

THE KERALA LOK AYUKTA ACT, 1999

(Act 8 of 1999)

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FIRST SCHEDULE

SECOND SCHEDULE

ACT 8 OF 1999*

THE KERALA LOK AYUKTA ACT, 1999

An Act to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relating to matters specified in List II or List III of the Seventh Schedule to the Constitution of India taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto.

Preamble.—WHEREAS it is expedient to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relating to matters specified in List II or List III of the Seventh Schedule to the Constitution of India, taken by or on behalf of the Government of Kerala or certain public servants in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto

4 BE it enacted in the Fiftieth Year of the Republic of India as follows:—

1. *Short title and commencement* :—(1) This Act may be called the Kerala Lok Ayuktha Act, 1999.

(2) It shall be deemed to have come into force on the 15th day of November, 1998.

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

(a) “action” means any action including administrative action taken by way of decision, recommendation or finding or in any other manner and includes wilful failure or omission to act and all other expressions relating to such action shall be construed accordingly;

(b) “allegation”, in relation to a public servant, means any affirmation that such public servant,—

(i) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

* Received the assent of the President on the 4th day of March 1999 and published in the Kerala Gazette Extra Ordinary No 437 dated 4th March, 1999.

(iii) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant,

(c) "Chief Minister" means the Chief Minister of the State;

(d) "competent authority", in relation to a public servant, means,—

(i) in the case of the Chief Minister or a Member of the State Legislature, or an office bearer of a political party, at the State level, the Governor acting in his discretion,

(ii) in the case of a Minister or Secretary, the Chief Minister;

(iii) in the case of an officer of the All India Services, employed in connection with the affairs of the State, the Minister concerned;

(iv) in the case of a Government servant, other than a Secretary, the Government of Kerala,

(v) in the case of any other public servant, such authority, as may be prescribed,

(e) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988),

(f) "Government servant" means a person who is a member of the civil services of the State of Kerala or who holds a civil post or is serving in connection with the affairs of the State of Kerala and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any person, whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Kerala;

Explanation —For the purpose of this clause the term 'another State Government' includes the Union Territories,

(g) "Governor" means the Governor of Kerala,

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

(i) "local authority" means a Panchayat at any level constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Town Panchayat or a Municipal Council or a Municipal Corporation constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(j) “Lok Ayukta” means the person appointed as the Lok Ayukta under section 3;

(k) “mal-administration” means action taken or purporting to have been taken in the exercise of administrative functions in any case where,—

(i) such action or the administrative procedure or practice adopted in such action is unreasonable, unjust, oppressive or improperly discriminatory; or

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

(l) “Minister” means a member of the Council of Ministers of the State, excluding the Chief Minister;

(m) “political party” means a political party or group which has representation in Parliament or in the Kerala Legislative Assembly, or a political party which is treated as a recognised political party in accordance with paragraph 6 of the Election Symbols (Reservation and Allotment) Order, 1968 or a political party registered under section 29A of the Representation of People’s Act, 1951 (Central Act 43 of 1951),

(n) “prescribed” means prescribed by rules made under this Act;

(o) “public servant” means a person who is or was at any time,—

(i) the Chief Minister;

(ii) a Minister,

(iii) a member of the Legislative Assembly of the State of Kerala;

(iv) a Government servant;

(v) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and such other Corporations or Boards, as the Government may, having regard to its financial interest, in such Corporations or Boards, by notification, from time to time, specify;

(vi) a member of a Committee or Board or Authority or Corporation, statutory or non-statutory, constituted by the Government of Kerala;

(vii) a person in the service or pay of,—

(A) a local authority in the State;

(B) a statutory body or a corporation (not being a local authority) established by or under State or a Central Act, owned or controlled by the Government of Kerala and any other board or corporation as the Government may, having regard to its financial interest therein, specify, by notification in the Gazette from time to time;

(C) a company registered under the Companies Act, 1956 (Central Act 1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the Government of Kerala or any company which is a subsidiary of such company;

(D) a society registered or deemed to have been registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (XII of 1955) or the Societies Registration Act, 1860 (Central Act 21 of 1860), which is subject to the control of the Government of Kerala and which is notified, in this behalf, in the Gazette;

