



सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LV] THURSDAY, SEPTEMBER 25, 2014/ASVINA 3, 1936

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV

Acts of Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the President on the 12th September, 2014 is hereby published for general information.

C. J. GOTHI,

Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.

GUJARAT ACT NO. 20 OF 2014.

(First published, after having received the assent of the President in the "Gujarat Government Gazette", on the 25th September, 2014).

AN ACT

to provide for the establishment of an Institution of Lokayukta Aayog to inquire and investigate into the allegations against public functionaries in the State of Gujarat and to safeguard the dignity and prestige of public functionaries against false and frivolous allegations and for matters connected therewith or incidental thereto.

It is hereby enacted in the Sixty-fourth Year of the Republic of India as follows:-

1. (1) This Act may be called the Gujarat Lokayukta Aayog Act, 2013.
- (2) It extends to the whole of the State of Gujarat, and it applies also to the public functionaries outside the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

**Short title,
extent,
application and
commencement.**

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

- (1) "action" means action taken whether before or after the commencement of this Act by way of decision, recommendation or finding or in any other manner and includes failure to act, and all other expressions connoting action shall be construed accordingly;
- (2) "allegation" in relation to a public functionary and with reference to any specific action taken by him means any affirmation that such public functionary in his capacity as a public functionary-
 - (i) is guilty of corruption, or lack of integrity; or
 - (ii) was actuated in the discharge of his functions by personal interest or corrupt motives; or
 - (iii) has abused his position to obtain any gain or favour to himself or to any other person;
- (3) "Bench" means a bench constituted in accordance with section 9;
- (4) "competent authority" means-
 - (a) in the case of a Minister, the Council of Ministers, and
 - (b) in the case of any other public functionary, such authority as may be prescribed;
- (5) "Governor" means the Governor of the State of Gujarat;
- (6) "*Lokayukta*" means a person appointed as a Lokayukta under section 3;
- (7) "Lokayukta Aayog" means Institution of the Lokayukta Aayog comprising of Lokayukta and Up-Lokayuktas appointed under section 3;
- (8) "Minister" means a member of the Council of Ministers for the State of Gujarat by whatever name called, that is to say the Chief Minister, a Minister, Minister of State and Deputy Minister and includes a Parliamentary Secretary to the Chief Minister;
- (9) "prescribed" means prescribed by rules made under section 26;
- (10) "public functionary" means, -
 - (a) a person who holds or has held an office of -
 - (i) a Minister;

- (ii) the Chairman or the Vice-Chairman of a Government Company within the meaning of section 617 of the Companies Act, 1956 in which not less than fifty one per cent. of its paid up share capital is held by the State Government and the Chairman or the Vice-Chairman of a Company which is subsidiary of a company in which not less than fifty one per cent. of its paid up share capital is held by the State Government; **1 of 1956.**
- (iii) the Chairman or the Vice-Chairman of a Corporation established by or under the Bombay Act or Gujarat Act and owned or controlled by the State Government;
- (iv) the Vice-Chancellor of a University established by law in the State of Gujarat;
- (v) the Mayor or the Deputy Mayor of a Municipal Corporation constituted under the Gujarat Provincial Municipal Corporations Act, 1949; **Bom. LIX of 1949.**
- (vi) the President or the Vice-President of a municipality constituted under the Gujarat Municipalities Act, 1963; **Guj. 34 of 1964.**
- (vii) the Sarpanch or the Up-sarpanch of a village panchayat, the President or the Vice-President of a taluka panchayat or a district panchayat constituted under the Gujarat Panchayats Act, 1993; **Guj. 18 of 1993.**
- (viii) the Chairman of any Committee constituted under the Gujarat Provincial Municipal Corporations Act, 1949 or the Gujarat Municipalities Act, 1963 or the Gujarat Panchayats Act, 1993; **Bom. LIX of 1949.
Guj. 34 of 1964.
Guj. 18 of 1993.**
- (ix) the Councilor who is a member of any committee constituted under the Gujarat Provincial Municipal Corporations Act, 1949 or the Gujarat Municipalities Act, 1963; **Guj. 34 of 1964.**
- (x) the member who is elected to any committee constituted under the Gujarat Panchayats Act, 1993; **Guj. 18 of 1993.**
- (b) a person who is or has been in the service or pay of the State Government, Local Authority, University, Board or Corporation owned and controlled by the State Government or the Government Company;
- (11) "Public servant" shall have the same meaning as assigned to it in Twelfth description under section 21 of the Indian Penal Code. **45 of 1860.**

- (12) “*Up-Lokayukta*” means a person appointed as *Up-Lokayukta* under section 3.

