

GOVERNMENT OF GOA

LAW COMMISSION

Establishment of the Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provision for the appointment of the Lokayukta and Upa Lokayukta and for the matters connected therewith.

Report No. 15

September 2011

LAW COMMISSION, GOA

(REPORT No. 15)

Establishment of the Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provision for the appointment of the Lokayukta and Upa Lokayukta and for the matters connected therewith.

Forwarded to the Chief Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the 19th day of September 2011.

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

The Commission consists of the Chairman, and the two Members.

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at **B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.**

Secretarial Support

- 1. Shri Manohar Shetye, O.S.D. to Chairman/ Acting Secretary**

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Any enquiry relating to this Report should be addressed to the O.S.D. to Chairman/ Acting Secretary and sent either by post to the Law Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa or email to chairman-glc.goa@nic.in or rdkhalap@rediffmail.com

RECOMMENDATIONS

It is therefore recommended that the The Goa Lokayukta Act 2011 may be introduced in the forthcoming Assembly Session.

We recommend accordingly.

**(Ramakant D. Khalap)
Chairman**

**(Cleofato Coutinho)
Member**

**(Mario Pinto Almeida)
Member**

REPORT

“ Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a Government servant not to eat up at least a bit of the King’s Revenue”

-Kautilya

Scourge of corruption has been afflicting all generation and all Countries perhaps from the beginning of the Civilization. A story in the Book of Genesis speaks about how the entire first civilization of humans originating from Adam and Eve was drowned and destroyed by God Almighty in a huge deluge because it had become corrupt. Humanity does not appear to have learnt any lessons from its primordial punishment. Cancer of corruption has spread all over. It is clawing at the sinews of our civilization. No country seems to be free from this menace. Almost every Country in the world finds a place on the corruption list published by Transparency International. Our Country of course has a place of “pride” in it.

The United Nations Commission on prevention of corruption which met in Mexico in 2003 adopted a convention urging upon its signatories to take effective steps to curb corruption. India is one of the 140 Countries which have subscribed to it. We have however, to this day failed to enact an effective law and constitute an efficient machinery to contain the monster of corruption. For ages we were dependant upon the provisions of Indian Penal Code for action against graft by public servants. This was augmented by the passage of the Prevention and Corruption Act 1988 and the Commission of Enquiries Act, 1952. After the Jain Hawala Case , The Central Vigilance Commission and the Central Bureau of Investigation were sought to be insulated from the Central Government in terms of the directions of the Supreme Court . It appears the measures suggested by the Supreme Court did not produce the desired results

The matters came to the fore when it was realized that the black wealth generated through corrupt means was being used to fund terrorist activities worldwide. A slew of measures were than adopted to prevent money laundering. International pressure on Swiss and other Banks holding secret accounts has mounted. This step is likely to throw up information about ill-gotten wealth being stashed away in Tax Havens. Our own Supreme Court is monitoring a case which seeks disclosure of names of Indians holdings secret accounts in Foreign Banks.

As early as in 1966 an Administrative Reforms Commission headed by Late Shri Morarji Dessai had advocated setting up of a two tier machinery of Ombudsmen-one at the

Central level and the other in States for redressal of peoples grievances against corrupt people in the Government. Lokpal Bills were introduced in the Parliament in 1968 and again in 2005. Orissa established a Lokayukta in 1970. Thereafter several other States followed suite. Goa had its first Commission under the Goa Public Men's Corruption (Inquiries and Investigation) Act 1988. The provisions of this Act were analogous to the Lokayukta Act in several states. Government of India circulated Model Bills on Lokayukta and State Vigilance Commission to all States. The Lokayukta Bill 2003 was introduced in the Goa Assembly in 2003. It was referred to Select Committee. It was finally passed by the Legislative Assembly of Goa in January 2007. The Governor of Goa reserved it for assent of the President as the proposed Legislation was within the ambit of Entry No.45 of the Concurrent List III of the VII Schedule of the Constitution of India. It was examined by the Ministry of Law, Home and Personnel and Public Grievances, Government of India. These Departments made their observations regarding certain provisions of Bills passed by the House in the context of Prevention of Corruption Act, 1988, The Delhi Special Police Establishment Act, and Right to Information Act. These observations were considered by the Government of Goa and it was decided that in view of legal infirmities pointed out by the Central Government Ministries, the Bill should be withdrawn and replaced by a fresh Bill. We are informed that this proposal could not materialize as the April 2011 Session was engulfed in pandemonium in the House. This is thus the chequered history in the Lokayukta Bill of Goa.

Meanwhile, the Nation got engulfed in a raging controversy and debate over the need for a strong ombudsmen mechanism at the Central and State levels. At the end of a series of meetings between the Government of India representative and members of so called "Civil Society" two Draft Bills emerged. The Government introduced its own Bill called "The Lokpal Bill 2011" in the Parliament. Another version called the "Jan Lokpal Bill 2011" also emerged.

We at the Law Commission decided to play our role by drafting a Lokayukta Bill which would have wide acceptance. Shri Digambar Kamat, Chief Minister of Goa also expressed his intention to table a comprehensive Lokayukta Bill in the Legislative Assembly of Goa which may be holding its last Session in early October 2011. He requested us to expedite drafting of a fresh Bill. We examined therefore all the available versions of the Lokpal and Lokayukta Bills. The Draft Bill annexed to this Report incorporates major provisions from the concerned Bills which we hope will meet the aspirations of the public at large. Some of the salient features of the Draft Bill are as under:

1. The Goa Lokayukta will be empowered to enquire suo moto as well as on complaint and reference by Government into all allegations of corruption favouritism, nepotism, lack of integrity, etc.