(E) a co-operative society,

(F) a University,

Explanation.—In this clause, “co-operative society” means a co-operative society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969) and “University” means a University established by or under any law of the State of Kerala;

(viii) the President, Secretary or Treasurer or any other office bearer of a trade union registered under the Indian Trade Unions Act, 1926 (Central Act 16 of 1926),

(ix) the Chairman or Vice-Chairman or President or Vice-President or Secretary or Treasurer or any other office bearer of a political party, at the District or State level,

(x) the Chairman or Manager or Secretary or Correspondent 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 Kerala Education Act, 1958 (6 of 1959). and the rules made thereunder;

(xi) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private college, whether under unitary or corporate management, which is affiliated to a University in the State and is governed by the Private Affiliated Colleges (Arts and Science Colleges) Staff Direct Payment of Salary Rules 1972,

(xii) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private college, whether under unitary or corporate management, affiliated to a University in the State and which receives aid or grant from the Government of Kerala; or

(xiii) the Chairman or Manager or Secretary or Correspondent having control over the administration of a Private Engineering College or Private Polytechnic, whether under unitary or corporate management, affiliated to a University in the State or the State Board of Technical Examination, Kerala, as the case may be and is governed by the Rules for Payment of Salaries to the Staff of the Private Engineering Colleges and Polytechnics, 1972,

(p) "Secretary" means a Secretary to the Government of Kerala and includes a Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Special Secretary, an Additional Secretary and a Joint Secretary;

(q) "State" means the State of Kerala,

(r) "Upa-Lok Ayukta" means a person appointed at Upa-Lok Ayukta under section 3.

3 *Appointment of Lok Ayukta and Upa-Lok Ayuktas.*—(1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Governor shall appoint a person to be known as Lok Ayukta and two other persons to be known as Upa-Lok Ayuktas.

(2) A person to be appointed as Lok Ayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister, in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State,

(3) A person to be appointed as an Upa-Lok Ayukta shall be a person who holds or has held the office of a Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State.

Provided that the Chief Justice of the High Court concerned shall be consulted, if a sitting judge is appointed as an Upa-Lok Ayukta.

(4) A person appointed as Lok Ayukta or Upa-Lok Ayukta shall, before entering upon his office, make and subscribe, before the Governor or a person appointed by him in that behalf, an oath or affirmation in the form set out for the purpose in the First Schedule

4. *Lok Ayukta or Upa-Lok Ayukta not to hold any other office.*—(1) The Lok Ayukta or the Upa-Lok Ayukta shall not be a member of the Parliament or of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lok Ayukta or Upa-Lok Ayukta) or carry on any business or practice any profession and accordingly, before entering upon his office, a person appointed as the Lok Ayukta or an Upa-Lok Ayukta shall, if he is practising any legal profession, suspend practice of such profession.

(2) A person who has been a member of a political party 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 the Lok Ayukta or an Upa-Lok Ayukta.

5. *Term of office and other conditions of service of Lok Ayukta and Upa-Lok Ayukta.*—(1) A person appointed as Lok Ayukta or Upa-Lok Ayukta shall hold office for a term of five years from the date on which he enters upon his office.

Provided that—

(a) the Lok Ayukta or an Upa-Lok Ayukta may, by writing under his hand and seal addressed to the Governor, resign his office,

(b) the Lok Ayukta or an Upa-Lok Ayukta may be removed from his office in the manner provided in section 6.

(2) A person who holds office as the Lok Ayukta or an Upa-Lok Ayukta shall, on the expiration of his term of office, be ineligible for reappointment to that office.

(3) On ceasing to hold office, the Lok Ayukta or an Upa-Lok Ayukta shall not be eligible for further employment to any office of profit under the Government or in any authority, corporation, company, society or university referred to in item (vii) of clause (o) of section 2.

(4) The salary and allowances payable to, and other conditions of service of, the Lok Ayukta or an Upa-Lok Ayukta shall be such, as may be prescribed.

Provided that—

(a) in prescribing the salary and allowances and other conditions of service of the Lok Ayukta, regard shall be had to the salary and allowances and other conditions of service of a Supreme Court Judge or of the Chief Justice of a High Court, as the case may be,

(b) in prescribing the salary and allowances payable to, and other conditions of service of, the Upa-Lok Ayuktas, regard shall be had to the salary and allowances payable to, and other conditions of service of a Judge of a High Court:

Provided further that the salary and allowances payable to, and other conditions of service of, the Lok Ayukta or an Upa-Lok Ayukta shall not be varied to his disadvantage after his appointment.