Appointment of Lokayukta and Up-Lokayukta.

3. (1) For the purpose of conducting investigations and enquiries in accordance with the provisions of this Act, the Governor shall, by warrant under his hand and seal and, on the recommendations of a Selection Committee as provided below, appoint a person to be known as the *Lokayukta* and not more than four other persons each to be known as *Up-Lokayukta*:

Provided that not more than half of such *Up-Lokayuktas* shall be judicial members and the remaining shall be administrative members.

- (2) The Selection Committee shall comprise of:
- (i) The Chief Minister – Chairperson;
 - (ii) The Speaker of the Gujarat Legislative Assembly;
 - (iii) A minister from the council of ministers, to be nominated by the Chief Minister;
 - (iv) The Leader of the Opposition in the Gujarat Legislative Assembly and should there be a vacancy in that position then a person elected in this behalf by the members of the Opposition in that House in such manner as the Speaker may direct;
 - (v) One Judge of the High Court of Gujarat, to be nominated by the Chief Justice of the High Court in consultation with the collegiums of five Senior Judges of the High Court;
 - (vi) Vigilance Commissioner, Gujarat State.
- (3) The Selection Committee while making recommendation will give due regard to representation of the SC/ST in the Aayog.
- (4) No appointment of a Lokayukta or *Up-Lokayukta* shall be invalid merely by reason of absence of any member of or due to any vacancy in the Selection Committee:

Provided however that the Selection Committee may, if it deems necessary, choose to appoint a Search Committee, comprising of atleast three and not more than five eminent persons from those who have been Chief Justice of a High Court, State Election Commissioner, Vigilance Commissioner, Chief Secretary to the Government of Gujarat, Secretary to the Government of India, Judges of Supreme Court or of High Courts to recommend a panel of suitable persons twice the number of vacancies referred to the Search Committee.

(5) The Lokayukta shall be a person who is or has been a Judge of the Supreme Court of India or Chief Justice of a High Court.

(6) The Up-Lokayukta (Judicial) shall be a person who has held the office of the Judge of a High Court. The Up-Lokayukta (Administrative) shall be a person with experience in administrative or quasi-judicial matters, and shall have functioned as Secretary or Additional Secretary to the Government of India, or as Chief Secretary or Additional Chief Secretary to the Government of Gujarat.

(7) A person appointed as the Lokayukta or an Up-Lokayukta shall, before entering upon his office, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the Schedule.

(8) If for any reason the Lokayukta is unable to discharge his functions, the Up-Lokayukta or if there are more than one Up-Lokayukta, the senior among them may discharge the functions of the Lokayukta. Seniority shall be computed from the date of appointment of Up-Lokayuktas and, Up-lokayukta who is a Judicial member shall always be deemed to be senior to the Up-Lokayukta who is an Administrative member irrespective of age and the date of appointment to the office of Up-Lokayukta.

4. (1) The Lokayukta and Up-Lokayukta shall not be a Member of the Parliament or a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as the Lokayukta or Up-Lokayukta) or be connected with any political party or shall not carry on any business or practice any profession and accordingly, before he enters upon his office, a person appointed as a Lokayukta or Up-Lokayukta shall,-

- (i) if, he is a Member of Parliament or of the Legislature of any State, resign such membership; or
- (ii) if, he holds any office of trust or profit, resign from such office; or
- (iii) if, he is connected with any political party, sever his connection with it; or
- (iv) 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
- (v) if, he is practicing any profession, suspend practice of such profession.

