servants accountable, gets frustrated and work done by the Lokayukt Organization is proved to be an exercise in futility. Question is when full-scale inquiry has been conducted by the Lokayukt Organization after giving an opportunity to the delinquent public servant to give explanation in writing and also of being heard in person, is it necessary for the disciplinary authority to start the inquiry over again with unproductive results? After recommendation has been made by the Lokayukt Organization, the recommendation can be the basis on which the disciplinary authority may pass an appropriate order for punishment. Such a procedure is being followed in Andhra Pradesh. There is no reason why the same situation should not be brought about in Madhya Pradesh by making suitable amendments in the Madhya Pradesh Lokayukt and Up-Lokayukt Act, 1981 and the Madhya Pradesh Civil Service (Classification, Control and Appeal) Rules, 1966.

Accordingly, a recommendation was made to the State Government vide letter No.360 dated 17.09.2004 to make an appropriate amendment in Rule 12(2) of the Madhya Pradesh Lokayukt and Up-Lokayukt Act, 1981 as under:-

"Sec.12(2) of the M.P. Lokayukt and Up-Lokayukt Act, 1981 should be substituted as under:-

The competent authority shall examine the report forwarded to it under sub-section (1) and without any further inquiry, take action on the basis of the recommendation and within ninety days from the date of receipt of the report, intimate or cause to be intimated to the Lokayukt or Up-Lokayukt, as the case may be, the action taken or proposed to be taken on the basis of the report."

*However, the State government was pleased to reject the proposal vide letter No.F-15-3/04 dated 21.07.2005.*

**(v) Provision of competent staff.**

Lokayukt Organization is under-staffed. With the growing awareness amongst the people about the serious evil consequences of corruption and mal-administration, complaints are on the increase. But the sanctioned strength of the staff has not been increased. Even the vacancies are not filled-up for years. The Lokayukt Organization does not have the power to make appointment to the various posts in the Organization except Class-III and Class-IV posts, and has, therefore, to depend on the executive government for filling up the posts in the Organization. Often, competent government servants are reluctant to join the Lokayukt Organization firstly, because the work in the Lokayukt Organization is more arduous in nature than elsewhere and, secondly, because most of the government servants have the apprehension of being victimized on their return to their parent cadre for having displeased some influential persons while discharging their duty in the Lokayukt Organization for not having worked according to their wishes. Some of the officers who are posted in the organization successfully make effort to get cancelled their posting orders, and some challenge their postings in the Court on the ground that they could not have been posted without their consent. An Organization like the Lokayukt cannot be run by the officers who are posted unwillingly. Some of the countries and also some of the States in India do not face any problem in filling the vacancies because the Lokayukt Organization or such like Organization makes the selection and appointment without having to depend upon the executive government. In some other States and also in some countries, allowance, say

20% of the basic pay is given as deputation allowance or special pay, so that competent persons may be encouraged to join the Organization.

It is, therefore, necessary that provision should clearly be made in the Madhya Pradesh Lokayukt and Up-Lokayukt Act, 1981 to ensure that the Lokayukt Organization shall have permanent staff of its own who should be selected and appointed by the Lokayukt Organization. Even if the Lokayukt Organization has to depend upon the executive government for the staff, there should be a clear provision that no person can be posted in, nor any person be withdrawn from the Lokayukt Organization without the concurrence of the Lokayukt. If a government servant is functioning quite satisfactorily in the Lokayukt Organization, there is no reason why executive government should insist that a person should be repatriated to his parent department because a particular number of years has elapsed. Nature of work in the Lokayukt Organization is quite different from that in other organizations, and requires the members of the staff to be trained. Training involves a lot of time and expenditure. If after a government servant is placed at the disposal of Lokayukt Organization and has been trained and then he goes back to his parent cadre, that would not only result in wastage of time and money, but would also adversely affect the effectiveness of the Lokayukt Organization. Further-more, such public servants should be allowed reasonable special pay or deputation allowance. *A recommendation was sent to the State Government vide letter No.998/Estt./Lokayukt/2007 dated 29.1.2007.* Although the state Government has not accepted the recommendation fully, but was pleased to sanction slab wise special pay up to the rank of Deputy Inspector General of Special Police Establishment vide order no. F-4 (1)/2005/1-10, dated 27.12.2007 of GAD

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