2. The Lokayukta will be empowered to take action against all functionaries including Chief Minister, Ministers, M.L.A.s, and all Government servants as well as office bearers of local bodies, Municipalities, Zilla Parishads, Panchayats, Co-operative Societies, Societies, Government Companies, NGOs and individuals getting grant of more than Rs. One lakh from Government or Foreign or public contributions.
3. A High Court Judge will alone be qualified to be Lokayukta or Upa-Lokayukta.
4. The Lokayukta will have its own Investigation and Prosecution Wings.
5. Special Courts will be established to try the offenders.
6. No previous sanction or authorization will be required to take cognizance of any complaint or to investigate into any offence of corruption or to prosecute an offender
7. All public functionaries will be liable to disclose their assets.
8. Disproportionate Assets will be confiscated. Bank accounts may be frozen.
9. Pending enquiry a public functionary may be transferred or suspended.
10. Every Department shall publish its Citizens Charter and update it regularly.

This is the Fiftieth year of our Liberation from the Portuguese yoke. During this half Century we have witnessed tremendous growth in every sector of our economy. Unfortunately corruption too has grown exponentially. So much so that people find it hard to believe that any one in our polity can ever be non-corrupt. This belief portents a great threat to our democracy. Monster of Corruption may one day devour our Nation. No redeemer is in sight. We ourselves therefore have to rise and vanquish it.

With this we commend this Draft Bill "Goa Lokayukta Bill 2011" for consideration and passing by the Legislative Assembly of Goa.

THE GOA LOKAYUKTA BILL, 2011

(BILL NO. __ OF 2011)

A

BILL

To provide for the establishment of the institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provision for the appointment of the Lokayukta and Upa Lokayukta and for the matters connected therewith.

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

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement:-

- (1) This act may be called the Goa Lokayukta Act, 2011
- (2) It extends to the whole of the state of Goa
- (3) It shall come into force at once

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

- (a) **“Action”** means action taken by the public functionary in the discharge or purported discharge of his functions as such public functionary, by way of decision, recommendation or finding or in any other manner, or includes any omission or commission in connection with or arising out of such action, and all other expressions connoting such action shall be construed accordingly.
- (b) **“Allegation”** in relation to a public functionary , means any affirmation that such public functionary in his capacity as such-
 - (i) Is guilty of corruption, favouritism, nepotism or lack of integrity;
 - (ii) Was actuated in the discharge of his functions by personal interest or improper or corrupt motive ;
 - (iii) Has abused or misused his position to obtain any gain or favour to himself or to any other person to cause loss or undue harm or hardship to any other person;
 - (iv) Any person on his behalf, is in possession or has at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income, for which the public functionary cannot satisfactorily account;
- (c) **“Chief Minister”** means the chief minister of the state of Goa:

(d) **“Competent authority”** in relation to a public functionary , means,-

(i) In the case of the Chief Minister Governor
Or any Member of the State Legislative
Assembly:

(ii) In the case of Minister or Secretary; The chief Minister or during the
period of operation of any
proclamation issued under
Article 356 of the Constitution of
India, the Governor.

(iii) in the case of Vice-Chancellor of The Chancellor of the University,
University;

(iv) in the case of any other public The Chief Minister or such authority
functionary; as may be prescribed;

(e) **“complaint”** means a complaint by any person alleging or making allegations that a public functionary has committed acts of corruption or any other act mentioned in sub clauses(i) to (iv) of clause (b) of section 2 **and also includes a grievance;**

(f) **“corruption”** includes anything made punishable under Chapter IX of the Indian Penal Code, 1860 (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

(g) **“family”** of a public functionary means the spouse, parents, unmarried sisters/brothers and children or relatives of the public functionary as are dependent on him or her, as the case may be;

(h) **“Governor”** means the Governor of the State of Goa;

(i) **“grievance”** means claim by **any person against a public functionary, falling under clause (q) (x) or (q) (xii) of section 2 of this Act**, that he sustained injustice or undue hardship in consequence of mal administration by **such public functionary;**

(j) **“local authority”** means a Municipal Corporation or a Municipal Council or a Planning and Development Authority or a Township Committee or a Zilla Panchayat or a Village Panchayat or any other local self body.

(k) **“Lokayukta”** means the person appointed to be Lokayukta under section 3 of this Act.

(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 administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improper, or discriminatory, 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;
- (m) **“Minister”** means a member (other than a Chief Minister) of the Council of Ministers for the State of Goa and includes a Deputy Chief Minister, a Minister of State, a Deputy Minister, and Parliamentary Secretary .
- (n) **“Notification”** means a notification published in the Official Gazette of the Government of Goa and the expression “notified” shall be construed accordingly;
- (o) **“Officer”** means a person appointed to a civil or public service or post in connection with the affairs of the State of Goa.
- (p) **“Prescribed”** means prescribed by the rules made under this Act;
- (q) **“Public functionary”** means a person, who is or was at any time,-
- (i) the Chief Minister or a Minister of the State of Goa; or
 - (ii) a Member of the Legislative Assembly of the State of Goa; or
 - (iii) the President or the Vice President or the Chairman or the Vice Chairman or the Secretary, or the Managing Director (by whatever name called) of,-
 - (1) a local authority; or
 - (2) a Government Company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956); or
 - (3) a statutory body or Corporation or Board established by or under a statute and owned or controlled by the Government of Goa, including a co-operative society; or
 - (4) any other Corporation or Board or Society owned or controlled by the Government of Goa; or
 - (iv) a member of a local authority; or
 - (v) A member of the State Transport Authority or any Regional Transport Authority; or
 - (vi) The Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private school, whether under individual or corporate management, which receives or has received aid or grant from the Government under the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985) or Rules made there under or any

other relevant law for the time being in force and the rules made there under; or

(vii) The Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private college, whether under a unitary or corporate management whether it is affiliated to a University in the State of Goa or not but which received aid or grant from the Government, or

(viii) The Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private engineering college or private polytechnic, whether under a unitary or corporate management, as the case may be, and which received aid or grant from the Government, or

(ix) An officer referred to in clause (o);

(x) A person in the service or pay of a local authority, University, statutory body or Corporation, Society, Government Company, or other institution as is referred to in sub clauses (iii) to (x);

(xi) Any person or body who/which has received Government grant of whatever nature to the tune of Rs.1 lakh or more in a financial year for whatever purpose.

