

Tripura Lokayukta Act, 2008

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SCHEDULE 1 :- THE SCHEDULE

Tripura Lokayukta Act, 2008

A Bill to provide for the establishment of the institution of Lokayukta to investigate the complaints by the citizens against the public functionaries in Tripura alleging corrupt practices by them and for matters directly connected therewith. WHEREAS it is expedient to provide for the establishment of the institution of Lokayukta to investigate the complaints by the citizens against the public functionaries in Tripura alleging corrupt practices by them and for matters directly connected therewith; Be it enacted by the Tripura Legislative Assembly in the Fifty-Ninth year of the Republic

of India as follows :-

1. Short Title Extent And Commencement :-

- (1) This Act may be called the Tripura Lokayukta Act, 2008.
- (2) It extends to the whole of Tripura.
- (3) It shall come into force on such date, as the State Government may by notification in the official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,

- (1) "action" means action taken by a public functionary in the discharge or purported discharge of his public function;
- (2) "Chief Minister" means the Chief Minister of the Government of Tripura.
- (3) "competent authority", in relation to a public functionary, means.

- (i) in the case of the Chief Minister, the State Legislative Assembly.
- (ii) in the case of a Minister, the Chief Minister:

Provided that during the period of operation of any proclamation issued under article 356 of the Constitution of India, the Governor;

- (iii) in the case of a Member of the State Legislative Assembly, the Speaker of the State Legislative Assembly.

Explanation.- The Speaker of the Legislative Assembly shall act in consultation with the Chief Minister and the Leader of the Opposition in the State Legislative Assembly;

- (iv) in the case of Pradhan, the Upa-Pradhan and the members of the Gram Panchayat. the Chairman, the Vice-Chairman and the members of the Panchayat Samiti - Sabhadhipati of the Zilla Parishad of the concerned District;-

- (v) in the case of Sabhadhipati. the Sahakari Sabhadhipati and the members of the Zilla Parishad - Minister-in-charge, Panchayat Department. Government of Tripura.

- (vi) in the case of the Councillors, Chairperson. Vice-Chairperson. members of the Nagar Panchayat Committee and the Chairperson, the Vice-Chairperson-in- Council, the Mayor, the Deputy Mayor, the members of Mayor-in-Council and Commissioner of the Nagar Panchayats. Municipality or the Municipal Corporation, as the case may be. - Minister-in-charge.

Department of Urban Development, Government of Tripura.

- (4) "complaint", in relation to a public functionary, means an allegation made in writing by any person that such public

functionary, in discharge or purported discharge of his public function has been guilty of corrupt practice;.

(5) "corrupt practice" means that the public functionary in any of his action has been guilty of wilful lack of financial integrity and/or wilful abuse of power for personal gain :

(6) "Governor" means the Governor of the State of Tripura :

(7) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of the wilful failure to perform duties duly assigned to a public functionary;

(8) "Lokayukta" means the person appointed as such under section 3:

(9) "Minister" means a Minister of the Government of Tripura. and includes a Deputy Chief Minister, a Minister, a Minister of State a Deputy Minister;

(10) "notification" means a notification published in the Official Gazette:

(11) "prescribed" means prescribed by rules made under this Bill;

(12) "public functionary" means a person who is

(i) the Chief Minister or a Minister;

(ii) a Member of the State Legislative Assembly;

(ii) any other person holding an office or post consequent upon an election held under the Tripura Municipal Act. 1994 and the Tripura Panchayats Act. 1993.

3. Appointment Or Lokayukta :-

(1) For the purpose of conducting investigations and inquiries in accordanc 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.

Provided that--

the Lokayukta shall be appointed by the Governor on the advice tendered by the Chief Minister in consultation with the Speaker and the Leader of the Opposition of the Legislative Assembly of the State.

(2) A person shall not be qualified for appointment as Lokayukta unless he is a retired Judge of the High Court or is qualified to be a Judge of High Court.

(3) Notwithstanding anything contained in any other provision of this Act, a person of high integrity and eminence shall be appointed a Lokayukta if such recommendation is made by the Chief Minister in consultation with the Speaker and the Leader of the Opposition

of the State Legislative Assembly.

(4) (a) Temporary or casual vacancy in the office of the Lokayukta shall be filled up in accordance with prescribed rules for a period not exceeding six months.

(b) If the Lokayukta is unable to perform his duties for six months or more, the Governor may declare the office vacant;

Provided that the Governor shall hear such Lokayukta before declaring such office as vacant.

(c) A vacancy occurring in the office of the Lokayukta by reason of his death, resignation, retirement or removal shall be filled up as soon as possible, but not later than three months from the date of occurrence of such vacancy.

4. Lokayukta To Hold No Other Office :-

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

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership;

(b) if he holds any office of profit, resign such office;

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

(d) 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

(e) if he is practising any profession, suspend practice of such profession till his tenure to that post.

5. Term Of Office Of Lokayukta :-

(1) Every person appointed as the Lokayukta shall hold office for a period of three years from the date he assumes his office:

Provided that-

(a) the Lokayukta may, in writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta may be removed from office in the manner provided in section 6.