(5) The expenditure in respect of the salaries and allowances of the Lok Ayukta and the Upa-Lok Ayuktas and the administrative expenses of the offices of the Lok Ayukta and the Upa-Lok Ayuktas including all salaries, allowances and pensions payable to, or in respect of the persons serving in that office, shall be charged on the Consolidated Fund of the State.

*6. *Removal of Lok Ayukta or Upa-Lok Ayukta*—(1) The Lok Ayukta or an Upa-Lok Ayukta shall not be removed from his office except by an order of the Governor, passed after an address by the Legislative Assembly of the State, supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting, has been presented to the Governor in the same session for such removal, on the ground of proved misbehaviour or incapacity.

• (2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lok Ayukta or an Upa-Lok Ayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 (Central Act 51 of 1968), in relation to the removal of a judge and accordingly, the provisions of that Act shall *mutatis mutandis* apply in relation to the removal of the Lok Ayukta and the Upa-Lok Ayukta, as they apply in relation to the removal of a Judge.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an Upa-Lok Ayukta appointed, from among the sitting Judges of the High Court, shall not be removed, except in like manner and on the like grounds, as a Judge of a High Court.

7. *Matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas.*—(1) Subject to the provisions of this Act, the Lok Ayukta and one of the Upa-Lok Ayuktas, as may be nominated by the Lok Ayukta for the purpose, may investigate any action which is taken by or with the general or specific approval of—

- (i) the Chief Minister, or
- (ii) a Minister, or
- (iii) a Member of the State Legislature; or
- (iv) a Secretary; or
- (v) an office bearer of a political party at the State level, or
- (vi) an officer referred to in sub-clause (iii) of clause (d) of section 2,

in any case where a complaint involving a grievance or an allegation is made in respect of such action and where there is difference of opinion between the Lok Ayukta and the Upa-Lok Ayukta as so nominated, the action shall be investigated by the Lok Ayukta and both the Upa-Lok Ayuktas together and the decision of the majority therein shall prevail.

(2) Subject to the provisions of this Act, an Upa-Lok Ayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being the Chief Minister or a Minister or a Member of the State Legislature or a Secretary or an office bearer of a political party at State level or an officer referred to in sub-clause (iii) of clause (d) of section 2, in any case where a complaint involving a grievance or an allegation is made in respect of such actions or such action can be or could have been in the opinion of the Upa-Lok Ayukta, the subject of a grievance or an allegation.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Lok Ayukta or an Upa-Lok Ayukta may investigate any action taken by or with the general or specific approval of a public servant, if it is referred to him by the Government

(4) The Lok Ayukta may, by general or special order, assign to each of the Upa-Lok Ayuktas the matters which may be investigated by them under this Act.

(5) Notwithstanding anything contained in sub-sections (1) to (4), when an Upa-Lok Ayukta is unable to discharge his functions owing to absence, illness or any other cause, his functions may be discharged by the other Upa-Lok Ayukta, and in the absence of both, by the Lok Ayukta.

(6) Notwithstanding anything contained in any other provisions of this Act, no investigation made by an Upa-Lok Ayukta under this Act and no action taken or things done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

(7) For the removal of doubts, it is hereby clarified that the term 'Lok Ayukta' wherever it is used in this Act, in relation to any of these persons referred to in sub-section (1), shall mean the Lok Ayukta and, as the case may be, one or both of the Upa-Lok Ayuktas as provided in that sub-section.

8. *Matters not subject to investigation* —(1) Except as hereinafter provided the Lok Ayukta or an Upa-Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule.

(2) The Lok Ayukta or an Upa-Lok Ayukta shall not investigate,—

(a) any action in respect of which a formal and public inquiry has been ordered with the prior concurrence of the Lok Ayukta or an Upa-Lok Ayukta, as the case may be,

(b) any action in respect of a matter which has been referred to inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952),

(c) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place

Provided that a complaint referred to in clause (c) may be entertained by the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, after the expiry of the period referred to in the said clause, if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in that clause

(3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lok Ayukta or an Upa-Lok Ayukta to question any administrative action involving the exercise of a discretion, except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can *prima-facie* be regarded as having been improperly exercised.

