



The Nagaland Lokayukta Act, 2017

Act 1 of 2018

Keyword(s):

Assembly, Bench, Complaint, Grievance, Investigation, Lokayukta, Minister, Public Servent, Special Court, Whistle Blower

Amendment appended: 1 of 2022

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PART-V**NOTIFICATION**Dated Kohima, the 23rd Jan., 2018

No.LAW/BILL/6-12/2018 :::: The Nagaland Lokayukta Act, 2017 (Act No. 1 of 2018) duly assented by the Hon'ble Governor of Nagaland on 21/12/2017 is published herewith for general information.

Sd/-

IMTIAKUM

Deputy Secretary to the Govt. of Nagaland.

An Act**Section-1: Short Title, Extent and Commencement.**

- (1) This Act may be called the Nagaland Lokayukta Act, 2017.
- (2) It extends to the whole State of Nagaland and applies also to the public servants posted outside Nagaland in connection with the affairs of the State of Nagaland.
- (3) It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint.

Section-2: Definitions.

- (1) In this Act, unless the context otherwise requires,—
 - (a) "Assembly" means the Nagaland Legislative Assembly;
 - (b) "Bench" means a bench of the Lokayukta;
 - (c) "Chairperson" means the Chairperson of the Lokayukta;
 - (d) "Governor" means the Governor of Nagaland;
 - (e) "Competent authority", in relation to—
 - (i) The Chief Minister, means the Governor of Nagaland;
 - (ii) A member of the Council of Ministers, means the Chief Minister;
 - (iii) A member of Assembly other than a Minister, means the Speaker of the House;
 - (iv) Vice Chancellor of a University, means the Chancellor;
 - (v) A Secretary to the Government, means the Chief Minister;
 - (vi) A Government servant other than Secretary, means the State Government;
 - (vii) Any other public functionary, means such authority as may be prescribed.
 - (f) "Complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;
 - (g) "Grievance" means a claim by a person that he suffered injustice or hardship as a consequence of maladministration;
 - (h) "Investigation" means an investigation as defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;
 - (i) "Judicial Member" means a Judicial Member of the Lokayukta;
 - (j) "Lokayukta" or "Upa-Lokayukta" means a person appointed under Section 3;
 - (k) "Mal-administration" means actions taken or purported to have been taken or failed to have been taken, where such action or failure is unreasonable, unjust, oppressive or improper or discriminatory or with undue delay or negligent or distortive of procedures, practices etc., governing such actions;
 - (l) "Minister" means a member of the Council of Ministers and includes Parliamentary Secretaries/Advisers/Chairman but does not include the Chief Minister;

- (m) "Notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
- (n) "Preliminary inquiry" means an inquiry conducted under this Act;
- (o) "Prescribed" means prescribed by rules made under this Act;
- (p) "Public servant" means a person who is or was at any time-
- (i) The Chief Minister;
 - (ii) A Minister;
 - (iii) A Member of the State Legislature;
 - (iv) A Government servant; and
 - (v) An officer of any body or Board or Corporation or Authority or Company or Society or Autonomous Body (by whatever name called) established or constituted under any Act of Assembly or wholly or partly financed by the State Government or controlled by it.
- (q) "Regulations" means regulations made under this Act;
- (r) "Rules" means rules made under this Act;
- (s) "Schedule" means a Schedule appended to this Act;
- (t) "Secretary" means the Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Commissioner & Secretary, a Special Secretary, a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or such other officer as may be authorized by the Government.
- (u) "Special Court" means the court of a Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988.
- (v) "Whistle blower" means any person who provides factual information with *prima facie* evidence about corruption in a public authority or is a witness or a victim in a case of corruption before the Lokayukta, -
- (i) or who faces the threat of professional harm, including but not limited to illegitimate transfer, denial of promotion, denial of perks, adverse departmental proceedings, discrimination etc.,
 - (ii) or who is actually subjected to any harm as a consequence to his making any complaint to the Lokayukta under this Act, or any other legal action aimed at preventing or exposing corruption.
- (2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.
- (3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

Section-3: Appointment of Lokayukta and Upa-Lokayukta

- (1) For the purpose of conducting investigations and inquiries 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 not exceeding 4 persons to be known as the Upa-Lokayukta.
- (2) The Lokayukta shall be appointed by the State Government after consultation with the Chief Justice of Gauhati High Court, the Speaker and Leader of Opposition failing which the Leader of the single largest party of the Nagaland Legislative Assembly.
- (3) The Upa-Lokayukta shall be appointed by the State Government after consultation with the Lokayukta.

