

Assam Lokayukta And Upa-Lokayuktas Act, 1985

20 of 1986

[12 December 1986]

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Assam Lokayukta And Upa-Lokayuktas Act, 1985

20 of 1986

[12 December 1986]

An Act to make provisions for appointment and functions of Lokayukta and Upa-Lokayuktas in Assam. Whereas it is expedient to make provisions for the appointment of Lokayukta and Upa-Lokayuktas in Assam for the investigation of grievances and allegations against Ministers, Legislators and other public servants in certain cases and for matters connected therewith. It is hereby enacted in the Thirty-sixth Year of the Republic of India as follows: Published in the Assam Gazette, Extraordinary No. 130 dated 31-12-1986.

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Assam Lokayukta and Upa-Lokayuktas Act, 1985.
- (2) It extends to the whole of the State of Assam and applies also to the public servants posted outside Assam in connection with the affairs of the State of Assam.
- (3) It shall come into force at once.

2. Definitions :-

In this Act, unless the context otherwise requires, -

- (a) "action" means action taken by way of decision, recommendation or finding or in any other manner, and includes failure to act. and all other expression connoting 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 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 motive;or
 - (iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;
- (c) "competent authority", in relation to a public servant, means-
 - (i) in the case of a Minister or Secretary or Member of the Legislative Assembly-the Chief Minister;
 - (ii) in the case of any other public servant -such authority as may be prescribed.

- (d) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;
- (e) "Lokayukta" and "Upa-Lokayukta" means a person appointed as an Upa-Lokayukta under S. 3;
- (f) "maladministration" means action taken or purporting to have been taken in 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 improperly 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;
- (g) "Minister" means a member (other than the Chief Minister) of the Council of Ministers, by whatever name called, for the State of Assam, that is to say a Minister, a Minister of State or a Deputy Minister and also includes Chief Parliamentary Secretary and Parliamentary Secretary;
- (h) "Officer" means a person appointed to a public service or post in connection with the affairs of the State of Assam;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "public servant" denotes a person falling under any of the following descriptions, and includes, subject to the provisions of sub-S.(4) of S.8, a person who at any time in the post fell under any of the following descriptions, namely:
- (i) every Minister referred to in Cl. (g);
- (ii) every member of the Legislative Assembly of the State of Assam not being the Chief Minister or Minister referred to in Cl. (g);
- (iii) every officer referred to in Cl. (h);
- (iv) (a) Chief Executive Councilor, Deputy Chief Executive Councilor, Members and Chairman of the Mahkuma Parishad;
- (b) President of the Anchalik Panchayat;
- (c) President and Secretary of the Gaon Panchayat;
- (d) Chairman/Vice Chairman/and Ward Commissioners of Municipal Board or Town Committee;
- (e) Mayor, Deputy Mayor/and Councilors of a Municipal Corporation;
- (f) Chief Executive Member, the Executive Members, the Chairman and the members of the Autonomous District Councils and Regional Councils established under the Sixth Schedule to the Constitution of India and their employees;
- (g) a non-official Chairman including every office bearer of that description by whatever name called or the Managing Director of a

district level central society or of an apex society registered under any law relating to Co-operative Societies for the time being in force;

Explanation. In this sub-clause, "central society" means a co-operative society, which includes in its membership other co-operative societies, and "apex society" means a State level central society;

(h) every person in the service or pay of,-

(a) any local authority in the State of Assam which is notified by the State Government in this behalf in the Official Gazette;

(b) any corporation not being a local authority established by or under an Assam or Central Act and owned or controlled by the State Government, which is notified by the State Government in this behalf in the official Gazette;

(c) any Government company within the meaning of S.617 of the Companies Act, 1956 (Central Act I

of 1956), in which not less than fifty-one percent of the paid-up share capital is held by the State Government or any company, which is a subsidiary of a company in which not less than fifty-one per cent of the paid-up share capital is held by the State Government in this behalf in the official Gazette;

(d) any society registered under the Societies Registration Act, 1860, which is owned or controlled by the State Government and which is notified by that Government in this behalf in the official Gazette.

(i) "Secretary" means Chief Secretary, Additional Chief Secretary, Commissioner, Secretary to the Government of Assam and includes a Special Secretary, an additional Secretary, a Joint Secretary, a Deputy Secretary, an Under-Secretary and also a special officer to the Government of Assam.