(2) A person shall be disqualified for appointment as a Lokayukta or Up-Lokayukta or for continuing to hold any such post if any member of his family has entered into any commercial contract with the State Government and the contract is subsisting or has any other dealing with the State Government relating to any business of a commercial nature.

Explanation.- For the purpose of sub-section (2), the expression "family" means wife, husband, son, daughter, and son's wife.

(3) A person shall be disqualified for appointment as Up-Lokayukta (Administrative) if he has been dismissed from the service of the Government or has been convicted and sentenced to imprisonment for a criminal offence.

Term of office and conditions of service of Lokayukta and Up-Lokayukta.

5. (1) Every person appointed as a Lokayukta or Up-Lokayukta shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of seventy-two years whichever is earlier :

Provided that –

- (i) the Lokayukta or Up-Lokayukta may, by writing under his hand addressed to the Governor, resign from his office,
- (ii) the Lokayukta or Up-Lokayukta may be removed from office in the manner specified in section 6.

(2) On ceasing to hold office, the Lokayukta and every Up-Lokayukta shall be ineligible for —

- (i) re-appointment as the Lokayukta or an Up-Lokayukta;
- (ii) any assignment or appointment which is required by law to be made by the Governor of Gujarat under his hand and seal;
- (iii) further employment to any other office of profit under the Government of Gujarat.

(3) There shall be paid to the Lokayukta and to the Up-Lokayukta such salary as may be prescribed.

(4) The allowances and pension payable to and other conditions of service of the Lokayukta and Up-Lokayukta shall be such as may be prescribed :

Provided that in prescribing the allowances and pension payable to and other conditions of service of the Lokayukta or Up-Lokayukta, regard shall be had to the allowances and pension payable to and other conditions of service of the Chief Justice of the High Court and of a Judge of the High Court, respectively:

Provided further that the allowances and pension payable to and other conditions of service of the Lokayukta or Up-Lokayukta shall not be varied to his disadvantage after his appointment.

(5) The salaries, allowances and pension payable to or in respect of Lokayukta and Up-Lokayukta shall be the expenditure charged on the Consolidated Fund of the State.

6. The Lokayukta or Up-Lokayukta shall not be removed from his office except by an order made by the Governor on the ground of proved misbehavior or incapacity after an inquiry made by the Chief Justice of the High Court or, as the case may be, by such other Judge of the High Court as the Chief Justice may nominate in this behalf, in which the Lokayukta or Up-Lokayukta had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. **Removal of Lokayukta or Up-Lokayukta.**

7. (1) Subject to the provisions of this Act, the Lokayukta Aayog may investigate any action which is taken by, or with approval of a public functionary in any case where a complaint involving an allegation is made in respect of such action or such action can be or could have been in the opinion of the Lokayukta Aayog the subject of an allegation. **Matters which may be investigated by Lokayukta Aayog.**

(2) No matter in respect of which a complaint is made under this Act shall be referred to a Commission for inquiry under the Commissions of Inquiry Act, 1952 except on the recommendation or with the concurrence of the Lokayukta Aayog:

60 of 1952.

Provided that nothing in this sub-section shall prevent the State Government from referring the matter to such Commission for inquiry if in its opinion the matter is exceptionally a matter of definite public importance.

(3) Notwithstanding anything contained in sub-section (1), the Lokayukta Aayog shall, before proceeding to investigate any action, make such preliminary inquiry as it deems fit for ascertaining whether there exist reasonable ground for conducting the investigation and if it finds that there exist no such grounds, it shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.

(4) An investigation under this section of an action taken by or with the approval of a public functionary shall not be affected merely on the ground that subsequent to such action such public functionary ceased to hold the office in which the action was taken by him or with his approval or ceased to be such public functionary.

Transaction 8. (1) The business of the Lokayukta Aayog shall be transacted in accordance with the provisions of this Act and as far as possible, be transacted and disposal of business by unanimously.

Lokayukta

Aayog. (2) The Lokayukta Aayog may by unanimous decision regulate the procedure for the transaction of business as also allocation of its business amongst the benches of the Lokayukta Aayog.