(xii) Any body registered under Foreign Contribution Regulation Act.

Explanation-In this clause,-

(1) **“co-operative society”** includes a co-operative society registered or deemed to have been registered under the Co-operative Societies Act in force in the State of Goa;

(2) **“society”** means a society registered in the State under the Societies Registration Act, 1860 (Central Act 21 of 1860);

(3) **“public servant”** means a public servant as defined in section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860);

(4) **“State”** means the State of Goa;

(r) **“Secretary”** means a Secretary to the Government of Goa and includes the Chief Secretary, an Additional Chief Secretary, a Principal Secretary, Development Commissioner, Commissioner, a Special Secretary, an additional Secretary, a Joint Secretary, Under Secretary or such Officer, by whatever name called;

(s) **“Upa-Lokayukta”** means a person appointed to be Upa-Lokayukta under section 3.

CHAPTER II

ESTABLISHMENT OF LOKAYUKTA AND UPALOKAYUKTA

3. Appointment of Lokayukta or Upa-Lokayukta-

(1) For the purpose of conducting investigations and inquiries and launching of prosecution in accordance with the provisions of this Act, the Governor shall, by order under his hand and seal, appoint a person to be known as the Lokayukta and if need be, one or more persons to be known as the Upa-Lokayuktas;

Provided that the Lokayukta and /or Upa Lokayuktas shall be appointed by the Governor on the advice tendered by the Chief Minister, in consultation with the Chief Justice of the High Court and the Leader of Opposition.

(2) A person shall not be qualified for appointment as the Lokayukta or Upa-Lokayukta unless he has been a judge of the High Court.

(3) Every person appointed as the Lokayukta or Upa-Lokayukta, shall before entering his office, make and subscribe, before the Governor or such person appointed in that behalf by him an oath or affirmation in the form set out hereunder:-

“ I A, Bhaving been appointed as the Lokayukta / Upa-Lokayukta under the Goa Lokayukta Act, 2011 do hereby swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will”.

(4) If the office of the Lokayukta or Upa-Lokayukta become vacant, or if the Lokayukta or Upa-Lokayukta, by reason of absence or for any other reason whatsoever, is unable to perform the duties of his office, those duties, shall, until some other person is appointed under sub section (1) and enters upon such office or, as the case may be, until the Lokayukta or Upa-Lokayukta resumes his duties, be performed,-

(a) where the office of the Lokayukta becomes vacant or where for any reason aforesaid he is unable to perform the duties of his office, by the Upa-Lokayukta or if there are two or more Upa-Lokayuktas, by such one of the Upa-Lokayuktas as the Governor may, appoint for the purpose;

(b) where the office of the Upa-Lokayukta becomes vacant or where for any reason aforesaid he is unable to perform the duties of his office, by the Lokayukta himself or if the Lokayukta so directs, by the other Upa-Lokayukta or as the case may be, such one or the other Upa-Lokayuktas as may be specified in the direction.

(5) The Upa-Lokayukta shall, while acting as or discharging the functions of Lokayukta, have all the powers and immunities of the Lokayukta and be entitled to salary, allowances and perquisites as are applicable in relation to the Lokayukta.

4. Lokayukta or Upa-Lokayukta to hold no other Office-

(1) Lokayukta or Upa-Lokayukta shall not be a Member of Parliament or a Member of the Legislative Assembly of any State, nor shall he hold any office of trust or profit (other than his office as the Lokayukta or Upa-Lokayukta, as the case may be), nor shall he be connected with any political party, nor shall carry on any business or practise and profession nor shall accept any assignment without prior approval of the Governor and accordingly, before he enters upon his office, a person appointed as the Lokayukta or Upa-Lokayukta, shall,-

- (a) if he holds any office of trust or profit, resign from such office;
- (b) if he is connected with any political party, sever his connection with it;
- (c) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or
- (d) if he is practising any profession, suspend practice of such profession.

(2) A person who has been a member of a political party and contested the elections of Parliament, Assembly, Panchayat, Zilla Panchayat or any other local body at any time during the period of five years immediately preceding,-

- (a) the commencement of this Act, in the case of first appointment, after such commencement; or
- (b) the date on which the vacancy has arisen, in the case of any subsequent appointment, shall not be eligible to be appointed as Lokayukta or Upa-Lokayukta;

5. Term of Office of the Lokayukta or Upa-Lokayukta

(1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a term of three years from the date on which he enters upon his office as Lokayukta or Upa-Lokayukta, as the case may be, or till he attains the age of seventy years, whichever is earlier:

Provided that-

- (a) the Lokayukta or Upa-Lokayukta may, by writing under his hand addressed to the Governor, resign from his office; or
- (b) the Lokayukta or Upa-Lokayukta may be removed from office in the manner provided in section 7.

(2) On ceasing to hold office, the Lokayukta or Upa-Lokayukta shall be ineligible for further appointment as the Lokayukta or Upa-Lokayukta or for any employment under the Government of Goa or for any employment under any local authority, University, statutory body or corporation, society, co-operative society, Government

Company, other body or corporation as is referred to in sub clauses (iii) to (x) of clause (q) of section 2.

6. Conditions of service of Lokayukta or Upa-Lokayukta-

(1) The Lokayukta or Upa-Lokayukta shall have the like status, shall be entitled to the same salary, allowances and pension and shall be subject to the same conditions of service, as a Judge of the High Court.

Provided that, the status, salary, allowances, pension and other conditions of service of a Judge of the Supreme Court or a retired judge of the Supreme Court appointed as Lokayukta or Upa-Lokayukta shall be the same as a judge of the Supreme Court:

Provided further that, if a person at the time of his such appointment is in receipt of pension in respect of any previous service, as a Judge under the Government of India or under the Government of a State, his salary in respect of service as the Lokayukta or Upa-Lokayukta shall be reduced,-

- (a) by the amount of that pension, except pension received as freedom fighter;
- (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; and
- (c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity:

Provided also that the allowances payable to, and other conditions of service of the Lokayukta or Upa-Lokayukta shall not be varied to his disadvantage after his appointment:

Provided further that the Lokayukta or Upa-Lokayukta shall not hold any other office.

