

The Goa Lokayukta (Amendment)

Bill 2021

(Bill No.05 of 2021)

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BILL

further to amend the Goa Lokayukta Act, 2011(Goa Act 3 of 2012).

BE it enacted by the Legislative Assembly of Goa in the seventy-second year of the Republic of India as follows:-

1. Short title and commencement- (1) This Act may be called the Goa Lokayukta (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 2- In section 2 of the Goa Lokayukta Act, 2011 (Goa Act 3 of 2012) (hereinafter referred to as the (“principal Act”))-

(i) in clause (b)-

(a) in item (i), the expression “nepotism or lack of integrity” shall be omitted.

(b) in item (ii), the words “or improper or corrupt motive” shall be omitted.

(c) for item (iii), the following item shall be substituted, namely :-

“ has abused or misused his position to obtain any gain or favour to himself or to any other person or to his family members, namely, spouse, children, parents and siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law and their respective spouses”.

(ii) in clause (i), for the word “mal-administration” the words “a corrupt act” shall be substituted;

(iii) clause (l) shall be omitted.

3. Amendment of Section 3- In section 3 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court, or of a Judge of the High Court. A person to be appointed as the Upa-Lokayukta shall be a person of eminence in public life with impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty years in the matters relating to anti-corruption policy or public administration, finance, including insurance and banking or law or management”.

4. Amendment of Section 9- In section 9 of the principal Act for sub-section (2) the following sub-section shall be substituted, namely:-

“(2) Notwithstanding anything contained in sub- section (i) or any other provisions of this Act, where any allegation of corruption against any public functionary comes to the knowledge or is brought to the notice of the Government, it may, if satisfied that it is necessary in public interest so to do, by order in writing refer such allegations of corruption to the Lokayukta for investigation and the Lokayukta, either himself or through the Upa-Lokayukta shall investigate the same as if it was a complaint presented under this Act”.

5. Insertion of new section 10A.- After section 10 of the principal Act, the following section shall be inserted, namely:-

“10A. Statutory matters, etc.- Nothing in this Act shall permit the Lokayukta or Upa-Lokayukta to examine the correctness of any Judgement or order passed by any Court of Law, Tribunal, Statutory Authority or Officer, under a Statute, or to decide any issue, question or dispute which is required to be settled, decided or adjudicated upon by a competent Court or Authority created under any statute.”

6. Amendment of section 13- In section 13 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:-

“Provided that if prior sanction of any authority is required under any law for the time being in force for such investigation then, such prior sanction shall be obtained from such authority before initiation of such investigation.”

7. Amendment of section 16- In section 16 of the principal Act, -

(i) in sub-section (1), clause (b) shall be omitted;

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

“ (2) The competent authority shall examine the report forwarded to it under sub-section (1), and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or Upa Lokayukta, as the case may be, the action taken or proposed to be taken or the reasons for refusal to take action, on the basis of the report.”

(iii) for sub section (3), the following sub-section shall be substituted, namely:-

“(3) If the Lokayukta or the Upa-Lokayukta, as the case may be, is satisfied with the action taken or proposed to be taken or the reasons for refusal to take action intimated to him under sub-section (2) by the Competent Authority, he shall close the case under information to the complainant, if any, the public functionary and the competent authority, but where he is not satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant, if any.”

8. Amendment of section 16 A - In section 16A of the principal Act-

(i) sub-section (3) and sub-section (4) shall be omitted;

(ii) in sub-section (5) the words “or deemed acceptance” shall be omitted.

9. Substitution of section 17- For section 17 of the principal Act, the following section shall be substituted, namely:-

17. Initiation of prosecution- If, after investigation into any complaint, the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that the public functionary has committed a criminal offence and that he should be prosecuted in a court of law for such an offence, then the Lokayukta

or Upa-Lokayukta, as the case may be, may pass an order directing the initiation of prosecution against the public functionary concerned:

Provided that before implementation of the direction for prosecution, prior sanction from the competent Authority shall be obtained for such prosecution against the public functionary:

Provided further that nothing in this section shall be construed as enabling the Lokayukta or Upa-Lokayukta to exercise powers under subsection (3) of section 156 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974).