- (4) A person shall not be qualified for appointment as the Lokayukta unless he/she has been a Judge of the Supreme Court or the Chief Justice of a High Court or a Judge of a High Court.
- (5) A person shall not be qualified for appointment as Upa-Lokayukta unless he or she has been a Judge of a High Court or eligible to be appointed as a Judge of the High Court and the other two Upa-Lokayukta shall be or a person who has held the office of not lower than a Secretary to the Government of Nagaland or a person of impeccable integrity and social standing having special knowledge and expertise of not less than twenty years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. Two members of the Upa-Lokayukta shall comprise of judicial members.
- (6) Every person appointed as the Lokayukta or 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.
- (7) If the office of the Lokayukta becomes vacant, or if the Lokayukta is, by reason of absence or for any other reason whatsoever unable to perform the duties of his/her office, those duties, until some other person is appointed under section (1) and enters upon such office or, as the case may be, until the Lokayukta resume his/her duties, shall be performed –
 - (a) Where the office of the Lokayukta becomes vacant or where for any reason aforesaid he is unable to perform the duties of his office, by any one of the judicial members of the Upa-Lokayukta.
 - (b) in the absence of Judicial members, the senior most Upa-Lokayukta shall discharge the responsibilities of the Lokayukta.”
- (8) The Upa-Lokayukta shall, while acting as or discharging the functions of Lokayukta, have all the powers and immunities of the Lokayukta.
- (9) A vacancy occurring in the office of the Lokayukta or Upa-Lokayukta by reason of his/her death, resignation, retirement or removal shall be filled in as soon as possible, but not later than six months from the date of occurrence of such vacancy.

Section-4 : Lokayukta or Upa-Lokayukta to hold no other office:

The Lokayukta or Upa-Lokayukta shall not be a-

- (1) Member of Parliament or a Member of the Legislature of any State.
- (2) A person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated 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 Chairperson or a Member, as the case may be, shall, if—
 - (a) He holds any office of trust or profit, resign from such office; or
 - (b) He is carrying on any business, sever his connection with the conduct and management of such business; or
 - (c) He is practicing any profession, cease to practice such profession.

Section-5: Term of office of the Lokayukta or Upa-Lokayukta.

- (1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 70 years, whichever is earlier:

- (a) Provided the Lokayukta or Upa-Lokayukta may, by writing under his hand addressed to the Governor, resign his office.
 - (b) The Lokayukta or Upa-Lokayukta may be removed from office in the manner provided in Section 6.
- (2) On ceasing to hold office, the Lokayukta or Upa-Lokayukta shall be ineligible for further appointment as the Lokayukta or Upa-Lokayukta or for any employment under the State Government or for any employment under any local authority, University, Statutory Bodies or Corporation, Society, Co-operative Society, Government Company, other Body or Corporation.

Section-6: Removal of the Lokayukta or Upa-Lokayukta.

- (1) The Lokayukta or Upa-Lokayukta shall not be removed from his office except by an order of the Governor passed after an address in the Assembly supported by a majority of the total membership of the House and by majority of not less than two-third of the members of the House present and voting, has been presented to the Governor in the same session for such removal on the ground of proved misbehavior or incapacity.
- (2) The procedure of the presentation of an address and for the investigation and proof of the misbehavior or incapacity of the Lokayukta or Upa-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, mutatis mutandis, apply in relation to the removal of the Lokayukta or Upa-Lokayukta as they apply in relation to the removal of a Judge.

Section-7: Conditions of service of the Lokayukta or Upa-Lokayukta.