(3) Subject to provisions of sub section (2), if there is difference of opinion on any matter within a bench, such matter shall be decided by the majority opinion and if a bench is equally divided then in that case, the bench shall refer the matter to Lokayukta on administrative side for being referred to the Lokayukta or other Up-Lokayukta, as the case may be.

(4) The Lokayukta shall be the administrative head of the Lokayukta Aayog.

Explanation.- For the purposes of this section, the Lokayukta Aayog shall mean Lokayukta Aayog comprising of Lokayukta and at least one Up-Lokayukta (Judicial) and at least one Up-Lokayukta (Administrative).

Constitution of 9. (1) Any complaint or matter received by the Lokayukta Aayog shall benches. only be inquired into or investigated by a bench of the Lokayukta Aayog.

(2) The Lokayukta Aayog shall function in benches of not less than two members. In consideration of work load, importance of issues at hand and other objective criteria, benches may comprise of two, three or five members:

Provided that each bench shall have atleast one judicial member and one administrative member :

Provided further that in respect of or during any investigation or inquiries in relation to a complaint if any allegation is also made against the Chief Minister either directly or in conjunction with any other public functionary, the bench shall comprise of five members.

(3) Every Bench shall be presided over by the senior most judicial member.

(4) The Benches of the Lokayukta Aayog shall ordinarily sit at Gandhinagar and at such other places as may be prescribed.

(5) On an application for transfer made by the complainant or the public functionary, the Lokayukta, after giving an opportunity of being heard to the complainant or to the public functionary, as the case may be, may transfer any case pending before one Bench for disposal or investigation to any other Bench.

- 10.** (1) The Lokayukta Aayog shall not investigate any action,- **Matter not subject to investigation.**
- 37 of 1850. (a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 with its prior concurrence, or
- 60 of 1952. (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 on its recommendation or with its prior concurrence or by the State Government under the proviso to sub-section (2) of section 7, or
- (c) in respect of a matter if a process including appeal, revision, review or other proceeding is pending before any tribunal, Court, officer or other competent authority under any other law for the time being in force, or
- (d) in respect of a matter which has been inquired into under the enactments referred to in clauses (a) or (b) or (c) and has been finally decided by a competent court.

(2) The Lokayukta Aayog shall not investigate any complaint which is excluded from its jurisdiction by virtue of a notification issued under section 23.

(3) The Lokayukta or an Up-Lokayukta shall not be a member of the Bench inquiring or investigating into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the Governor shall, on an application made by the party aggrieved, obtain in such manner as may be prescribed, the opinion of the Chief Justice of the High Court and decide the dispute.

(4) The Lokayukta Aayog shall not inquire into any complaint if the complaint is made after the expiry of five years from the date on which the action mentioned in such complaint is alleged to have been taken or if the complaint is made after a period of one year from the date of the complainant's knowledge of such cause for action.

11. (1) Subject to the provisions of this Act, a complaint stating the allegations may be made under this Act to the Lokayukta Aayog by any person other than a public servant, having personal knowledge of such allegation, in his capacity as such : **Provisions relating to complaints.**

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any other person who is authorized by him in this behalf.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokayukta Aayog by a person in a police custody or in a jail or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such jail, asylum or other place and the Lokayukta Aayog may, if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

(4) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of two thousand rupees to be available for disposal under section 24:

Provided that the Lokayukta Aayog may for sufficient cause to be recorded in writing exempt a complainant from the requirement of depositing the sum under this section.

(5) Notwithstanding anything contained in section 12 or any other provision of this Act, every person who willfully or maliciously makes any false allegations in a complaint under this Act shall, on conviction be punished with imprisonment for a term not exceeding six months, and shall also be liable to fine of Rs. 25,000 (twenty-five thousand rupees).

(6) The offence punishable under sub-section (5) shall be cognizable.

Procedure in respect of investigations.