10. Omission of section 27- Section 27 of the principal Act shall be omitted.

Statement of Objects and Reasons

The Bill seeks to amend sections 2, 9, 10, 13, 16, 16A, 17 and 27 of the Goa Lokayukta Act, 2011(Goa Act 3 of 2012) with a view to bring the Goa Lokayukta Act in line with the provisions of the Constitution of India, the Code of Criminal Procedure, 1973 and the Prevention of Corruption Act, 1988 as amended vide the Prevention of Corruption (Amendment) Act, 2018.

The Bill also seeks to amend sub-section (2) of section 3 of the Goa Lokayukta Act, 2011(Goa Act 3 of 2012) so as to provide that a person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court, or a retired Judge of the High Court and to provide that a person to be appointed as Upa-Lokayukta shall be an eminent person who is of an impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty years in the matters relating to public administration or finance; including insurance and banking or law or anti-corruption policy or management, as there is difficulty in obtaining the willingness from eligible retired Supreme Court Judges or retired High Court Chief Justices for appointment as Goa Lokayukta.

This Bill seeks to achieve the above objects.

Financial Memorandum

No financial implications are involved in this Bill.

Memorandum Regarding Delegated Legislation

No delegated legislation is involved in this Bill.

Porvorim –Goa

(DR. PRAMOD SAWANT)

Dated: /01/2021

Hon. Chief Minister/
Minister for Vigilance

Assembly Hall,
Porvorim-Goa,

(Namrata Ulman)
Secretary to the Legislative

Dated: /01/2021

Assembly of Goa

Annexure

Extract of sections 2, 3, 9.10, 13, 16, 16A, 17 and 27 of the Goa Lokayukta Act, 2011 (Goa Act 3 of 2012).

2: Definitions:

2 (b) (i):- is guilty of corruption, favouritism, nepotism or lack of integrity;

2 (b) (ii):- was actuated in the discharge of his functions by personal interest or improper or corrupt motive;

2 (b) (iii):- has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person;

2 (i):- ‘grievance’ means claim by **any person against public functionary, falling under clause (q) (xi) of Section 2 of this Act**, that he sustained injustice or undue hardship in consequence of mal-administration by **such public functionary**.

2 (l) “ Mal-administration” means action taken or purporting to have been taken in the exercise of administrative functions in any case :- (i) where such action or the administration procedure or practice governing such action is unreasonable, unjust, oppressive or improper, discriminately; or

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

3: Appointment of Lokayukta or Upa- Lokayukta:

3(2): - A person to be appointed as the Lokayukta shall be a person who has held the office of a Judge of the Supreme Court, or of a Chief Justice of the High Court. A person to be appointed as the Upa-Lokayukta shall be a person who has held the office of a Judge of the High Court or is qualified to be appointed as a Judge of the High Court.

9: Matters which may be investigated by Lokayukta or Upa-Lokayukta:

9(2) - Notwithstanding anything contained in sub-section (1) or any other provisions of this Act, where any allegation of corruption against any public functionary or any grievance of mal-administration by any public functionary comes to the knowledge or is brought to the notice of the Government, it may, if satisfied that it is necessary in public interest so to do, by order in writing refer such allegations of corruption or grievance of mal-administration or both to the Lokayukta for investigation and the Lokayukta, either himself or through the Upa-

Lokayukta shall investigate the same as if it was a complaint presented under this Act.