9. *Provisions relating to complaints and investigations.*—(1) Subject to the provisions of this Act, any person may make a complaint under this Act to the Lok Ayukta or an Upa-Lok Ayukta.

(2) Every complaint shall be made in such form and in such manner, as may be prescribed, and shall be supported by an affidavit.

(3) Where the Lok Ayukta or an Upa-Lok Ayukta proposes, after making such preliminary inquiry as he deems fit, to conduct any investigation under this Act, he—

(a) shall forward a copy of the complaint to the public servant and the competent authority concerned;

(b) shall afford to such public servant, an opportunity to offer his comments on such complaint,

(c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held, either in public or in camera, as the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, considers appropriate in the circumstances of the case.

(5) The Lok Ayukta or an Upa-Lok Ayukta may, in his discretion, refuse to investigate or discontinue investigation of, any complaint involving a grievance or an allegation, if in his opinion—

(a) the complaint is frivolous or vexatious or is not made in good faith;

(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 Lok Ayukta or an Upa-Lok Ayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

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

(8) In every proceeding before the Lok Ayukta or an Upa-Lok Ayukta under this Act, the State shall be made a party thereto and the Government shall appoint a Special Attorney and one or more senior Government Pleaders to represent the Government before the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, on the terms and conditions prescribed:

Provided that it shall not be necessary that state should be made a party in cases where Government interests are not involved.

10. *Issue of search warrant etc.*—(1) Where in consequence of information in his possession, the Lok Ayukta or an Upa-Lok Ayukta,—

(a) has reason to believe that any person—

(i) to whom a summons or notice under this Act has been or might be issued, will not or would not produce or cause to be produced any property, document or thing which will be necessary or useful for, or relevant to, any inquiry or other proceeding to be conducted by him,

(ii) is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents, either wholly or partly, income or property which has not been disclosed to the authorities for the purpose of any law or rule in force, which requires such disclosure to be made; or

(b) consider that the purposes of any inquiry or other proceedings to be conducted by him will be served by a general search or inspection, he may be by a search warrant authorise any Police Officer, not below the rank of a Deputy Superintendent of Police, to conduct a search or carry out an inspection in accordance therewith and in particular to—

(A) enter and search any building or place where he has reason to suspect that such property, document, money, bullion, jewellery or other valuable article or thing is kept;

(B) search any person who is reasonably suspected, of concealing about his person any article, for which search should be made;

(C) break open the lock of any door, box, locker, safe, almirah or other receptacle, for exercising the powers conferred by item (A), where the keys thereof are not available,

(D) seize any such property, document, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(E) place marks of identification on any property or document or make or cause to be made extracts or copies therefrom; or

(F) make a note or an inventory of any such property, document, money, bullion, jewellery or other valuable article or thing.

(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to search and seizure shall apply, so far as may be, to searches and seizures under sub-section (1).

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

11. *Evidence.*—(1) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lok Ayukta or an Upa-Lok Ayukta may require any public servant or any other person who, in his 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 Lok Ayukta or an Upa-Lok Ayukta shall have all the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person 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 commission for the examination of witnesses or documents,
- (f) such other matters as may be prescribed.

(3) Any proceeding before the Lok Ayukta or an Upa-Lok Ayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (Central Act 45 of 1860).

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document,—

(a) as might prejudice the affairs of the State or the security or defence or international relations of India (including India's relation with the Government of any other country or with any international organisation);

(b) as might involve the disclosure of proceedings of the Cabinet of the Government of Kerala or any Committee of that Cabinet 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

(5) 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.

12 *Reports of Lok Ayukta etc.*—(1) If, after investigation of any action in respect of which a complaint involving grievance has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or to any other person, the Lok Ayukta or an Upa-Lok Ayukta shall by a report in writing, recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time, as may be specified in the report and also intimate the complainant about its having made the report.