12. (1) Where the Lokayukta Aayog proposes, after making such preliminary inquiry as it deems fit to conduct any investigation under this Act, it -

- (i) shall forward a copy of the complaint or in the case of any investigation which it proposes to conduct on his own motion, a statement setting out the grounds therefor to the public functionary concerned and the competent authority concerned,
- (ii) shall afford to the public functionary concerned an opportunity to offer his comments on such complaint or statement, and
- (iii) may make such orders as to the safe custody of documents relevant to the investigation, as it deems fit.

(2) Every such investigation shall be conducted in private and, in particular the identity of the complainant and of the public functionary affected by the investigation and the proceedings, including evidence collected, of the Lokayukta Aayog shall not be disclosed to the public or the press or published in any manner whether before, during or after the investigation:

Provided that, the Lokayukta Aayog may conduct any investigation relating to a matter of definite public importance in public, if it, for reasons to be recorded in writing, thinks fit to do so.

(3) Every investigation or inquiry shall be completed within a period of six months.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta Aayog considers appropriate in the circumstances of the case.

(5) The Lokayukta Aayog may, in its discretion, refuse to investigate or cease to investigate any complaint, if in its opinion-

- (a) the complaint is frivolous or vexatious, or is not made in good faith; or
- (b) there are no sufficient grounds for investigating or as the case may be, for continuing the investigation; or
- (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(6) In any case where the Lokayukta Aayog decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, it shall record the reasons therefor and communicate the same to the complainant and the public functionary concerned.

(7) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public functionary to take further action with respect to any matter subject to the investigation.

(8) Whoever discloses to the public or to the press any information or publishes such information in contravention of the provisions of this section shall, on conviction, be punished with imprisonment for a term which may extend to two years and shall also be liable to fine of rupees two lakhs.

(9) If, at any stage of the proceeding, the Lokayukta Aayog —

- (a) considers it necessary to inquire into the conduct of any person other than the prospective accused; or

- (b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense, consistent with the principles of natural justice.

Evidence. 13. (1) Subject to the provisions of this section, for the purpose of investigation (including the preliminary inquiry, before such investigation) under this Act, the Lokayukta Aayog may require any public servant or any other person who in its opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such document.

(2) For the purpose of any such investigation (including the preliminary inquiry), the Lokayukta Aayog shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the ^{5 of 1908.} following matters, namely:-

- (a) summoning and enforcing the attendance of any person by issuing summons or warrants and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) such other matters as may be prescribed:

Provided that a warrant issued under sub-section (1) shall for all purposes, be deemed to be a warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973. 2 of 1974.

(3) The Lokayukta Aayog shall have power to require any person subject to the provisions of sub-section (8) to furnish information on such points or matters as in the opinion of the Lokayukta Aayog may be useful for or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code. 45 of 1860.

(4) The Lokayukta or the Up-Lokayukta or any Gazetted Officer specially authorized in this behalf by the Lokayukta Aayog may enter any building or place where it has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies there from, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 in so far as they may be applicable. 2 of 1974.

(5) The Lokayukta Aayog shall be deemed to be a Civil Court and when any offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokayukta Aayog, the Lokayukta may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 346 of the Code of the Criminal Procedure, 1973.

(6) Any proceeding before the Lokayukta Aayog shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(7) Subject to the provisions of sub-section (8), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the State Government or any public servant, whether imposed by any enactment or by any rule under the enactment shall apply to the disclosure of information for the purpose of any investigation under this Act and the State Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule under the enactment in legal proceedings.

(8) (i) No person shall be required or authorized by virtue of this Act to furnish any such information or answer any such question or produce an document,-

(a) as might prejudice the security or defense or international relations of India (including India's relations with the Government of any other country or with any international organization), or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings, other than the decision, of the Cabinet or Council of Ministers of the State Government or any committee thereof, if any;

and for the purpose of this sub-section, a certificate issued by the Chief Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

(ii) For the purpose of investigation under this Act, no person shall be compelled to give any evidence or produce any document, which he could not be compelled to give or produce in proceedings before a court.

