



LEGISLATIVE ASSEMBLY OF THE STATE OF GOA

**The Goa Lokayukta
(First Amendment) Bill, 2013**

(Bill No. 3 of 2013)

(To be introduced in the Legislative Assembly of the State of Goa)

**GOA LEGISLATURE SECRETARIAT,
ASSEMBLY HALL, PORVORIM-GOA**

JANUARY, 2013

**The Goa Lokayukta (First Amendment)
Bill, 2013**

(Bill No. 3 of 2013)

A

BILL

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

5 Be it enacted by the Legislative Assembly of
Goa in the Sixty fourth Year of the Republic of
India, as follows:-

1. *Short title and commencement.*—(1) This Act
may be called the Goa Lokayukta (First
10 Amendment) Act, 2013.

(2) It shall come into force from the date of
coming into force of the Goa Lokayukta Act, 2011
(Goa Act 3 of 2012).

2. *Amendment of section 2.*— In section 2 of the
15 Goa Lokayukta Act, 2011 (Goa Act 3 of
2012)(hereinafter referred to as the "principal
Act"), in clause (q), in sub-clause (iii), for item (4),
the following shall be substituted, namely:-

20 "(4) any other Corporation or Board or Society
or non-statutory body or administrative
committee, owned or controlled by the
Government of Goa; or".

3. *Amendment of section 3.*— For sub-section (2)
of section 3 of the principal Act, the following
25 sub-section shall be substituted, namely:-

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

4. *Amendment of section 5.*— In sub-section (1) of section 5 of the principal Act,—

(i) for the words "three years", the words "five years" shall be substituted;

(ii) in the existing proviso, for the words "Provided that", the words "Provided further that" shall be substituted;

(iii) before the existing proviso, the following proviso shall be inserted, namely:—

"Provided that where a Judge of the Supreme Court has been appointed as a Lokayukta, he shall be entitled to hold office for a term of five years from the date on which he enters upon his office as a Lokayukta or till he attains the age of seventy three years, whichever is earlier:"

5. *Amendment of section 6.*— In sub-section (1) of section 6 of the principal Act,—

(i) for the expression " 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:", the expression "The Lokayukta shall

have the status of a Judge of the Supreme Court and the Upa-Lokayukta shall have the status of a Judge of the High Court, and they shall be entitled to salary, allowances and pension and shall be subject to the same conditions of service, as a Judge of the Supreme Court and a Judge of the High Court, respectively:";

(ii) the first proviso shall be omitted.

6. Insertion of new section 16A.- After section 16 of the principal Act, the following section shall be inserted, namely:-

"16A. Public functionary to vacate office.—(1) Where, after investigation into a complaint, the Lokayukta or the Upa-Lokayukta is satisfied that the complaint involving an allegation against the public functionary is substantiated and that the public functionary concerned should not continue to hold the office held by him, the Lokayukta or the Upa-Lokayukta shall make a declaration to that effect in his report under clause (a) of sub-section (1) of section 16. The Competent Authority may either accept or reject such declaration after giving an opportunity of being heard to the public functionary concerned.

(2) If the declaration under sub-section (1) is accepted or rejected within a period of three months from the date of receipt of the report, or of a copy of the report, as the case may be, the fact of such acceptance or rejection shall immediately be intimated by the Competent Authority to the public functionary concerned.

(3) If the declaration under sub-section (1) is in respect of a Chief Minister or a Minister, accepted by the Competent Authority, he may resign from his office.

(4) With effect from the date of intimation of acceptance of the declaration under sub-section (1), notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public functionary, - 5

(i) specified under sub-clauses (iii) to (xi), except sub-clause (ix), of clause (q) of section 2, shall be deemed to have vacated his office; 10

(ii) specified under sub-clause (ix) of clause (q) of section 2, shall be deemed to have been placed under suspension: 15

Provided that if the public functionary is a member of an All India Service as defined in section 2 of the All India Services Act, 1951 (Central Act 61 of 1951), the State Government shall take action to keep him under suspension in accordance with the Rules or regulations applicable to his service. 20

(5) If the declaration under sub-section (1) is not accepted within a period of three months from the date of receipt of the report, or of a copy of the report, as the case may be, it shall be deemed to have been rejected on the expiry of the said period of three months." 25

7. *Amendment of section 19.*— In sub-section (1) of section 19 of the principal Act, for the expression "not more than rupees ten thousand" the 30

expression "which shall not be less than rupees one lakh and which may extend to rupees ten lakhs" shall be substituted.