(2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the period specified in the report, intimate or cause to be intimated, as the case may be, to the Lok Ayukta or the Upa-Lok Ayukta the action taken on the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that such allegation is substantiated, either wholly or partly, he shall, by report in writing, communicate his findings and recommendations, along with the relevant documents, materials and other evidence to the competent authority and also intimate the complainant about its having made the report.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and, within three months of the date of receipt of report, intimate or cause to be intimated to the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, the action taken or proposed to be taken on the basis of the report.

(5) If the Lok Ayukta or the Upa-Lok Ayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case, under intimation to the complainant, the public servant and the competent authority concerned; but where he is not so 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.

(6) The Lok Ayukta shall present annually a consolidated report on the performance of his functions as well as the functions of the Upa-Lok Ayuktas, to the Governor.

(7) On receipt of the special report under sub-section (5) or the annual report under sub-section (6), the Governor shall cause a copy thereof, together with an explanatory memorandum, to be laid before the Legislative Assembly.

(8) The Lok Ayukta or an Upa-Lok Ayukta may, at his discretion, make available, from time to time, the substance of cases closed or otherwise disposed of by him 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.

13 *Payment of compensation.*—If the Lok Ayukta or an Upa-Lok Ayukta is satisfied that,—

(a) all or any of the allegations made in a complaint have or has been substantiated, either wholly or partly; and

(b) having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case, the complainant deserves to be compensated, the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, shall determine the amount, which shall be paid to the complainant by way of compensation and the Lok Ayukta or an Upa-Lok Ayukta, as the case may be, shall determine the person by whom, the said compensation shall be paid, after giving that person a reasonable opportunity of being heard.

14 *Public Servant to vacate office if directed by Lok Ayukta etc.*—(1) Where, after investigation into a complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration. In other cases, the competent authority concerned shall send a copy of such report to the Government, which shall accept the declaration.

(2) When the declaration so made is accepted the fact of such acceptance shall immediately be intimated by registered post, by the Governor, the Government or the Chief Minister, if any of them is the competent authority and the Government, in other cases and then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or deemed acceptance of the declaration—

- (i) if he is the Chief Minister or a Minister, resign his office of Chief Minister or Minister, as the case may be;
- (ii) if he is a public servant falling under items (v) and (vi), but not falling under items (iv) and (vii) of clause (o) of section 2, be deemed to have vacated his office; and
- (iii) if he is a public servant falling under items (iv) and (vii) of clause (o) of section 2, be deemed to have been placed under suspension by an order of the appointing authority and the appointing authority shall initiate appropriate action in accordance with the rules applicable to such public servant:

Provided that if the public servant 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 Government shall take action to keep him under suspension and initiate appropriate action, in accordance with the rules or regulations applicable to his service.

15. *Initiation of Prosecution.*—Notwithstanding anything contained in section 14, if after investigation into any complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the public servant has committed any criminal offence and that he should be prosecuted in a court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned, if there is no necessity for prior sanction; and, if prior sanction of any authority is required, with the sanction of the appropriate authority.

Explanation:—For the purpose of this section,—

(a) ‘investigation’ means the collection of evidence regarding the correctness or otherwise of the allegation or grievance,

(b) ‘initiation of prosecution’ means the filing of a report or a complaint before a court of competent jurisdiction to take cognisance of an offence.

16 *Staff of Lok Ayukta, etc.*—(1) There shall be such officers and employees, as may be prescribed, to assist the Lok Ayukta and the Upa-Lok Ayuktas in the discharge of their functions under this Act.

(2) The categories of officers and employees referred to in sub-section (1) and their appointment and other conditions of service 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 Lok Ayukta.

(3) Without prejudice to the provisions of sub-section (1), the Lok Ayukta or an Upa-Lok Ayukta may, for the purpose of conducting investigations under this Act, utilise the services of,—

- (a) any officer or investigating agency of the State Government; or
- (b) any officer or investigating agency of the Central Government, with the prior concurrence of that Government; or
- (c) any other agency.

(4) The officers and other employees referred to in sub-section (1) shall be under the administrative and disciplinary control of the Lok Ayukta:

Provided that when the Lok Ayukta is unable to discharge his functions owing to absence, illness or any other cause, the senior among the Upa-Lok Ayuktas may discharge the functions of the Lok Ayukta under this sub-section

17. *Secrecy of information.*—(1) Any information obtained by the Lok Ayukta or an Upa-Lok Ayukta or members of his staff, in the course of, or for the purpose of, any investigation under this Act and any evidence recorded or collected in connection with such information, shall be treated as confidential and no court shall be entitled to compel the Lok Ayukta or the Upa-Lok Ayukta or any public servant to give evidence relating to such information or to produce the evidence so recorded or collected.