Report of 14. (1) If after investigation of any action in respect of which a complaint involving an allegation has been made against a Minister or against a Minister in conjunction with any other public functionary, the Lokayukta Aayog is satisfied that such allegation can be substantiated either wholly or partly against the Minister, it shall, by a report in writing, communicate its findings, alongwith the relevant documents, materials and other evidence, to the Chief Minister.

(2) On receipt of the report under sub-section (1), the Chief Minister shall, without any delay, cause the same to be placed before the Council of Ministers for its consideration, in its original form. The Council of Ministers shall accept or reject the report or any part thereof as it may decide. As per the decision of the Council of Ministers, the State Government shall take appropriate action.

Findings and recommendations to be communicated to competent authority by a report.

15. (1) If, in any case to which section 14 does not apply, the Lokayukta Aayog, after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, is satisfied that such allegation can be substantiated, either wholly or partly, it shall by a report in writing, communicate its findings alongwith the relevant documents, materials and other evidence, to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and intimate, within seven months of the date of receipt of the report to the Lokayukta Aayog as to the action taken or proposed to be taken on the basis of the report.

Report of Lokayukta Aayog, competent authority to act in a time bound manner.

16. (1) (i) Where, after conclusion of an investigation or an inquiry, the Lokayukta Aayog is satisfied that the complaint involving an allegation against a public functionary falling under sub-clause (a) of clause (10) of section 2 is substantiated and arrives at a finding that the public functionary concerned should not continue to hold the post held by him, the Lokayukta Aayog shall make a declaration to that effect in its report. Where the competent authority is the Council of Ministers or the Chief Secretary, it / he may either accept or reject the declaration, for reasons to be recorded in writing and communicated to the Lokayukta Aayog, within a period of six months. In other cases, the competent authority shall send a copy of such report to the State Government, which may either accept or reject the declaration within a period of one year from the date of receipt of the report, or the copy of the report, as the case may be. If, on the expiry of specified period in this sub-section, no decision is taken on the declaration then such declaration shall be deemed to have been accepted.

(ii) If the declaration so made is accepted or is deemed to have been accepted, the fact of such acceptance or the deemed acceptance shall immediately be intimated by registered post by the State Government or the Chief Minister or the Chief Secretary, if any of them is the competent authority, and by the State Government in other cases then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public functionary concerned shall, with effect from the date of intimation of such acceptance or of the deemed acceptance of the declaration,

- (a) if he is a Minister, resign from his office of Minister;
- (b) if he is not a Minister, be deemed to have vacated his office.

(2) (i) Where, after conclusion of an investigation or an inquiry, the Lokayukta Aayog is satisfied that the complaint involving an allegation against a public functionary falling under sub-clause (b) of clause (10) of section 2 is substantiated and arrives at a finding that the public functionary concerned should be proceeded against under the relevant Disciplinary and Appeal Rules as may be applicable, the Lokayukta Aayog shall make a declaration to that effect in its report.

(ii) The competent authority shall accept or reject the declaration within a period of six months from such receipt. If the competent authority fails to accept or reject the declaration within six months time then departmental proceedings shall be deemed to have been instituted against the concerned public functionary.

(3) Every departmental proceeding initiated under a report of the Lokayukta Aayog shall be completed within a period of twelve months from the date of acceptance or deemed acceptance of declaration.

17. (1) The Lokayukta Aayog shall present, in such form as may be prescribed by the State Government in consultation with the Lokayukta Aayog, annually a consolidated report of the performance of its functions under this Act to the Governor, and the Governor shall, on receipt of such report, cause a copy thereof together with an explanatory memorandum to be laid before the State Legislature. **Annual report of Lokayukta Aayog.**

(2) Subject to the provisions of sub-section (2) of section 12, the Lokayukta Aayog may at his discretion make available from time to time, the substance of cases closed or otherwise disposed of by the Lokayukta Aayog which may appear to him to be of general public, academic or professional interest in such manner and to such persons as he may deem appropriate.

(3) The Lokayukta shall prepare a report on utilization of financial resources at its disposal and shall present it to the Governor, who shall cause it to be laid before the legislative assembly of the State. The report shall not be open to any debate within the assembly.