5 8. *Insertion of new section 19A.*— After section 19 of the principal Act, the following section shall be inserted, namely:-

"19A. Offence and Penalty.- (1) Notwithstanding anything contained in this Act, whoever makes,-

10 (i) a complaint containing false allegations;

(ii) a complaint with *malafide* intention or ulterior motive;

15 (iii) a complaint with intention to malign or tarnish image or reputation of the public functionary;

(iv) a complaint with an affidavit containing false statements;

(v) a frivolous or vexatious complaint;

20 shall on conviction be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than rupees fifty thousand but which may extend to rupees one lakh.

25 (2) No Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a public functionary after obtaining the previous sanction of the Lokayukta or the Upa-Lokayukta, as the case may be.

(3) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the State Government."

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9. Amendment of section 33.-In section 33 of the principal Act,—

(i) in clause (iii), the words, "and any member of its staff" be omitted;

(ii) in clause (v), the words "or any member of their staff" shall be omitted;

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(iii) for clause (vi), the following clause shall be substituted, namely:-

"(vi) The State Election Commissioner referred to in Article 243 K of the Constitution of India."

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STATEMENT OF OBJECTS AND REASONS

1. The amendment of section 2 (q) (iii) (4) is felt necessary in order to bring within the purview of Goa Lokayukta Act, 2011 the public functionaries in respect of the non-statutory and the administrative committees constituted, owned or controlled by the Government of Goa.

2. The amendment of sub-section 2 of section 3 is felt necessary in order to facilitate appointment of a retired Judge of the Supreme Court or the Chief Justice of a High Court as a Lokayukta.

3. The amendment of sub-section 1 of section 5 is necessary, so as to enable the Lokayukta/Upa-Lokayukta to have a term of five years, in order to ensure continuity of investigation into the complaints received and decision making. It is also to avoid repeated change of Lokayukta, considering the fact that the chances of availability of retired Supreme Court Judges and Chief Justices of High Court for the appointment as Lokayukta/Upa-Lokayukta will be less.

4. The amendment of sub-section (1) of section 6, relating to Pay and Allowances of Lokayukta is necessary as a consequence of the proposed amendment of section 5 (1) requiring a retired Supreme Court Judge/Chief Justice of a High Court to be the Lokayukta.

5. The insertion of new section 16A after section 16 is necessary in order to strengthen

the institution of Lokayukta/Upa-Lokayukta by providing teeth in the form of vacation of Public office/Suspension against the indicted public functionaries. However, in the case of Chief Minister and Ministers, only their voluntary resignation will have the effect of vacation of their office. In all cases the right to opportunity of hearing is mandatory. The concept of deemed rejection has been introduced.

6. Section 19 has been amended to increase the costs/compensation payable to the public functionary by the complainant, in order to prevent filing of false/frivolous and vexatious complaints.

7. The insertion of a new section 19A has been felt necessary in order to ensure that unscrupulous persons do not file false, frivolous and vexatious complaints with *malafide* or ulterior motive or with the intention to malign or tarnish reputation of the public functionary, filing a false affidavit with the complaint, have been made offences under the Act and the offenders will be prosecuted and punished suitably at State expense.

8. The amendment of section 33 (iii), (v), (vi) is required in order to ensure that the staff members of the public functionaries mentioned in Section 33 are not exempted from the purview of investigation into the complaints of allegations of misconduct. It is also felt necessary to exempt the State Election Commissioner referred to in Article 243 K of the Constitution of India, since he can only be removed by impeachment.

This Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

No financial implications are involved in this Bill

MEMORANDUM REGARDING DELEGATED LEGISLATION

No delegated legislation is involved in this Bill.

Porvorim-Goa,
Dated: 28/01/2013.

(MANOHAR PARRIKAR)
Hon. Chief Minister/
Minister for Vigilance.

Assembly Hall,
Porvorim-Goa,
Dated: 28/01/2013.