3. Appointment Of Lokayukta And Upa-Lokayuktas :-

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

Provided that, -

(a) the Lokayukta shall be appointed after consultation with the Chief Justice of the Gauhati High Court, the Speaker and the leader of the opposition in the Assam Legislative Assembly, and if there be

no such leader a person elected in this behalf by the members of the opposition in that house in such manner as the speaker may direct;

(b) the Upa-Lokayukta or Upa-Lokayuktas shall be appointed after consultation with the Lokayukta;

Provided further that where the Speaker of the Legislative Assembly is satisfied that circumstances exist on account of which it is not practicable to consult the leader of the opposition in accordance with Cl. (a) of the preceding proviso he may intimate the Governor the name of any other member or the opposition in the Legislative Assembly who may be consulted under that clause instead of the leader of the opposition.

(2) Every person appointed as the Lokayukta or an Upa-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 First Schedule.

(3) The Upa-Lokayuktas shall be subject to the administrative control of the Lokayukta and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special direction, as he may consider necessary to the Upa-Lokayukta:

Provided that nothing in this sub-section shall be construed to authorise the Lokayukta to question any finding, conclusion or recommendation of an Upa-Lokayukta.

4. Lokayukta Or Upa-Lokayukta To Hold No Other Office :-

The Lokayukta shall be a person who is or has been a Judge of the Supreme Court or a High court and the Lokayukta or an Upa-Lokayukta shall be a person who is not and has never been a member of 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 as the case may be, an Upa-Lokayukta); or be connected with any political party or carry on any business or practice, any profession, and accordingly before he enters upon his office, a person appointed as the Lokayukta or, as the case may be, an Upa-Lokayukta, shall, -

(a) if he is a sitting Judge or holds any other office of trust or profit, resign from such office; or

(b) if he is connected with any political party, sever his connection with it; or

- (c) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or
- (d) if he is practising any profession, suspend practice of such profession.

5. Term Of Office And Other Conditions Of Service Of Lokayukta And Upa-Lokayukta :-

(1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 68 years:

Provided that, -

(a) the Lokayukta or an Upa-Lokayukta may, by writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta or an Upa-Lokayukta may be removed from office in the manner specified in S.6.

(2) If the office of the Lokayukta or an Upa-Lokayukta becomes vacant, or if the Lokayukta or an Upa-Lokayukta is by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, these duties shall, until some other person appointed under S.3, enters upon such office or, as the case may be, until the Lokayukta or such Upa-Lokayukta resumes his duties, be performed, -

(a) where the office of the Lokayukta becomes vacant or where 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-Lokayukta as the Governor may by order direct;

(b) where the office of an Upa-Lokayukta becomes vacant or where 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-Lokayukta or, as the case may be such one of the other Upa-Lokayukta as may be specified in the direction.

(3) On ceasing to hold office the Lokayukta or an Upa-Lokayukta shall be ineligible for further employment (whether as the Lokayukta or an Upa-Lokayukta) or in any other capacity under the Government of Assam or for any employment under, or office in any such local authority, corporation, Government company or society as is referred to in sub-Cl. (iv) of Cl. (j) of S.2.

(4) There shall be paid to the Lokayukta and the Upa-Lokayuktas such salaries as are specified in the Second Schedule.

(5) The allowances and pension, if any payable to, and other

conditions of service, of the Lokayukta or an Upa-Lokayukta shall be such as may be prescribed:

Provided that in prescribing the allowances and pension payable to, and other conditions of service of,-

(a) the 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;

(b) the Upa-Lokayukta, regard shall be had to the allowances and pension payable to, and other conditions of service of a Judge of a High Court;

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

6. Removal Of Lokayukta Or Upa-Lokayukta :-

(1) Subject to the provisions of Art. 311 of the Constitution, the Lokayukta or an Upa-Lokayukta may be removed from his office by the Government on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under Cl.

(2) of the said Article before such removal, -

(i) in respect of Lokayukta shall only be held by a person appointed by the Governor being a person who is or has been a Judge of the Supreme Court or a chief Justice of a High court; and

(ii) in respect of an Upa-Lokayukta shall be held by a person appointed by the Governor being a person who is or has been a Judge of the Supreme Court or who is or has been a Judge of a High Court.