10: Matters not subject to investigation:

10 (1) Except as hereinafter provided, the Lokayukta shall not investigate:—

- (i) any matter, in respect of which, a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta;
- (ii) any matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 (Central Act 60 of 1952);
- (iii) any complaint involving an allegation of corruption made after the expiry of a period of five years from the date on which the matter or conduct complained against is alleged to have taken place:

Provided that the Lokayukta or Upa-Lokayukta, as the case may be, may entertain a complaint made after the expiry of the period specified in sub- clause (iii) above, if the complainant shows sufficient cause for not making the complaint within the said period:

Provided further that in respect of an investigation of a complaint involving allegations of corruption, once the complaint is entertained and is being investigated, nothing shall prevent the Lokayukta or Upa-Lokayukta from investigating and enquiring into acts of corruption which may pertain to any period prior to the said period of five years.

13: Procedure in respect of detail investigation:

13 (1) Where the Lokayukta or Upa-Lokayukta, after making the preliminary inquiry under section 12; finds that there are reasonable grounds for conducting a detail investigation and proposes to conduct such an investigation under this Act, he shall forward a copy of the complaint, alongwith it's enclosures to the public functionary and the competent authority concerned and proceed to make a detailed investigation.

16: Reports of Lokayukta:

16 (1) (b):- If, after investigation of any complaint involving a grievance, the Lokayukta or the Upa-Lokayukta, is satisfied that in consequence of mal-administration by the public functionary, the complainant has sustained injustice or undue hardship, the Lokayukta or the Upa-Lokayukta, shall by a report in writing recommend to the public functionary and the competent authority concerned, that

such injustice or undue hardship shall be remedied or redressed and as such report shall be acted upon as far as possible within 60 days and a report shall be sent to the Lokayukta or Upa-Lokayukta accordingly.

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

16 (3):- If the Lokayukta or the Upa-Lokayukta, as the case may be, is satisfied with the action taken or proposed to be taken on his recommendation referred to in clause (a) of sub-section (1), he shall close the case under information to the complainant, if any, the public functionary and the competent authority concerned, but where he is not satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant, if any.

16A: Public functionary to vacate office:

16 A (3) :- If the declaration under sub-section (1) is not rejected within such period of three months, it shall be deemed to have been accepted by the Competent Authority, on the expiry of the said period of three months and the fact of such deemed acceptance of declaration shall immediately be intimated by the Lokayukta or the Upa-Lokayukta, as the case may be, to the Competent Authority and the public functionary concerned.

16 A (4) :- If the declaration under sub-section (1) is in respect of a Chief Minister or a Minister, accepted or deemed to have been accepted by the Competent Authority, he may resign from his office.

16 A (5) :- With effect from the date of intimation of acceptance or deemed acceptance of the declaration, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public functionary,-

17: Initiation of Prosecution:

17:- If, after investigation into any complaint, the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that the public functionary has committed a criminal offence and that he should be prosecuted in a court of law for such an offence, then he may pass an order to the effect and the appropriate authority shall initiate prosecution against the public functionary concerned:

Provided that if prior sanction of any authority is required under any law for the time being in force, for such prosecution, then, such prior sanction shall be obtained from such authority before initiation of such prosecution.

27:Pendency of case not to bar proceeding under this Act:

27:- The pendency of any civil or criminal case in the High Court or any Court subordinate thereto in respect of any allegation or grievance shall not bar the scrutiny, investigation or enquiry of or into that allegation under this Act, and no such scrutiny, investigation or enquiry shall be deemed to amount to contempt of such Court.

Provided that the Lokayukta or the Upa-Lokayukta, as the case may be, shall refrain from conducting further proceedings under this Act till the final disposal of such pending civil or criminal case in the High Court or any Court subordinate thereto and all further proceedings under this Act shall be subject to any order, judgement, directions, etc; that may be passed by the High Court or such subordinate court in such pending civil or criminal case.

Porvorim –Goa

(DR. PRAMOD SAWANT)

Dated: 27 /01/2021

Hon. Chief Minister/
Minister for Vigilance

Assembly Hall,
Porvorim-Goa,

(Namrata Ulman)
Secretary to the Legislative

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