(2) The Lokayukta shall before he enters upon his office, make and subscribe before the Governor, or some other person appointed in

that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule to this Act.

(3) On ceasing to hold office, the Lokayukta shall be ineligible for further appointment as the Lokayukta or for any employment under the State Government or under the local authority. University, statutory body or corporation, society, co-operative society. Government Company, or other body or corporation constituted by or under any State law.

6. Removal Of Lokayukta :-

(1) The Lokayukta 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 misconduct including corrupt practice or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misconduct including corrupt practice or incapacity of the Lokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and accordingly, the provisions of that Act shall apply, mutatis mutandis, in relation to the removal of the Lokayukta as they apply in relation to the removal of a Judge.

7. Matters Which May Be Investigated By Lokayukta :-

Every investigation on any complaint alleging corrupt practices against the public functionaries under this Act shall be initiated by the Lokayukta with the prior approval of the competent authority.

8. Matters Not Subject To Investigation By Lokayukta And Limitation Thereof :-

(1) The Lokayukta shall not investigate any complaint alleging corrupt practices against any public functionary in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act. 1850.

(2) The Lokayukta shall not investigate any complaint alleging corrupt practices against any public functionary, if such complaint is made after the expiry of one year from the date on which the

action complained of is alleged to have taken place:

Provided that the Lokayukta may on being satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice, condone the delay and investigate the complaint.

(3) The Lokayukta shall not, except on a reference by a Court of law; investigate any matter which is under adjudication by such Court of law.

9. Bar Of Investigation Against Govt. Servant :-

Notwithstanding anything contained in any of the provisions of this Act. the Lokayukta shall not investigate any complaint against a Government servant.

10. Provision Relating To Complaints :-

(1) Subject to the provisions of this Act, complaint may be made by any person to the Lokayukta in respect of any action:

Provided that death of the complainant shall not debar, if the Lokayukta who is in seisin of the matter so desires, to proceed with the investigation with such help as he considers necessary.

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

11. Procedure In Respect Of Investigation :-

(1) Where the Lokayukta is satisfied on preliminary enquiry that the complaint needs investigation he-

(a) shall forward a copy of the complaint a statement setting out the grounds of such investigation, to the public functionary concerned and the competent authority concerned for information:

(b) shall give the public functionary concerned an opportunity to offer his comments on such complaint or statement; and

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

(2) (a) Every preliminary enquiry referred to in sub-section (1) shall be made in private and in particular, the identity of the complainant and of the public functionary affected by such preliminary enquiry shall not be made public, whether before or during such preliminary enquiry, but the result of every investigation made under subsection (I) shall be made public.

(b) Every such investigation shall be completed as early as possible

but in no case the period of such investigation shall exceed one year.

(3) (a) Save as otherwise provided in the foregoing provisions of this section the procedure for making any investigation shall be such as the Lokayukta considers appropriate in the circumstances of each case, but regard shall always be given to the principles of natural justice.

(b) For the purpose of investigation under this Act, the Lokayukta may, with the concurrence of the State Government, utilize the services of any officer or investigating agency including the Police of that Government and such officer or investigating agency including the Police shall do all such act or deed, which shall be essential for such investigation.

(4) The Lokayukta may, in his discretion, refuse to investigate, or discontinue the investigation of, any complaint involving any 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 investigation 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 decides not to entertain a complaint or decides to discontinue any investigation in respect of the complaint, he shall record his reasons therefor and communicate the same to the complainant, the public functionary and the competent authority.

12. Evidence :-

(1) Subject to other provisions of this section, for the purposes of any investigation (including preliminary enquiry, if any, before such investigation) under this Act, the 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 such document.

(2) For the purposes of any such investigation (including the preliminary enquiry), the Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 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 commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed.

(3) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code, 1860.

(4) No person shall be required or authorized, by virtue of this Act, to furnish such class or category of information, answer or question, or produce so much of such class or category of document,-

(a) as might prejudice the security or defence or international relations of India (including the relations of India with the Government of any other country or with any international organization), or

(b) as might involve the disclosure of proceedings of the Council of Ministers of the State Government or any Committee of that Council of Ministers, and

(c) to give any evidence or produce any document which he could not be compelled to give or produce in any proceedings before a Court.

(5) For the purpose of sub-section (4), a certificate issued by the Chief Secretary to the Government of Tripura, certifying that any information or answer or any portion of a document is of the class or category specified in clause (a) or clause (b), shall be conclusive and binding.

13. Reports Of Lokayukta :-

(1) If, after investigation of any complaint in respect of any action under this Act, the Lokayukta is satisfied that such complaint is substantiated, either wholly or partly, he shall send to the competent authority a report in writing, recording therein his findings and recommendations along with the relevant documents, materials or other evidence.

(2) The competent authority shall, on receipt of the report under sub-section (1), examine the said report, take appropriate action and inform the Lokayukta.

14. Annual Reports Of Lokayukta :-

(1) The Lokayukta shall present annually a consolidated report on the work done under this Act to the State Government.

(2) On receipt of annual report under sub-section (1), the State Government shall cause a copy thereof to be laid before the State Legislature along with a memorandum of action taken on the recommendations of the Lokayukta and the reasons for non-acceptance of the recommendations, if any.