- (1) The salary, allowances, pension and retiral benefits etc of the Lokayukta shall be the same as admissible to a Chief Justice of a High Court.
- (2) The salary, allowances, pension and retiral benefits etc of the Upa-Lokayukta shall be the same as admissible to a sitting Judge of a High Court.
Provided that if the Lokayukta or Upa-Lokayukta is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Lokayukta or Upa-Lokayukta or, as the case may be, 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, by the amount of that portion of the pension:
- (3) In addition to the pension, which the Lokayukta or Upa-Lokayukta may be receiving at the time of his appointment, the Lokayukta or Upa-Lokayukta shall be paid pension at the rates applicable in the case of Chief Justice of the High Court and Judges of the High Court respectively in respect of each completed year of service as Lokayukta or Upa-Lokayukta.

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

Provided that the Lokayukta or Upa-Lokayukta shall not receive any pension if he has been removed from that office.

Provided further that-

- (a) In prescribing the other allowances payable to and other conditions of service of the Lokayukta, regard shall be had to the similar allowances to and such other conditions of service of a Judge of the Supreme Court or the Chief Justice of a High Court.
 - (b) In prescribing the other allowances payable to and such other conditions of service of Upa-Lokayukta regard shall be had to the similar allowances payable to, and such other conditions of service of a Judge of High Court.
- (4) The administrative expenses of the office of the Lokayukta or Upa-Lokayukta including all salaries and pensions payable to or of persons serving in that office, shall be charged on the Consolidated Fund of the State.

Section-8: Matters which may be investigated by Lokayukta or Upa-Lokayukta.

- (1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken, by or with the general or specific approval of-
 - (a) The Chief Minister or a Minister or a Secretary;
 - (b) A member of the State Legislature;
 - (c) Vice-chancellor or Registrar of a University;
 - (d) The Chairman and Vice-Chairman (by whatever name called) or a member of an Authority, Board, or a Committee, a Statutory or non Statutory Body or a Corporation established by or under any law of the State Legislature.
 - (e) Any other public servant.
- (2) The Lokayukta or Upa-Lokayukta may, if he thinks fit, investigate an action taken by or with the general or specific approval of a public functionary, if it is referred to him by the State Government.
- (3) The Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta whether or not a complaint has been made to the Lokayukta in respect of such action.

Section-9: Matters not subject to Investigation:

- (1) Except as hereinafter provided, the Lokayukta or Upa-Lokayukta shall not conduct any investigation under this Act in the cases of a complaint involving a grievance in respect of any action:
 - (a) If such action relates to any matter specified in the Second Schedule; or
 - (b) If the complainant has or had any remedy by way of a proceeding before any forum or other authority;Provided that nothing in clause (b) shall prevent the Lokayukta or Upa-Lokayukta from conducting an investigation, if the Lokayukta or, as the case may be, the Upa-Lokayukta, is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.
- (2) The Lokayukta or Upa-Lokayukta shall not investigate:
 - (a) Any action in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 by the State Government or Government of India;
 - (b) Any action in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 by the State Government or Government of India.

- (3) The Lokayukta or Upa-Lokayukta shall not investigate-
- (a) Any complaint involving a grievance made after the expiry of a period of twelve months limitation from the date on which the action complained against becomes known to the complainant.
 - (b) Any complaint involving an allegation made after the expiry of five years from the date on which the action or conduct complained against is alleged to have taken place.
- Provided that the Lokayukta or Upa-Lokayukta in respect of grievance or allegation, as the case may be, may entertain a complaint made after the expiry of the said period if the complainant shows sufficient cause for not making the complaint within the said period.
- (4) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or 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 extent that the discretion can prima facie be regarded, as having been improperly exercised.

Section-10 : Provision relating complaints.

- (1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Lokayukta; in the case of an allegation, by any person, and in the case of a grievance, by a person aggrieved:

Provided that where the person aggrieved is dead or, is for any reason, unable to act for himself, the complaint may be made or continued by his legal representative or by any other person who is authorized by him in writing in this behalf.

- (2) Every complaint shall be made in such form and in such manner and shall be accompanied by such affidavit as may be prescribed.
- (3) Notwithstanding anything contained in this Act or any other law for the time being in force, any letter written to the Lokayukta by a person in police custody or in jail or in any asylum or other place from insane persons, shall be forwarded to the Lokayukta unopened and without delay by the police officer or other person in-charge of such jail, asylum or other place and the Lokayukta may, if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

Section-11 : Provisions for holding preliminary inquiry.