CHAPTER III

EXPENSES OF INSTITUTION OF LOKAYUKTA AND UPA-LOKAYUKTA TO BE CHARGED ON THE CONSOLIDATED FUND OF GOA

7. The expenditure in respect of the salaries and allowances of the Lokayukta or Upa-Lokayukta and their offices and staff shall be charged on the Consolidated Fund of the State of Goa.

8. Removal of the Lokayukta or Upa-Lokayukta-

(1) The Lokayukta or Upa-Lokayukta shall not be removed from his office except by an order of the Governor upon a recommendation made by a Committee consisting of the Chief Minister, Leader of Opposition and the Chief Justice of the Bombay High Court on ground of proved misbehaviour or incapacity.

9. Staff of Lokayukta or Upa-Lokayukta-

(1) The Lokayukta or Upa-Lokayukta shall have a Secretary and such or other officers and employees as may be determined by the Governor in consultation with the Lokayukta or Upa-Lokayukta, to assist the Lokayukta or Upa-Lokayukta in the exercise of their powers and the discharge of their functions under this Act.

(2) The conditions of service of the Secretary and other officers and employees shall be such as may be specified by the Governor.

(3) Appointment of Secretary and such other officers and employees shall be made by the Lokayukta in consultation with the Upa-Lokayukta, if any:

Provided that where such appointment is made by direct recruitment, the Goa Public Service Commission shall be consulted.

(4) The rules for reservation of appointments and posts in Government service in favour of the Scheduled Castes and Scheduled Tribes and Other Backward Classes of Citizens shall, mutatis mutandis, apply to appointments to be made under this section

(5) Without prejudice to the provisions of sub-sections (1),(2) and (4)the Lokayukta or Upa- Lokayukta may ,for the purpose of dealing with any particular case or class of cases , secure -

(a) the services of any officer or employee or investigating agency of the Government of Goa or the Government of India with the concurrence of that Government; or

(b) the services of any expert.

(6)The terms and conditions of service of the officers,employees, agencies and persons referred to in sub-section (5) shall be such as may be specified by the Lokayukta or Upa- Lokayukta.

(7) In the discharge of their functions under this act ,the officers and employees referred to in sub-section (1) and officers, employees, agencies and persons referred to in sub-section (5) shall be subject to the exclusive administrative control and direction of the Lokayukta or Upa- Lokayukta.

CHAPTER IV

JURISDICTION OF LOKAYUKTA AND UPA-LOKAYUKTA

10. Matters which may be investigated by Lokayukta or Upa- Lokayukta.:-

(1) Subject to the provisions of this Act, the Lokayukta or Upa- Lokayukta. (where the case is allotted to him by the Lokayukta or Upa- Lokayukta) may , either suo motu or on complaint made to him under section 11 , investigate any allegation against any Public functionary.

(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 notice of 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.

(3) Notwithstanding anything contained in sub-section(1) and (2) above or any other provisions of this Act , the Lokayukta in his discretion ,may investigate any complaint either himself or allot the same to the Upa- Lokayukta to investigate, however , to the extent possible , the case distribution shall be equitable.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3) or any other provisions of this Act, the Lokayukta may, for reasons to be recorded in writing, investigate any allegation which is being investigated by the Upa-Lokayukta.

(5) Notwithstanding anything contained in the above sub-sections or any other provisions of this Act, the Lokayukta or Upa-Lokayukta, as the case may be, may investigate any allegation against any person or a public functionary in so far as he considers necessary so to do for the purpose of its investigation into any allegation against a public functionary.

(6) Notwithstanding anything contained in the above sub-sections or any other provisions of this Act, the Lokayukta may, at any stage, make over any complaint pending before him to an Upa-Lokayukta for disposal.

(7) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them, matters which may be investigated by them under this Act:

Provided that no investigation made by the Upa-Lokayukta under this Act or action taken or thing done by him in respect of such investigation shall be called in question on the ground only that such investigation related to a matter which is not assigned to him by such order.

(8) Any matter which the State Government may require the Lokayukta to enquire into and/or submit a report thereon with recommendations shall be investigated by him.

11. Matters not subject to investigation -

(1) Except as hereinafter provided, 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 Inquiries 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 an enquiring into acts of corruption which may pertain to any period prior to the said period of five years.

12. Provisions relating to complaints :-

(1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Lokayukta or Upa-Lokayukta ;-

(a) in case of grievance, by the aggrieved person, and

(b) in case of an allegation, by any person other than a public functionary .

(2) Every complaint under sub section (1) shall be made in such form and in such manner as may be prescribed and shall be accompanied by an affidavit in support of the allegations contained in the complaint. However, the Lokayukta or Upa-Lokayukta, as the case may be, may dispense with such affidavit in any appropriate case.

(3) Every complaint under sub section (1), shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the verification of pleadings.

(4) Notwithstanding anything contained in this Act or any other law for the time being in force, any letter written to the Lokayukta or Upa-Lokayukta, by a person in police custody or in a jail or in any asylum or other place for insane persons, shall be forwarded to the Lokayukta or Upa-Lokayukta, unopened and without delay by the police officer or

any other person in charge of such jail, or asylum or place for insane persons and Lokayukta or Upa-Lokayukta, if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of this section.

CHAPTER V

INVESTIGATING WING

13. Notwithstanding anything contained in any law for the time being in force, the Lokayukta or Upa-Lokayukta shall constitute an investigation wing for conducting investigation of any offence alleged to have been committed by the public functionary punishable with the offence of corruption.

Provided that till the investigation wing is constituted, the State Government shall make available such number of investigation officers and other staff as the Lokayukta or Upa-Lokayukta may require from its Ministries for carrying out investigation under this Act.