Staff of 18. (1) There shall be such officers and employees as may be prescribed to **Lokayukta.** assist the Lokayukta and the Up-Lokayukta as in the discharge of their functions under this Act.

(2) The categories, recruitment and conditions of service of the officers and employees referred in sub-section (1) including such special conditions as may be necessary for enabling them to act without fear in the discharge of their functions, shall be such as may be prescribed in consultation with the Lokayukta Aayog.

(3) Without prejudice to the provisions of sub-section (1), the Lokayukta Aayog may, for the purpose of conducting investigations under this Act, request the services of any officer or investigation agency of the State Government. The State Government may, having regard to administrative exigencies, make available such officer/s or agency as deemed fit for the purpose of that specific investigation :

Provided that nothing in this sub-section shall be construed to mean a permanent allocation of such officer/s or agency to the Lokayukta Aayog.

(4) For the purpose of investigating into any matter, any officer, agency or person whose services are utilised under sub-section (3) may, subject to the direction of the Lokayukta Aayog,-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(5) The provisions of sections 13 and 19 shall apply in relation to any information furnished to any officer, agency or person whose services are utilised under sub-section (3) as they apply in relation to the information furnished to the Lokayukta Aayog during the course of the investigation of any action by him.

Secrecy of 19. (1) Any information, obtained by the Lokayukta Aayog or by **information.** members of its staff in the course of, or for the purposes of any inquiry or investigation under this Act, and any evidence recorded in connection with such information, shall subject to the provisions of the proviso to sub-section (2) of section 12, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 no court shall be entitled to 1 of 1872. compel the Lokayukta or the Up-Lokayukta or the Lokayukta Aayog, or any public servant to give evidence relating to such information or produce the evidence so recorded.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,-

- (a) in any report to be made on an investigation under this Act or for any action or proceeding to be taken on such report; or
- 19 of 1923. (b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 or an offence of giving or fabricating false evidence under the Indian Penal Code or for purposes of any proceedings under section 20; or
- 45 of 1860. (c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the State Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such notice is given, nothing in this Act shall be construed as authorising or requiring the Lokayukta or Up-Lokayukta or any member of his staff to disclose or communicate to any person any document or information specified in the notice or any document or information of a class so specified.

20. (1) Whoever intentionally offers any insult or causes any interruption **Intentional** to the Lokayukta or the Up-Lokayukta or to the Lokayukta Aayog while the **insult or** Lokayukta Aayog is conducting any investigation under this Act shall, on **interruption to** conviction, be punished with simple imprisonment for a term which may **or bringing into** extend to six months, or with fine or with both. **disrepute**
Lokayukta
Aayog.

(2) Whoever, by words spoken, or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or the Up-Lokayukta or the Lokayukta Aayog into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months or with fine or with both.

2 of 1974. (3) The provisions of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the public prosecutor except with the previous sanction of the Lokayukta.

21. (1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or the Up-Lokayukta or the Lokayukta Aayog or against any officer, employee, agency or person referred to in section 18 in respect of anything which is in good faith done or intended to be done under this Act. **Protection.**

(2) No proceedings of the Lokayukta Aayog shall be held bad for want of form and except on the grounds of jurisdiction, limitation and provisions of section 10, no proceedings or decision of the Lokayukta Aayog shall be liable to be challenged, reviewed, quashed or called in question in any court.

Conferment of additional functions on Lokayukta. 22. (1) The State Government may, by notification published in the *Official Gazette* and after consultation with the Lokayukta Aayog, confer on the Lokayukta Aayog such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The State Government may, by order in writing and after consultation with the Lokayukta Aayog, confer on the Lokayukta Aayog such powers of a supervisory nature over agencies, authorities or officers set up constituted or appointed by the State Government for the eradication of corruption as may be specified in the order.

(3) The State Government may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokayukta Aayog to cause investigation in any action (being action in respect of which a complaint may be made under this Act to the Lokayukta Aayog) and notwithstanding anything contained in this Act, the Lokayukta Aayog shall comply with such order.