(2) The person appointed under the proviso to sub-S (1) shall submit the report of his inquiry to the Governor who shall, as soon as may be, cause it to be laid before the State Legislature.

(3) Notwithstanding anything contained in sub-S (1), the Governor shall not remove the Lokayukta or an Upa-Lokayukta unless an address by the State Legislature supported by a majority of the total membership of that house and 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.

7. Matters Which May Be Investigated By Lokayukta Or Upa-Lokayukta :-

(1) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, the Lokayukta may investigate any action which is taken by, or with the general or specific approval of, -

(i) a Minister or a Secretary; and

(ii) any public servant referred to in sub-Cl. (ii) or sub-Cl. (iv) of Cl. (j) of S. 2; or

(iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta, in this behalf.

(2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Upa-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister, Secretary or other public servant referred to in sub-S. (1).

(3) Notwithstanding anything contained in sub-S. (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action, which may be investigated by an Upa-Lokayukta under that sub-section.

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

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

8. Matters Not Subject To Investigation :-

(1) Except as hereinafter provided, the Lokayukta or an Upa-Lokayukta shall not conduct any investigation under this Act, -

(a) except on a complainant made under and in accordance with S. 9; or

(b) in the case of a complaint involving a grievance in respect of any action,-

(i) if such action relates to any matter specified in the Third Schedule; or

(ii) if the complaint has or had any remedy by way of proceeding

before any Tribunal or Court of Law:

Provided that nothing in sub-Clause (ii) shall prevent the Lokayukta or an Upa-Lokayukta from conducting an investigation if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to a remedy referred to in that sub-clause.

(2) The Lokayukta or an Upa-Lokayukta shall not investigate any action, -

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850), by the Government of India or by the State Government; or

(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry under the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952), by the Government of India or by the State Government.

(3) The Lokayukta or an Upa-Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under S.19.

(4) The Lokayukta or an Upa-Lokayukta shall not investigate, -

(a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

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

Provided that the Lokayukta or an Upa-Lokayukta may entertain a complaint referred to in Clause (a), if the complainant satisfied him that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upa-Lokayukta 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 cannot be regarded as having been properly exercised.

(6) The Lokayukta or an Upa-Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub Clause (iv) excluding Chief Executive Councilor of Mahkuma Parishad, Mayor of a Municipal Corporation, Chief Executive Member of Autonomous District Council or sub-Clause (v) of Clause (j) of S. 2.

9. Provisions Relating To Complaints :-

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

(a) in the case of a grievance, by the person aggrieved other than a public servant;

(b) in the case of an allegation, by any person other than a public servant:

Provided that, where the person aggrieved is dead or is for any person 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 person who is authorised by him in this behalf.

(2) Every complaint shall be accompanied by the complainants own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a Magistrate of First Class together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings and affidavits respectively.

(4) Not less than three copies of the complaint as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

(6) Notwithstanding anything contained in sub-Ss.(1) to (5), or in any other enactment, any letter written to the Lokayukta or Upa-Lokayukta by a person in police custody, or in a gaol 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 persons in charge of such gaol, asylum or other place, and the Lokayukta or Upa-Lokayukta, as the case may be, may entertain it and treat it as a complaint, but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under sub-S. (2).

10. Procedure In Respect Of Investigations :-

(1) Where the Lokayukta or an Upa-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he-

- (a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned;
 - (b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint; and
 - (c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.
- (2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:
Provided that, the Lokayukta or an Upa-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.
- (3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of the case.
- (4) The Lokayukta or an Upa-Lokayukta may, in his discretion, refuse to investigate or cease to investigate 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; 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.
- (5) In any case where the Lokayukta or an Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefore and communicate the same to the complainant and the public servant concerned.
- (6) 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 servant to take further action with respect to any matter subject to the investigation.

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 Lokayukta or an Upa-Lokayukta 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 such information or produce any such documents.

(2) For the purpose of any such investigation (including the preliminary enquiry) the Lokayukta or an Upa-Lokayukta 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 of office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) such other matters as may be prescribed.

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

(4) Subject to the provisions of sub-S.(5), 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 of law, 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 of law in legal proceedings.