14. (1) No investigation shall be made by an investigating officer of the Investigation Wing below the rank of Deputy Superintendent of Police or by any other Officer of equivalent rank .

(2) The Investigation Officers of the Investigation Wing shall have in relation to investigation of such offences, all the powers duties and privileges and liabilities which Police Officers have in connection with the investigation of such offences;

15. (1) The Lokayukta or Upa-Lokayukta may, before holding any inquiry under this Act , by an order, require the investigation officer of its investigation wing to make, or cause to be made a preliminary investigation in such manner as it may direct and submit a report to the Lokayukta or Upa-Lokayukta .

(2) The Investigating Officer, on receipt of an order under Sub-section (1) shall complete the investigation and submit his report within six months. The Lokayukta or Upa-Lokayukta for reasons to be recorded may extend the time specified in sub-section (1)

CHAPTER VI

PROSECUTION WING

16.(1) The Lokayukta or Upa-Lokayukta may, by notification constitute a prosecution wing and appoint such officers to assist for the purpose of prosecution of public functionary in relation to any complaint by the Lokayukta or Upa-Lokayukta under this Act .

(2) The officers under the prosecution wing, shall after having been directed by the Lokayukta or Upa-Lokayukta file a complaint before the Special Court and take all necessary steps in respect of prosecution of public functionary in relation to any offense punishable under the prevention of Corruption Act 1988.

CHAPTER VII

INQUIRY AND INVESTIGATION PROCEDURE

17.Procedure in respect of inquiry and investigation.-

(1) The Lokayukta or Upa-Lokayukta on receipt of a complaint may either make a preliminary inquiry or direct the Investigation Wing to make a preliminary investigation to ascertain whether there exists a prima facie case for proceeding in the matter.

(2) Ever preliminary inquiry or preliminary investigation referred to in sub-section (1) shall ordinarily be completed within a period of thirty days and for reasons to be recorded in writing within a further period of thirty days from the receipt of the complaint

(3) Upon the completion of the preliminary investigation, the Investigating Authority shall submit its report to the Lokayukta or Upa-Lokayukta.

(4) Before the Lokayukta or Upa-Lokayukta comes to the conclusion in the course of a preliminary inquiry and after the submission of a report under sub-section 3 that a prima facie case is made out against a public functionary pursuant to such preliminary inquiry, the Lokayukta or Upa-Lokayukta shall afford the public functionary an opportunity to be heard consistent with the principles of natural justice.

(5) Where the Lokayukta, or Upa-Lokayukta after receiving the report of the Investigating Authority pursuant to a preliminary investigation or conclusion of the preliminary inquiry referred to in sub-section (1) is satisfied that no prima facie case is made out for proceeding further in the matter, the complaint shall be closed and the decision shall be communicated to the complainant and the public functionary.

(6) Where the Lokayukta or Upa-Lokayukta is of the opinion that a prima facie case is made out and refers the matter for investigation , upon completion of such investigation and before filing the charge sheet, the public functionary against whom the investigation is being conducted shall be given an opportunity of being heard.

(7) Every inquiry conducted by the Lokayukta or Upa-Lokayukta, upon being satisfied that a prima facie case is made out, shall be open to the public provided that in exceptional circumstances and for reasons to be recorded in writing by the Lokayukta or Upa-Lokayukta such inquiry may be conducted in camera.

(8) In case the Lokayukta or Upa-Lokayukta proceeds to inquire into the complaint the inquiry shall be completed within a period of six months from the date of receipt of the complaint and for reasons to be recorded in writing, may be extended for a further period of six months

(9) Public functionary against whom an inquiry is conducted shall be given an opportunity of being heard.

(10) Upon completion of such investigation, the Investigating Authority shall place the record in its possession along with its prima facie conclusions before the Lokayukta or Upa-Lokayukta who shall before directing that a charge sheet be filed afford the public functionary concerned an opportunity of being heard

(11) If the Lokayukta or Upa-Lokayukta proposes to inquire into a complaint, it may at any stage

- a) pass appropriate orders for safe custody of the documents;
- b) forward the complaint to the public functionary

(12).- If at any stage of the proceedings, the Lokayukta or Upa-Lokayukta

- a) considers it necessary to inquire into the conduct of any person other than the prospective accused or
- b) is of the opinion that the reputation of any person other than the accused is likely to be prejudicially affected by the inquiry the Lokayukta or Upa-Lokayukta shall give to that person a reasonable opportunity of being heard

18. (1) Notwithstanding anything contained in any other law for the time being in force no sanction or permission or authorization shall be required by the Lokayukta or Upa-Lokayukta or its Investigation Wing or the Prosecution Wing for the purpose of making inquiry by the Lokayukta or Upa-Lokayukta or its Investigation Wing into any complaint against any public functionary or filing any complaint in respect thereof before the Special court under this Act.

(2) The Special Court may, on a complaint filed by the Lokayukta or Upa-Lokayukta or any Officer authorized by it in this behalf, take cognizance of the offence committed by the public functionary, notwithstanding anything contained in any law for the time being in force.