15. Prosecution For False Complaint :-

(1) Notwithstanding anything contained in section II or elsewhere in this Act, whoever wilfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year but shall not be less than three months and shall also be liable to fine which may extend to Rs.5,000/- (five thousand).

(2) No court, except the court of a Judicial Magistrate of the first class, shall take cognizance of an offence under sub-section (I).

(3) No such court shall take cognizance of any such offence unless the complaint is made with the previous sanction of the Lokayukta, by the person against whom the false complaint was made.

(4) Any such court may, on conviction of a person making the false complaint, award to the opposite party, such amount of compensation out of the amount of fine, as it thinks fit.

16. Staff Of Lokayukta :-

(1) The Lokayukta may appoint such officers and other employees, as may be prescribed by the State Government, to assist the Lokayukta in discharging his functions under this Act.

(2) Without prejudice to the provisions of sub-section (1). the Lokayukta may for the purpose of conducting investigations under this Act, utilize, in such manner as may be prescribed, the services of. -

(a) any officer or investigating agency of the State Government with the concurrence of that Government;

(b) any other person or agency.

17. Secrecy Of Information :-

(1) Any information obtained by the Lokayukta or any of his officers or other employees in the course of or for the purposes of any

preliminary enquiry under this Act. and any evidence recorded or collected in connection with such information, shall, subject to the provisions of clause (a) of sub-section (2) of section 11. be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act. 1872, no court shall have jurisdiction to compel the Lokayukta 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

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

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

(c) for such other purposes as may be prescribed

(3) Such officer or authority as may be prescribed in this behalf, may give notice in writing to the Lokayukta with respect to any document or information specified in the notice or any class or category of documents so specified, that in the opinion of the State Government, the disclosure of the document or the information or the class or category of documents would be prejudicial to the public interest; and where such a notice is given, the Lokayukta may, for reasons to be recorded in writing decide as to whether the disclosure of such document or information or class or category of documents involves public interest. In case the disclosure of any document or information or class or category of documents so specified is held to involve public interest, the Lokayukta or any of his officers or other employees shall not communicate to any person any such document or information or class or category of documents.

18. Intentional Insult Or Interruption To Or Bringing Into Disrepute Lokayukta :-

(1) Whoever intentionally insults or causes any interruption to the Lokayukta while the Lokayukta is making 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 which may

extend to Rs.5,000/-(five thousand) 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 into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs.5.0007-(five thousand) or with both.

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

(4) The Lokayukta shall have and may exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt as a High Court has and may exercise, and for this purpose, the provisions of the Contempt of Courts Act. 1971, shall have effect, subject to the modification that any reference therein to the High Court shall be construed to be a reference to the Lokayukta.

19. Protection Of Action Taken In Good Faith :-

(1) No suit, prosecution or other legal proceedings shall lie against the Lokayukta or against any officer, employee, investigating agency, or other person or agency referred to in section 15 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta shall be deemed to be invalid by reason only of any defect or infirmity in his appointment.

(3) No proceeding, decision, finding or recommendation of the Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court or tribunal.

20. Conditions Of Appointment Of Lokayukta :-

The Lokayukta shall be entitled to such allowances and privileges and other conditions of appointment, as may be prescribed.

21. Conferment Of Additional Functions On Lokayukta :-

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

(2) When any additional functions are conferred on the Lokayukta under Sub Sec-1. the Lokayukta shall exercise the same powers and discharge the same functions as he would exercise and discharge in the case of any investigation on a complaint involving an allegation, and the provisions of this Act shall apply accordingly.

22. Power Of State Government To Make Rules :-

(1) The State Government may in consultation with the Lokayukta by notification, make rules for carrying out the purposes of this Act.

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

(a) the matters in respect of which the Lokayukta shall have powers of a civil court under clause (f) of sub-section (2) of section 12;

(b) the other purposes in relation to disclosure of any information or evidence under clause (c) of sub-section (2). and the officer or authority for the purposes of sub-section (3). of section 17:

(c) any other matter which is required to be, or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

23. Power Of Lokayukta To Make Regulations :-

(1) The Lokayukta may with the prior approval of the State Government, by notification, make such regulations as may deem necessary for carrying out the purposes of this Act.

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

(a) the normal working hours of the office of the Lokayukta and holding of sittings of the Lokayukta outside normal working hours;

(b) the holding of sittings of the Lokayukta at places other than the place of ordinary sittings;

(c) the procedure which may be followed by the Lokayukta for conducting proceedings including inquiry and investigation;

- (d) the forms in which complaints may be made, the affidavits which may accompany such complaints, and the fees, if any which may be charged in respect thereof;
- (e) the forms and notices as may in the opinion of the Lokayukta be necessary for carrying out the inquiry and investigation.

24. Removal Of Doubts :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the Official Gazette.

SCHEDULE 1

THE SCHEDULE

[see section 5(2)]

Form of oath or affirmation to be made by the Lokayukta.

" Ihaving been appointed Lokayukta of the State of Tripura 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, that I will uphold the sovereignty and integrity of India that 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 and that I will uphold the Constitution and the law.