(5) 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 security of the State or the defence or international relations of India (including India's relations with the Government of any other country or with any international organisation) or the investigation or detection of crime; or
- (b) as might involve the disclosure of proceedings of the Cabinet, of State Government 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 Cl. (a) or Cl.(b), shall be binding and conclusive.

(6) Subject to the provisions of sub-S. (4) no person shall be compelled for the purpose of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

12. Report Of Lokayukta And Upa-Lokayuktas :-

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

(2) The competent authority to whom a report is sent under sub-S. (1) shall within one month of the expiry of the time specified in the report, intimate or cause to be intimated to the Lokayukta, or as the case may be, the Upa-Lokayukta, the action taken for compliance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been made, the Lokayukta or an Upa Lokayukta is satisfied that such allegation can be substantiated either wholly or partly he shall by report in writing communicate his findings and recommendation along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upa-Lokayukta, the action taken on the basis of the report.

(5) If the Lokayukta or the Upa-Lokayukta is satisfied with the action taken on his recommendations or findings referred to in sub-Ss,(1) and (3), he shall close the case under information 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 complainant concerned.

(6) The Lokayukta and the Upa-Lokayukta shall present annually a consolidated report on the performance of their functions under this

Act to the Governor.

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

(8) Subject to the provisions of sub-S.(2) of S.10, the Lokayukta may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by an Upa Lokayukta, 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. Action In Case Of False Complaint :-

(1) Notwithstanding anything contained in any other provision of this Act every person who willfully or maliciously makes any false complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) No Court, except a Court of Session, in the case of a complaint investigated by the Lokayukta or a Court of Magistrate, First Class in the case of a complaint investigated by an Upa-Lokayukta shall take cognizance of the offence under sub-S.(1)

(3) No such Court shall take cognizance of such offence as aforesaid except on a complaint in writing made by the Public Prosecutor at the direction of the Lokayukta or Upa-Lokayukta, as the case may be, and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it, anything contained in the Code of Criminal Procedure, 1973, notwithstanding.

(4) Such Court, on conviction of the person making false complaint may award, out of the amount of fine, to the complainant such amount of compensation as it thinks fit.

(5) If at any stage of a proceeding, under this Act before the Lokayukta or an Upa-Lokayukta it appears to him that any person appearing in such proceeding or any person who filed an affidavit in support of a complaint fabricated false evidence with the intention that such evidence should be used in such proceedings, the Lokayukta or Upa-Lokayukta, as the case may be, may, if satisfied that it is necessary and expedient in the interest of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and

may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 and sentence him to imprisonment for a term which may extend to six months or to fine which may extend to five thousand rupees or to both.

(6) When any such offence as is described in S. 175, S.178, S.179 or 180 of the Indian Penal Code is committed in the view or presence of the Lokayukta or Up-Lokayukta, he may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

(7) In every case tried under sub-S. (6), the Lokayukta or Upa-Lokayukta, as the case may be, shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(8) Any person, convicted on a trial held under sub S. (5) or sub-S, (6) may appeal to the High Court, and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall, so far as they are applicable, apply to appeals under this sub-section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(9) The provisions of sub-Ss. (5), (6), (7) and (8) shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973, but nothing in these subsections shall affect the power of the Lokayukta or Upa-Lokayukta, as the case may be, to proceed under sub-S.(3) in respect of any offence, where it does not choose to proceed under sub-Ss. (2), (6) and (7).

(10) Words and expressions used in sub- Ss.(5) to (9) and not defined in this Act shall have the same meanings as in the Code of Criminal Procedure, 1973.

14. Staff Of Lokayukta And Upa Lokayukta :-

(1) The Lokayukta may appoint, or authorise an Upa-Lokayukta or any officer subordinate to the Lokayukta or an Upa-Lokayukta to appoint officers and other employees to assist the Lokayukta and the Upa-Lokayuktas in the discharge of their functions under this

Act.

Provided that nothing in this sub-section shall be construed to prevent any person who holds a post under the Central or the State Government from being appointed on deputation with the consent of that Government.

(2) The number and categories of officers and employees who may be appointed under sub-S.(1), their salaries, allowances and other conditions of service and the administrative powers of Lokayukta and Upa Lokayuktas shall be such as may be determined by general or special order of the State Government made after consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-S. (1), the Lokayukta or an Upa-Lokayukta may for the purpose of conducting investigations under this Act utilise the services of-

- (i) any officer or investigation agency of the State or Central Government with the concurrence of that Government;
- (ii) any other person or agency.