(N.B. Subhedar)
Secretary to the Legislative
Assembly of Goa

ANNEXURE

.....
**Extracts of the existing sections 2, 3, 5, 6, 19,
33 of the Goa Lokayukta Act, 2011 (Goa Act 3
of 2012)**
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2. Definitions.— In this Act, unless the context otherwise requires:—

(a) "action" means action taken by a 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, and 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 or 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 or any
Member of the State
Legislative Assembly: | Governor; |
| (ii) | in the case of a
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 a Vice-
Chancellor of University: | the Chancellor of
the University; |
| (iv) | in the case of any other
public functionary: | the Chief Minister or
such authority 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) (xi) 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, 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 the Chief Minister) of the Council of Ministers for the State of Goa and includes a Deputy Chief Minister, a Minister of State and a Deputy Minister;

(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 any other relevant law for the time being in force and the rules made thereunder; 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); or

(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 (ix);

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

Explanation.— In this clause:—

(1) "co-operative society" includes a co-operative society registered or deemed to have been registered under the Goa Co-operative Societies Act, 2001 (Goa Act 36 of 2001) or under any other law 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.

3. Appointment of Lokayukta or Upa-Lokayukta.—

(1) For the purpose of conducting investigations and inquiries 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 or is qualified to be appointed as 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, B having 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 offices of the Lokayukta or Upa-Lokayukta becomes 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 of 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.

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 attain 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 a 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.

(2) The expenditure in respect of the salaries and allowances of the Lokayukta or Upa-Lokayukta shall be charged on the Consolidated Fund of the State of Goa.

16. *Reports of Lokayukta.*— (1) (a) If, after investigation of any complaint involving an allegation, the Lokayukta or Upa-Lokayukta, as the case may be,

is satisfied that such allegation is substantiated either wholly or partly, he shall, by report in writing within a period of ninety days from the date of the completion of inquiry to the Government, communicate his findings and recommendations and as far as possible along with the relevant documents, materials, and other evidence to the competent authority concerned and a copy of the report regarding the findings and recommendations shall be submitted to the Government.

(b) If, after investigation of any complaint involving a grievance, the Lokayukta or the Upa-Lokayukta, is satisfied that in consequence of mal-administration by the public functionary, the complainant has sustained injustice or undue hardship, the Lokayukta or the Upa-Lokayukta, shall by a report in writing recommend to the public functionary and the competent authority concerned, that such injustice or undue hardship shall be remedied or redressed and such report shall be acted upon as far as possible within 60 days and a report shall be sent to the Lokayukta or Upa-Lokayukta accordingly.

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

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

case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant, if any.

(4) The Lokayukta or Upa-Lokayukta shall present annually a consolidated report on the administration of this Act to the Governor.

(5) On receipt of a report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the Legislative Assembly of Goa.

19. *Costs.*— (1) The Lokayukta or the Upa-Lokayukta, as the case may be, in case the allegation made in the complaint is found to be false or vexatious to the knowledge of the complainant, order the complainant to pay costs/compensation of not more than rupees ten thousand, to the public functionary against whom the allegation has been made.

(2) The Lokayukta or the Upa-Lokayukta, as the case may be, may, if he is satisfied that all or any of the allegations made in the complaint against the public functionary have or has been substantiated, either wholly or partly, order the public functionary, to pay such amount of costs, not exceeding rupees ten thousand as may be specified in the order, to the complainant and issue a certificate of recovery in respect of the amount so specified.

(3) Any person in whose favour a certificate is issued under sub-section (2) may apply to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person against whom, a certificate is issued has a place of residence or business, for recovery of the amount specified in the certificate and such Court shall thereupon execute the certificate, or cause the same to be executed, in the manner and by

the same procedure as if it was a decree for the payment of money passed by itself in a suit.

33. *Removal of doubts.*— For the removal of doubts, it is hereby declared that nothing in this Act shall be construed to authorize the Lokayukta or Upa-Lokayukta to investigate any complaint against,—

(i) the Chief Justice or any Judge of the High Court, or a Judicial Officer of subordinate Courts within the meaning of Chapter VI of Part VI of the Constitution of India;

(ii) any officer or servant of any Court as referred to in clause (i);

(iii) the Chairman or a member of the Goa Public Service Commission and any member of its staff;

(iv) the Election Commissioners and the Regional Commissioners referred to in Article 324 of the Constitution of India and the Chief Electoral Office of Goa;

(v) functionaries appointed under Article 323-A and 323-B of the Constitution of India or any member of their staff; and

(vi) any member of the staff of Governor's Secretariat.

Porvorim-Goa,
Dated: 28/01/2013.

(MANOHAR PARRIKAR)
Hon. Chief Minister/
Minister for Vigilance.

Assembly Hall,
Porvorim-Goa,
Dated: 28/01/2013.

(N.B. Subhedar)
Secretary to the Legislative
Assembly of Goa