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

(a) for the purpose of investigation or for any report to be made thereon or for the purpose of any action or proceedings to be taken on such report under section 12,

(b) for the purpose of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923), or an offence of giving or fabricating false evidence under the Indian Penal Code (Central Act 45 of 1860) or for the purposes of trial of any offence under section 15 or any proceedings under section 18; or

(c) for such other purposes as may be prescribed.

18. *Intentional insult or interruption to, or bringing into disrepute to the Lok Ayukta or an Upa-Lok Ayukta*—(1) Whoever intentionally insults or causes any interruption to the Lok Ayukta or an Upa-Lok Ayukta, while the Lok Ayukta or the Upa-Lok Ayukta is conducting any investigation or inquiry under this Act shall, on conviction, be punished with simple imprisonment for a term which shall not be less than six months but which may extend to one year or with fine, or with both.

(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 Lok Ayukta or an Upa-Lok Ayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which shall not be less than six months but which may extend to one year or with fine, or with both.

(3) The provisions of section 199 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), 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 (1) of the said section, 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 Lok Ayukta or the concerned Upa-Lok Ayukta:

Provided that the Court may, for adequate and special reasons, to be recorded in the judgement, impose a lesser sentence of imprisonment and fine.

19. *Power to punish for contempt*—The Lok Ayukta and the Upa-Lok Ayuktas shall have and exercise the same jurisdiction, power and authority in respect of contempt of itself, as the High Court has and may exercise and for this purpose the provisions of the Contempt of Courts Act, 1971 (Central Act 70 of 1971), shall have effect subject to the modification that the reference therein made to the High Court shall be construed to be reference therein made to the Lok Ayukta and the Upa-Lok Ayuktas, as the case may be.

20. *Protection of action taken in good faith*—(1) No suit, prosecution or other legal proceedings shall lie against the Lok Ayukta or an Upa-Lok Ayukta or against any officer, employee, agency or person referred to in section 16 in respect of anything which is, in good faith, done while acting or purporting to act in the discharge of his official duties under this Act.

(2) No proceedings of the Lok Ayukta or an Upa-Lok Ayukta shall be held to be bad for want of forum and, except on the ground of jurisdiction, no proceedings or decision of the Lok Ayukta or an Upa-Lok Ayukta shall be liable to be challenged, reviewed, quashed or called in question in any court.

21. *Prosecution for false complaint*—(1) Notwithstanding anything contained in this Act, whoever makes any complaint with malicious intention under this Act shall, on conviction, be punished with imprisonment for a term, which shall not be less than three months but which may extend to six months and with fine, which shall not be less than two thousand rupees but which may extend to five thousand rupees.

(2) No court inferior to that of a court of the Judicial Magistrate of the First Class shall take cognizance of an offence under sub-section (1).

(3) No such court shall take cognizance of an offence under sub-section (1), except on a complaint made by a person against whom false, frivolous or vexatious complaint was made, after obtaining the previous sanction of the Lok Ayukta or the Upa-Lok Ayukta, as the case may be.

(4) 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 Government.

22. *Public servants to submit property statement.*—(1) Every public servant, other than a Government servant, shall within six months after the commencement of this Act, and thereafter before the 30th day of June once in two years submit to the competent authority in the prescribed form, a statement of his assets and liabilities and those of the members of his family.

(2) If no such statement is received by the competent authority from any such public servant, within the time specified in sub-section (1), the competent authority shall make a report to that effect to the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, and send a copy of the report to the public servant concerned. If within two months of such report, the public servant concerned does not submit such statement, the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, shall publish, or cause to be published the name of such public servant in three newspapers having wide circulation in the State.

Explanation —In this section “family” means the spouse and such children and parents of the public servant as are dependent on him.