(4) When any additional functions are conferred on the Lokayukta Aayog under sub-section (1) or when the Lokayukta Aayog is to cause investigation in any action under sub-Section (3), the Lokayukta Aayog shall exercise the same powers and discharge the same functions as it would in the case of any investigation made on a complaint involving an allegation, and the provisions of this Act shall apply accordingly.

Power to exclude complaints against certain classes of public functionaries. 23. (1) The State Government may, on the recommendation of the Lokayukta Aayog and on being satisfied that it is necessary or expedient in the public interest so to do, exclude, by notification in the *Official Gazette*, complaints, involving allegations against persons belonging to any class of public functionaries specified in the notification from the jurisdiction of the Lokayukta.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued before the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following the State Legislature agree in making any modification in the notification or agree that the notification, should not be made and notify such decision in the *Official Gazette*, the notification shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done by virtue of that notification.

- 24.** The sum deposited under section 11 by a complainant shall, - **Disposal of deposit.**
- (a) in a case where the complaint is refused to be investigated or ceased to be investigated under sub-section (4) of section 12 stand forfeited to the State Government,
 - (b) if the Lokayukta Aayog, for reasons to be recorded in writing so direct, be utilised for compensating the public functionary complained against, and
 - (c) in any other case, be refunded to the complainant.
- 25.** The Lokayukta Aayog may, by general or a special order in writing, **Power to direct that any power conferred or duties imposed on it by or under this Act delegate.** (except the power to make report to the Chief Minister or Chief Secretary or the State Government under sections 14 and 15) may also be exercised or discharged by such of the officers, employees or agencies referred to in section 18 as may be specified in the order.
- 26.** (1) The State Government may, by notification in the *Official Gazette*, **Power to make make rules for the purpose of carrying into effect the provisions of this Act. rules.**
- (2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for,-
- (a) the competent authority under section 2;
 - (b) the salary and the allowances and pension payable to, and other conditions of service of the Lokayukta and Up-Lokayukta under sub-sections (3) and (4) of section 5;
 - (c) other places where the benches of Lokayukta shall sit;
 - (d) the manner for obtaining the opinion of Chief Justice of High Court;
 - (e) the administrative powers of Lokayukta under sub-section (4) of section 8;
 - (f) the forms of complaints and the affidavits, under sub-section (2) of section 11 and the manner in which and the authority or agency for depositing the amount under sub-section (4) of that section 11;
 - (g) the other matters in respect of which the Lokayukta Aayog shall have powers of a Civil Court under clause (f) of sub-section (2) of section 13;
 - (h) the form of consolidated annual report under sub-section (1) of section 17;
 - (i) the categories of officers and employees who may be appointed, their salaries and allowances and other conditions of service under sub-section (1) of section 18;
 - (j) the other purposes of disclosure of any information or particulars under clause (c) of sub-section (2) of section 19 and the officer or other authority who may give notice for the purpose of sub-section (3) of section 19:

(k) any other matters which is to be, or may be, prescribed for which the Act makes no provision and are necessary for the proper implementation of this Act.

(3) Any rescission or modification so made by the State Legislature shall be published in, the *Official Gazette* and shall thereupon take effect.

Provisions of Act to be in addition to and not in derogation of any other law.

27. The provisions of this Act shall be in addition to and not in derogation of the provisions of the Prevention of Corruption Act, 1988 or any other law ^{2 of 1988.} for the time being in force.

Repeal and savings.

28. (1) The Gujarat Lokayukta Act, 1986 is hereby repealed.

Guj. 31 of 1986.

(2) All proceedings in which inquiry or investigation has been initiated under section 10 (1) of the repealed Act and is pending before the Lokayukta under the repealed Act shall be continued by the Lokayukta Aayog in accordance with provisions contained in this Act.

(3) Any appointment of Lokayukta under repealed Act shall be deemed to be an appointment of a Lokayukta appointed under section 3(1) of this Act.

(4) Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by any Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 before the commencement of this Act and no complaint shall be made ^{60 of 1952.} under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

SCHEDULE

[See section 3(7)]

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