19. (1) When after the conclusion of inquiry or investigation, the findings of the Lokayukta or Upa-Lokayukta disclose the commission of an offence under the

Prevention of Corruption Act 1988 by a public functionary, the Lokayukta or Upa-Lokayukta shall,

- (a) file a case in a Special Court and send a copy of the report together with its findings to the competent authority;
- (b) recommend to the competent authority initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public functionary who are regulated by their Service Rules
- (c) provide a copy of the report to the public functionary

(2) The Government shall within a period of thirty days of the receipt of recommendation under clause b) of sub-section (1) initiate disciplinary proceedings against the said public functionary and forward its comments on the report, including the action taken or proposed to be taken thereon to the Lokayukta or Upa-Lokayukta within six months of the initiation of such disciplinary proceedings;

CHAPTER VIII

POWERS OF LOKAYUKTA AND UPA-LOKAYUKTA

20. Powers of the Lokayukta or Upa-Lokayukta

(1) If the Lokayukta or Upa-Lokayukta has reason to believe that any document which in its opinion shall be useful or relevant to, any investigation or inquiry under this Act, are secreted in any place. It may authorize any officer of the Investigation Wing to search for and seize such document ;

(2) If the Lokayukta or Upa-Lokayukta is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any investigation or inquiry under this Act and that it would be necessary to retain the document in its custody or in the custody of such officer as may be authorized, it may so retain or direct such officer authorized to retain such document till the completion of such investigation or inquiry provided that when any document is required to be returned, the Lokayukta or Upa-Lokayukta or its Officers may return the same after retaining the copies of such document truly authenticated ;

(3) The provisions of the Criminal Procedure Code 1973 relating to searches shall, so far as may be, apply to searches under this Section subject to the modifications that sub-section 5 of section 165 of the said Code shall have effect as if for the word Magistrate wherever it occurs therein the word Lokayukta or Upa-Lokayukta or any Officer authorized by it were substituted.

(4) Subject to the provisions of this section for the purposes of any inquiry, the Lokayukta or Upa-Lokayukta shall have the powers of the Civil Court under the Code of Civil Procedure while trying a suit.

(5) The Lokayukta or Upa-Lokayukta shall refer any matter to the Bombay High Court in case there is contempt of the Institution of Lokayukta or Upa-Lokayukta.

(6) (i) The Lokayukta or Upa-Lokayukta may for the purpose of conducting any inquiry, utilize the services of any officer or investigation Agency in the State of Goa as the case may be ;

(ii) For the purposes of investigating any matter pertaining to the inquiry, any officer or Agency whose services are utilized under sub-section (2) may subject to the directions and control of the Lokayukta or Upa-Lokayukta –

a) summon and enforce attendance of any person and examine him ;

b) require the discovery and production of any document ;

c) requisition any public record or copy thereof

The officer whose services are utilized under sub-section (2) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Lokayukta or Upa-Lokayukta within such period as may be specified by the Lokayukata or Upa-Lokayukta;

21. (1) Where the Lokayukta or Upa-Lokayukta or any Investigating Officer authorized by it in this behalf, has reason to believe, the reasons for such belief to be recorded in writing, on the basis of material in his possession that –

a) any person is in possession of any proceeds of corruption;

b) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, he may, by order in writing, provisionally attach such property and or order freezing of accounts with any Financial institution for period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income Tax Act 1961 and the Lokayukta or Upa-Lokayukta shall be deemed to be an Officer under sub-rule (e) of rule 1 of that Schedule .

(2) The Lokayukta or Upa-Lokayukta shall immediately after attachment under sub-section (1) forward a copy of the order along with the material in his possession referred to in that sub-section to the Special Court in a sealed envelope in the manner as may be prescribed for such Court and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section 1 shall cease to have effect after the expiry of the period specified in that sub section or after the expiry of the period as directed by the Special Court under sub section (2)

(4) Nothing in this sub-section shall prevent the person interested in the enjoyment of the immoveable property attached under sub-section (1) from such enjoyment

5)the Special Court may at its discretion release part of the amounts from the accounts frozen under sub section (1)for sustenance of the person concerned

Explanation .- For the purposes of this sub-section person interested in relation to any immoveable property includes all persons claiming or entitled to claim any interest in the property .

22. (1)The Lokayukta or Upa-Lokayukta when it provisionally attaches any property under sub-section (1) of section 21 shall within a period of thirty days of such attachment direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make prayer for confirmation of attachment of property till completion of proceedings against the public functionary in the Special Court .

(2) The Special Court may, if it is of the opinion that the property provisionally attached has been acquired through corrupt means make an order of confirmation of attachment of such property till the completion of the proceedings against the public functionary in the Special Court.

(3) If the public functionary is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public functionary along with the benefit from such property as might have occurred during the period of attachment.

(4) If the public functionary is subsequently convicted of the charges of corruption, the proceeds relating to the offence under the Prevention of Corruption Act 1988 shall be confiscated and vest in the State Government free from all encumbrances or leasehold interest excluding any debt due to any Bank or financial institution .

Explanation .- For the purposes of this sub section, the expression Bank , debt and financial institutions shall have the meaning respectively assigned to them in clauses (b), (g) and (h) of Section 2 of the Recovery of Debts Due to Bank and Financial Institutions Act 1993.

23. Where the Lokayukta or Upa-Lokayukta while making an inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available that

a) continuance of the public functionary referred to in clauses q (iii) to (xi) of Section 2 in his post while conducting the inquiry is likely to affect such inquiry adversely or

b) the public functionary referred to in clause (a) is likely to destroy or in any way temper with the evidence or influence witnesses, then the Lokayukta or Upa-Lokayukta may recommend to the State Government to transfer or suspend such public functionary from the post held by him till such period as may be specified in the order and the Government shall ordinarily accept the recommendation of the Lokayukta or Upa-Lokayukta under sub-section (1) except for reasons to be recorded in writing in a case where it is not feasible for administrative reasons .

CHAPTER IX

SPECIAL COURTS

24. Special Courts

(1).- The State Government shall constitute such Special Courts as recommended by the Lokayukta or Upa-Lokayukta to hear and decide the cases arising out of Prevention of Corruption Act or under this Act.

(2) The Special Courts constituted under sub-section (1) shall ensure completion of Trial within a period one year from the date of filing the case in the Court provided that in the case the Trial cannot be completed within a period of one year the Special Court shall record reasons thereof and complete the trial within a further period three months or such further period not exceeding three months each for reasons to be recorded in writing, before the end of such each three months period , but not exceeding a total period two years .

(3) The special court shall take cognizance of any complaint filed by the lokayukta or the upalokayukta and proceed to try and dispose of the complaint without any sanction or permission required under any other law in force.