23. *Power to make rules.*—(1) The Government may, by notification, in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for,—

(a) the authorities to be prescribed under sub-clause (iv) of clause (d) of section 2,

(b) the salary, allowances and pensions payable to, and other conditions of service of, the Lok Ayukta and the Upa-Lok Ayuktas;

(c) the form and the manner in which a complaint may be made;

(d) the powers of a civil court which may be exercised by the Lok Ayukta or an Upa-Lok Ayukta under clause (f) of sub-section (2) of section 11;

(c) the salary, allowances, appointment and other conditions of service of the staff and employees of the Lok Ayukta and the Upa-Lok Ayuktas under sub-section (2) of section 16.

(f) any other matter for which rules have to be or may be made under this Act.

(3) Any rule under this Act may be made, either prospectively or retrospectively, and when a rule is made with retrospective effect, the reasons that necessitated the making of such rule shall be specified in the statement to be placed before the Legislative Assembly

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen 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 Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter 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 under that rule.

24. *Removal of doubts.*—(1) For the removal of doubts it is hereby declared that nothing in this Act shall be construed as authorising the Lok Ayukta or an Upa-Lok Ayukta to investigate any action which is taken by or with the approval of,—

- (a) any judge as defined in section 19 of the Indian Penal Code (Central Act 45 of 1860),
- (b) any officer or servant of any civil or criminal court in the State;
- (c) the Accountant General of Kerala;
- (d) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in Article 324 of the Constitution of India and the Chief Electoral Officer, Kerala;
- (e) the Speaker of the State Legislative Assembly;
- (f) the Chairman or a member of the Kerala Public Service Commission;
- (g) the State Election Commissioner appointed under Article 243 K of the Constitution of India;

- (h) the Chairman or a member of the Kerala State Commission for Backward Classes;
- (i) chairperson or a member of the Kerala State Human Rights Commission; and
- (j) the office bearers or members of the State Legal Services Authority the District Legal Services Authority, the High Court Legal Services Committee and the Taluk Legal Services Committee constituted under the Legal Services Authorities Act, 1987 (Central Act 39 of 1987).

(2) The provisions of this Act shall be in addition to the provisions of any other enactment or any rule or law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act, in respect of any action and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

25. *Power to remove difficulties* —(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything, not inconsistent with such provisions, which appear to them to be necessary or expedient for the purpose of removing the difficulty.

(2) No order under sub-section (1) shall be made after the expiration of a period of two years from the commencement of this Act

(3) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fourteen 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 Legislative Assembly makes, any modification in the order or decides that the order should not be made, the order shall thereafter 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 under that order.

26. *Repeal and saving*.—(1) The Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 (24 of 1988) and the Kerala Lok Ayukta Ordinance, 1998 (16 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,—

(i) in so far as it is not inconsistent with the provisions of this Act, anything done or any action taken under the said Act shall be deemed to have been done or taken under this Act and may be continued and completed under the corresponding provisions of this Act:

Provided that, for the purpose of this sub-section, "Public Men" as detained under the said Act shall be deemed to correspond to "public servants" under this Act,

(ii) all inquiries and investigations or other proceedings pending before the Commission under the repealed Act shall stand transferred to and be continued by the Lok Ayukta or the Upa-Lok Ayukta, as the case may be, under the provisions of this Act, as if it were commenced before him under this Act,

(iii) anything done or deemed to have been done or any action taken or deemed to have been taken under the Kerala Lok Ayukta Ordinance, 1998 (16 of 1998) shall be deemed to have been done or taken under this Act.

(3) Notwithstanding anything contained in this Act, initially the staff of the Lok Ayukta shall also consist of the Secretary and other officers and employees of the Kerala Public Men's Inquiry Commission constituted under the Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 (24 of 1988), as if they were appointed under the provisions of this Act and they shall, till their services are duly terminated or reverted to the parent department, if on deputation, be entitled to the same salary, allowances and other terms and conditions of service as are entitled to them immediately before the commencement of this Act, until they are varied in accordance with the provisions of this Act.

FIRST SCHEDULE

[See section 3 (4)]

I having been appointed as Lok Ayukta/Upa-Lok Ayukta do 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 I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

SECOND SCHEDULE

[See section 8 (i) (a)]

(a) Action taken for the purpose of investigating crime relating to the security of the State.

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not.

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(c) Administrative action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation.

(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service.

(e) Grant of honours and awards.