15. Secrecy Of Information :-

(1) Any information obtained by the Lokayukta or the Upa-Lokayukta or members of their staff in the course of or for the purpose of any investigation under this Act and any evidence recorded or for the purpose of any investigation under this Act and any evidence recorded or collected in connection with such information, shall subject to the provisions of the proviso to sub-S. (2) of S. 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872). no Court shall be entitled to compel the Lokayukta or an Upa-Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

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

(a) for purposes of the investigation or in any report to be made thereon or for any action of proceedings to be taken on such report; or

(b) for purposes 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, 1860 (Central Act 45 of 1860) or for purposes of any trial of an offence under S. 13 or any proceedings under S. 16; or

(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 or an Upa-Lokayukta, as the case may be, with respect to any documents or information specified in the notice or any class of documents or information 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, Upa-Lokayukta or any member of their staff, unless the Lokayukta or the Upa-Lokayukta, for reasons to be recorded, is of the opinion that disclosure of such document or information involves no public interest, to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

16. Intentional Insults Or Interruption To, Or Bringing Into Disrepute, Lokayukta Upa-Lokayukta :-

(1) Whoever intentionally offers any insult, or causes any interruption to the Lokayukta or an Upa-Lokayukta while the Lokayukta or the Upa-Lokayukta is conducting any investigation under this Act, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, 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 Lokayukta or an Upa-Lokayukta 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.

(3) The provisions of sub-Ss.(2) to (6) of S.199 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply in relation to an offence under sub-S.(1) or sub-S.(2) as they apply in relation to an offence referred in respect of such offence shall be made by the public prosecutor except with the previous sanction-

(a) in the case of an offence against the Lokayukta, of the Lokayukta:

(b) in the case of an offence against an Upa-Lokayukta, of the Upa-Lokayukta concerned.

17. Protection :-

(1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or the Upa-Lokayukta or against any officer,

employee, agency or person referred to in S.14 in respect of anything which is in good faith done or intended to be done under this Act.

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

18. Conferment Of Additional Functions Of Lokayukta And Upa-Lokayukta Etc :-

(1) The State Government may, by notification published in the official Gazette and after consultation with the Lokayukta, confer on the Lokayukta or an Upa-Lokayukta, as the case may be, 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, confer on the Lokayukta or an Upa-Lokayukta such powers of a supervisory nature over agencies, authorities or officers setup, constituted or appointed by the State Government for the eradication of corruption.

(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 to investigate any action being an action in respect of which a complaint may be made under this Act, to the Lokayukta or an Upa-Lokayukta and notwithstanding anything contained in this Act the Lokayukta shall comply with such order:

Provided that the Lokayukta may entrust investigation of any such action (being action in respect of which a complaint may be made under this Act to an Upa-Lokayukta) to an Upa-Lokayukta.

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

19. Power To Exclude Complaints Against Certain Classes Of Public Servants :-

(1) The State Government may in consultation with the Lokayukta

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 a grievance or an allegation against persons belonging to any class of public servants specified in the notification, from the jurisdiction of the Lokayukta or, as the case may be, Upa-Lokayukta:

Provided that no such notification shall be issued in respect of public servants holding posts carrying a minimum salary (excluding allowances) of one thousand rupees or more.

(2) Every notification issued under sub-S.(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 more than one successive sessions, and if, before the expiry of the said period the house agrees in making any modification in the notification or the house agrees that the notification should be annulled and notifies 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.

20. Power To Delegate :-

The Lokayukta or an Upa-Lokayukta may, by a general or special order in writing direct that any powers conferred or duties imposed on him by or under this Act (except the powers to make reports to the Governor under S. 12) may also be exercised or discharged by such of the officers, employees or agencies referred to in S.14, as may be specified in the order.