CHAPTER X

COMPLAINTS AGAINST LOKAYUKTA , UPA-LOKAYUKTA AND THEIR OFFICIALS

25. (1) The Lokayukta and Upa-Lokayukta shall not inquire into any complaint made against the Lokayukta or against the Upa-Lokayukta.

(2) Any complaint against the Lokayukta or Upa-Lokayukta shall be made by an application by the party aggrieved to the Governor.

(3)The Governor shall, in case there exists a prima facie for bias or corruption, make a reference to the Chief Justice of Bombay High Court in such a manner as may be prescribed for inquiring into the complaint against the Lokayukta or Upa-Lokayukta.

(4) The Governor shall decide the action against the Lokayukta or Upa-Lokayukta on the basis of the opinion of the Chief Justice of Bombay High Court and in case the Governor is satisfied on the basis of the said opinion that the Lokayukta or Upa-Lokayukta is biased or has indulged in corruption, the Governor shall, notwithstanding anything contained in sub section (1) of section 8, remove such Lokayukta or Upa-Lokayukta and also order for initiation of prosecution in case of allegation of corruption.

26. (1)Every complaint or allegation of wrongdoing made against any officer or employee or investigation agency under or associated with the Lokayukta or Upa-Lokayukta for

offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

(2) The Lokayukta or Upa-Lokayukta shall complete the inquiry into the complaint or allegation made, within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokayukta or Upa-Lokayukta engaged or associated with the Lokayukta and Upa-Lokayukta, if it is prima facie satisfied on the basis of evidence available, that-

- (a) continuance of such officer or employee of the Lokayukta or Upa-Lokayukta engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or
- (b) an officer or employee of the Lokayukta or Upa-Lokayukta engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

Then, the Lokayukta or Upa-Lokayukta may, by order, suspend such officer or employee of the Lokayukta or Upa-Lokayukta or divest such agency engaged or associated with the Lokayukta or Upa-Lokayukta of all powers and responsibilities thereto before exercised by it.

(4) On the completion of the inquiry, if the Lokayukta or Upa-Lokayukta is satisfied that there is prima facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokayukta or Upa-Lokayukta or such officer, or employee, agency engaged or associated with the Lokayukta or Upa-Lokayukta and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokayukta or Upa-Lokayukta or person, agency engaged or associated, a reasonable opportunity of being heard.

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THROUGH SPECIAL COURTS

27. Assessment of loss and recovery through Special Courts

(1) If any public functionary is convicted of an offence under the Prevention of Corruption Act 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any caused to the Public Exchequer on account of the action and decision of such public functionary not taken by him in good faith and for which he stands convicted and may order recovery of such loss, if possible or quantifiable from such public functionary so convicted.

Provided that if the Special Court for reasons to be recorded in writing comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of action or decisions of the public functionary so convicted, than such loss, may if assessed and quantified under this Section may also be recovered from such beneficiary or beneficiaries proportionately.

CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

28. Finance, Accounts and Audit

The Lokayuka or Upa-Lokayukta shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokayukta or Upa-Lokayukta and forward the same to the State Government for information.

29. The State Government may, after due appropriation made by the State Assembly by law in this behalf, make to the Lokayukta or Upa-Lokayukta grant of such sums of money as are required to be paid for the salaries and allowances payable to the Lokayukta or Upa-Lokayukta and the administrative expenses, including the salaries and allowances and pension payable to or in respect of Officers and other employees of the Lokayukta or Upa-Lokayukta.

30. (1) The Lokayukta or Upa-Lokayukta shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor General

(2) The accounts of the Lokayukta or Upa-Lokayukta shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor General of India or any person appointed by him in connection with the audit of the accounts of the Lokayukta or Upa-Lokayukta under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor General of India generally has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the Offices of the Lokayukta or Upa-Lokayukta .

(4) The Accounts of the Lokayukta or Upa-Lokayukta as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State

Government and the State Government shall cause the same to be laid down before the Legislative Assembly of the State.

31. (1) The Lokayukta or Upa-Lokayukta shall furnish to the State Government , at such time and in such form and manner as may be prescribed or as the State Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokayukta or Upa-Lokayukta as the State Government may, from time to time, require.

(2) The Lokayukta or Upa-Lokayukta shall prepare, once every year, in such form and at such time as may be prescribed, an annual report, giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

(3) The copy of the report received under sub-section (2) shall be laid by the State Government, as soon as may be, after it is received, before the State Legislative Assembly.

CHAPTER XIII

DECLARATION OF ASSESTS

32. Declaration of assets by Public Functionary

(1) Ever public functionary shall make a declaration of his assets and liabilities in the manner as provided by or under this Act,

(2) A public functionary shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the Lokayukta or Upa-Lokayukta the information relating to

(a) the assets of which he, his spouse and his dependent children are jointly or severally, owners or beneficiaries

(b) his liabilities and that of his spouse and of the dependent children

(3) A public functionary holding his Office as such, at the time of the commencement of this Act , shall furnish information relating to such assets and liabilities, as referred to in sub-section (2) to the Lokayukta or Upa-Lokayukta within thirty days of the coming into force of this Act ,

(4) Every public functionary shall file with the Lokayukta or Upa-Lokayukta, on or before the 31st of July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st march of that year .

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

(6) The Lokayukta or Upa-Lokayukta in respect of each office or Department shall ensure that all such statements are published on the web site of such Officer or the Department by the 31st August of that year.

Explanation: For the purposes of this Section, “dependent children” mean sons and daughters who have no separate means of earning and are solely dependent on the public functionary for their livelihood

33. Presumption as to acquisition of assets by corrupt means in certain cases.

(1) If any public servant willfully or for reasons which are not justifiable, fails to

a) Declare his assets, or

b) give misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished, then such assets shall, unless otherwise proved, be presumed to belong to the public functionary and shall be presumed to be assets acquired by corrupt means ;

Provided that the Lokayukta or Upa-Lokayukta may condone or exempt the public functionary from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

CHAPTER XIV

CITIZENS CHARTER

34. Citizens Charter

(1) Every,

a) Ministry or Department or Office of the State Department or anybody or Board or Corporation or Authority or Company or Society or Autonomous Body (by whatever name called) established or constituted or incorporated under an Act of the State Legislative Assembly or wholly or partly financed by the State Government or Controlled by it ; and

b) Every other Society or Association of persons or Trust (whether registered or not) wholly or partly financed by the Government or in receipt of any sums under the Foreign Contribution (Regulation) Act or any donation from public, shall prepare and publish a Charter to be known as Citizens Charter within a period of one year from the commencement of this Act,

(2) the Citizen’s Charter referred to in sub-section (1) shall specify the citizens the commitments of,

- a) the ministry or Department or Office of the State Government or anybody or Board or Corporation or Authority or Company or Society or Autonomous Body or other Society or Association of persons or Trust referred to in that sub-section ;
- b) the officer responsible for meeting such commitments and
- c) the time within which such commitments shall be complied with along with other relevant details relating to public delivery of services or fulfillment of its objectives

(3) Every ministry or Department or Office of the State Government or anybody or Board or Corporation or Authority or Company or Society or Autonomous Body or other Society or Association of persons or Trust referred to in sub section (1) shall designate an Officer to be called The Public Grievance Redressal Officer to whom any aggrieved person may file a complaint for non compliance of the Citizen's charter.

(4) Every ministry or Department or Office of the State Government or anybody or Board or Corporation or Authority or Company or Society or Autonomous Body or other Society or Association of persons or Trust shall appoint at least one Public Grievance Redressal Officer in each District where it has an Office

(5) Every ministry or Department or Office of the State Government or anybody or Board or Corporation or Authority or Company or Society or Autonomous Body or other Society or Association of persons or Trust referred to in subsection (1) shall review and revise its Citizen's Charter at least once in a year.

CHAPTER XV

OFFENCES AND PENALTIES

35. Offences and Penalties

(1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act and makes a false statement to the lokayukta or Upalokayukta shall on conviction be punished as though the same is an offence under section 181 of the Indian Penal Code.

(2) No other Court except the Special Court shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under Subsection (1) except on a complaint made by the person against whom false, frivolous and devious complaint was made or upon a complaint made by the Lokayukta or the Upalokayukta

(4) The prosecution with relation to the sub-section 1 shall be conducted by the Public Prosecutor and all expenses connected with such prosecution shall be borne by the State Government.

CHAPTER XVI

MISCELLANEOUS

36. Protection of action taken in good faith by any public functionary

No suit, prosecution or other legal proceedings under this Act shall lie against any public functionary, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

37. Protection of action taken in good faith by others

No suit, prosecution or other legal proceedings shall lie against the Lokayukta or Upa-Lokayukta or against any officer, employee, agency or any person, in respect of any thing which is done in good faith or intended to be done under this Act.

38. Officers and employees of the Lokayukta or Upa-Lokayukta to be public functionary

The Lokayukta or Upa-Lokayukta and other employees shall be deemed when acting or purporting to act in pursuance of any of the provisions of the Act, to be public functionaries within the meaning of Section 21 of the Indian Penal Code (45 of 1860)

39. Bar of jurisdiction

No civil Court shall have jurisdiction in respect of any matter which the Lokayukta or Upa-Lokayukta is empowered by or under this Act to determine.

40. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act,

41. Provisions of this Act to be in addition to other laws

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

42. Power to make rules

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- a) the procedure of inquiry into misbehavior for removal of the Lokayukta or Upa-Lokayukta under sub-section 1 of section 8
- b) the post or posts in respect of which the appointment shall be made after consultation with the Goa Public Service Commission under the proviso to sub-section (1) of section 9;
- c) other matters for which the Lokayukta or Upa-Lokayukta shall have the powers of a Civil Court;
- d) the manner of sending the order of attachment along with the material to the special Court under sub-section 1 of Section 20 and 21.
- e) the manner of transmitting the letter of reference under sub-section 5 of Section 20
- f) the form for maintaining the Accounts and other relevant records and the form of the Annual Statement of Accounts
- g) the form and manner and the time for preparing the returns and statements along with the particulars
- h) the form and the time for preparing an annual report giving the summary of its activity during the previous year
- i) the form of annual returns to be filed by public functionary under Sub-section 1 of Section 32
- j) the minimum value for which the Lokayukta or Upa-Lokayukta may condone or exempt a public functionary from furnishing information in respect of assets under the proviso to Section 33
- k) any other matter which is to be or may be prescribed

43. Power of Lokayukta or Upa-Lokayukta to make Regulations

(1) Subject to the provisions of this Act and rules made there under the Lokayukta or Upa-Lokayukta may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing powers such regulations may provide for all or any of the following matters namely

- a) the conditions of service of the Secretary and other Officers and staff of the Lokayukta or Upa-Lokayukta and the matters which in so far as they relate to the salaries, allowances, leave or pension, require the approval of the Government under sub-section 2 of section 8
- b) the place of sitting of benches of the Lokayukta or Upa-Lokayukta
- c) the manner for displaying on the website of the Lokayukta or Upa-Lokayukta the status of all complaints pending or disposed off along with records and evidence with reference thereto under sub-section 13 of section 23
- d) the manner and procedure of conducting inquiry or investigation
- e) any other matter which is required to be or may be specified under this Act.

44. Laying of rules and regulations

Every rule and regulation made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly of the State while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid Legislative Assembly agrees in making any modifications in the rules or regulations or the legislative Assembly agrees that the rule or regulation should not be made. The rule or regulation shall thereafter have effect only in such modified form or be of no effect as the case may be so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

45. Power to remove difficulties

(1) if any difficulty arises in giving effect to the provisions of this Act the State Government may by order publish in the Official Gazette make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulties.

Provided that no such order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this Section shall be laid as soon as may be after it is made before the legislative Assembly of the State.