21. Power To Make Rules :-

(1) The State Government may, by notification in the official 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 for the purpose required to be prescribed under sub-Cl.(ii) of Cl.(c) of S.2;

(b) the allowances and pension if any, payable to and other conditions of service of the Lokayukta and Upa-Lokayukta:

(c) the form, if any, in which, complaints may be made and the

fees, if any, which may be charged and the security, if any, for costs of the person against whom an allegation is made which may be required to be furnished in respect thereof;

(d) the powers of a Civil Court which may be exercised by the Lokayukta or an Upa-Lokayukta;

(e) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is in the opinion of the State Government necessary for the proper implementation of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, 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, if during the said period, the house agrees in making any modification in the rule or the house agrees that the rule should be annulled and notifies such decision in the official Gazette, the rule shall from the date of publication of such notification 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.

22. Removal Of Doubts :-

For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokayukta and Upa-Lokayuktas to investigate into any allegation against-

(a) (i) the Chief Justice or any Judge of the High Court;

(ii) officers and staff of the High Court;

(iii) Members of the Assam Judicial Service as defined in Cl. (b) of Art 236 of the Constitution;

(b) the Chairman or any member of the Assam Public Service Commission;

(c) the Speaker and the Deputy Speaker of the Assam Legislative Assembly and the staff of the State Legislature.

SCHEDULE 1

THE FIRST SCHEDULE

[See Section 3 (2)]

I,.....having been appointed Lokayukta/ Upa-Lokayukta do swear in the name of God/solemnly affirm that I will bear 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 judgement perform the duties of my office without fear or favour, affection or ill will,

SCHEDULE 2

THE SECOND SCHEDULE

[See Section 5(4)]

There shall be paid to the Lokayukta and the Upa Lokayukta in respect or time spent on actual service, salary at the following rates per mensem, that is to say-
Lokayukta..... Rs. 4,000 9,000.

In case the person appointed as Lokayukta retired as, or immediately before his appointment as Lokayukta held the post of, Chief Justice of a High Court or Judge of the Supreme Court; Rs. 3,500 in any other case,

Upa-Lokayukta..... Rs. 3,500 8,000

In case the person appointed as Upa-Lokayukta retired as, are immediately before his appointment as Upa-Lokayukta hold the post of a Judge of a High court: Re. 3,000 in any other case:

Provided that if the Lokayukta or an Upa-Lokayukta at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Government, his salary in respect of service as the Lokayukta or, as the case may be, Upa-Lokayukta shall be reduced-

(a) by the amount of that pension, and

(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, 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.

SCHEDULE 3

THE THIRD SCHEDULE

[See Section 8. (1) (b) (i)]

(a) Action taken for the purpose of investigating crime or protecting the security of the State.

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to, or shall continue to be prosecuted, in Court or not.

(c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration of the State Government or of the local authority or other corporation, company or society, as the case may be, with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligations.

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

(e) Grant of honours and awards.

A number of aspects of administrative functioning fall outside the judicial purview. The efficacy of judicial review of administrative action is overawed by the various factors. The quest for an effective control, mechanism over the administration led people to the institution of Ombudsman in operation in Scandinavian countries, Sweden was the first country to adopt this institution as early as in 1809. New Zealand and England opted for it in 1962 and 1967. Australia followed the suit. Ombudsman had been in a very strong position to redress individual grievances arising out of mal-administration.

If in countries like New Zealand and England which have high standards of administration, cases of maladministration can be found there is no sense of any

doubt about India. There is a peculiar element present in the Indian situation which is not so manifest in other countries; widespread suspicion of administrative corruption which has very largely undermined public confidence in it and has eroded the normal authority and image of administration.

In the ordinary way, when a citizen complains direct to the authority, his case will be dealt with by the superior officers of the officials originally subject to complaint. The administration enjoys a vast reservoir of power to order and affect the daily lives of the people over wide canvass, which requires regular monitoring and inspect. Accountability instills in Ministers, and in their Civil Servants and awareness of the need to act in a way that can be subsequently justified in public. For their part, the civil servants are as anxious as ever to keep the Minister out of trouble, not so much because they are worried about the possibility of bringing about his resignation if they fail, but because they know that if his standing is diminished on account of their actions, or because of the service and advice they provide, their own reputations and subsequent careers may well suffer as a result. The appointment of Lok Ayukta in Assam was made with the element of solemnity after consultation with the Chief Justice of the Guwahati High Court, the Speaker and the Leader of the Opposition in the Assam Legislative Assembly. The appointment of Upa-Lokayukta has not so far been made, which is to be appointed after consultation with the Lokayukta. The Lokayukta had to be a person who is or been a Judge of the Supreme Court or High Court and it is a condition of his appointment that a Lokayukta or an Upa-Lokayukta should not and should never be a member of the Parliament or Legislative Assembly of any State and also had/has not been holding any office of trust or profit. He should not have been connected with any political party or has carried any business or practice or any profession before he enters upon his office as Lokayukta. If prior to the appointment as such he has been a sitting Judge or holding any office of profit of trust or connected with any political party or carrying on any business or practicing any profession, he had to sever all his connection there from.

The term of his office is for a period of five years or until he attains the age of 68 years. The conditions of service of a Lokayukta is at par with the Chief Justice of the High Court and that of the Upa-Lokayukta equivalent to a Judge of a High Court.

The present Act was enacted as Assam Act No. XX of 1986, having received the assent of the President on 12-12-1986, published in the Assam Gazette, Extraordinary, No. 130, dated 31-12-1986, effective from such date to make provisions for appointment of Lokayukta and Upa-Lokayuktas for the State of Assam to cause investigation of grievances and allegations against Ministers, Legislators and other public servants in certain cases.

The allegations can basically be of the following nature:

- (a) Abuse of position by a public servant to obtain any gain or favour to himself or to any person or to cause undue harm or hardship to any person;
- (b) That a public servant was actuated in the discharge of his functions as such public servant by personal interest or improper interest or improper or corrupt motive; or
- (c) That a public servant is guilty of corruption, or lack of integrity in his capacity as such public servant.

The expression Minister does not include the Chief Minister but means council of Ministers, by whatever name called, for the State of Assam, that is to say a Minister, a Minister of State or Deputy Minister and includes Chief Parliamentary Secretary and Parliamentary Secretary.

It is interesting to note that nothing in the present Act should be construed to

authorise the Lok Ayukta or Upa-Lokayukta to investigate into any allegation against the Chief Justice or any Judge of the High Court, Officers and staff of the High Court, members of the Assam Judicial Service, the Chairman or any member of the Assam Public Service Commission and the Speaker and the Deputy Speaker of the Assam Legislative Assembly and the staff of the State Legislature (This provision of exclusion was inserted by Assam Amendment Act, 1987).

The procedure is that a complaint may be made in case of a grievance or any allegation by the person aggrieved to be supported by an Affidavit, along with any schedule or annexures thereto should be in triplicate. The Lokayukta is to make a preliminary enquiry if so deemed fit and thereafter conduct investigation by forwarding a copy of the complaint to the public servant concerned and to the Chief Minister, in case of a complaint against a Minister or Secretary as may be prescribed in case of a complaint against a public servant. The preliminary inquiry is not a must but at the discretion of the Lokayukta. The person against whom a complaint is made is entitled to an opportunity to offer his comments. The investigation is to be conducted in private and the identity of the complaint and the public servant concerned should not be disclosed to the public or the Press, whether before or after the investigation. Where the Lokayukta decides not to entertain a complaint or to discontinue any investigation, he may do so by recording reasons thereof and communicate the same to the parties concerned. The procedure during investigation is that of civil nature and the whole proceeding shall be deemed to be a judicial proceeding.

After investigation, if the allegations are substantiated either wholly or partly, the findings are recommending along with all documents and evidence shall be communicated to the competent authority. Which is either the Chief Minister or such person authorised, who on receipt of such report, within three months thereof, shall intimate the Lokayukta about the action taken, on the basis of the report. If the Lokayukta is satisfied with the action taken on his report, he shall close the case and if he is not so satisfied then he may make a Special Report upon the case to the Governor, and inform the complainant accordingly. The Governor on receipt of the Special Report shall cause a copy thereof together with an explanatory memorandum to be laid down before the State Legislature, which becomes the final authority to appreciate the Special Report. Absolute secrecy of the entire proceeding/investigation had to be maintained, but where the case is closed or otherwise disposed of, the Lokayukta at his discretion, make available the substance of the case 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.

False complaints shall invite penal consequences so far as the complaint is concerned. Intentional insult or interruption to, or bringing into disrepute the Lokayukta or Upa-Lokayukta during investigation under the Act, shall also invite penal consequences to such person, who may be punished with simple imprisonment for a term prescribed.

This gives abundance of legal sanctity to the authority and office of the Lokayukta and Upa-Lokayukta.