- (1) The Lokayukta or Upa-Lokayukta, on receipt of a complaint or in case initiated on his own motion, may, before proceeding to investigate such complaint or case, make such preliminary inquiry or direct any other person so authorized to make such preliminary inquiry as he deems fit. If on such preliminary inquiry, he finds that there exists no such ground he shall record a finding to that effect and thereupon the matter shall be closed and the complainant shall be informed accordingly.
- (2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokayukta or Upa-Lokayukta deems appropriate in the circumstances of the case and he may, if he deems it necessary so to do, call for the comments of the public functionary concerned.

Section-12: Procedure in respect of Investigation.

- (1) The Lokayukta or Upa-Lokayukta shall, in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied.
- (2) The Lokayukta or Upa-Lokayukta may in his discretion, at any stage, refuse to inquire or cease to inquire into any complaint involving a grievance or 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 appropriate for the complainant to avail of such remedies.

Provided that the Lokayukta or Upa-Lokayukta shall record his reasons thereof and communicate the gist of the order to the complainant and the public functionary concerned.

- (3) The Lokayukta or Upa-Lokayukta, as the case may be, shall have power to review his order or decision to restore any matter closed at any stage, and to grant or refuse permission to the complainant to withdraw the complaint;

Provided that the Lokayukta or Upa-Lokayukta shall record his reasons in writing therefore.

Section-13: Issue of Search Warrants.

- (1) Where in consequence of information in his/her possession, the Lokayukta or Upa-Lokayukta-
 - (a) Has reason to believe that any person;
 - (i) To whom a summon or notice under this Act has been issued or likely to be issued, may not produce or cause to be produced, or may tamper with any property, document or thing which will be necessary or useful for or relevant to any inquiry or other proceedings to be conducted by him;
 - (ii) Is in possession of any 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 as required under any law or rule for the time being in force; or
 - (b) Considers 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 by a search warrant authorize any officer subordinate to him or any officer of the institution of Lokayukta or any person or agency referred to in Section 17 or any Commissioner appointed by him under clause (e) of sub-section (2) of Section 14, to conduct a search or carry out an inspection in accordance therewith and in particular to:
 - (i) 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.
 - (ii) Search any person who is reasonably suspected of concealing about his person any article for which search should be made;
 - (iii) Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by item (1), where the keys thereof are not available;
 - (iv) Seize or seal any such property, document, money, bullion, jewellery or other valuable article or thing found as a result of such search;
 - (v) Place marks of identification on any property or document or make or cause to be made extracts or copies there from; or

- (vi) 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 relating to search and seizure shall *mutatis mutandis* apply to searches and seizures under section (1).
- (3) A warrant issued under sub-section (1), for all purposes, be deemed to be warrant issued by a Court under Section 93 of the Code of Criminal Procedure, 1973.

Section-14: Evidence.

- (1) Subject to the provisions of this section for the purpose of any investigation, including the preliminary inquiry, under this Act, the Lokayukta or Upa-Lokayukta may require any public functionary or any person or authority who, in his opinion, is able to furnish information or procedure documents relevant to the investigation or inquiry, to furnish any such information or produce any such document and such public functionary, person or authority so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and 177 of the Indian Penal Code.
- (2) For the purpose of any such investigation, including preliminary inquiry, the Lokayukta or Upa-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 examine 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 or local inspection;
 - (f) Such other matter as may be prescribed.
- (3) Any proceeding before the Lokayukta or Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860.
- (4) No person shall be required or authorized by virtue of this Act, to furnish any such information or answer any such question or produce document:
 - (a) As might prejudice public interest or security of the State or the security or defence or international relations of India.
 - (b) As might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet.

Provided that a certificate to this effect is issued by the Chief Secretary.

Provided further that the Lokayukta or Upa-Lokayukta, as the case may be, require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) or clause (b) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that such certificate ought not to have been issued he shall declare the certificate to be of no effect.

Section-15 : Interim recommendation.

If, during the course of preliminary inquiry or investigation under this Act, the Lokayukta or Upa Lokayukta is prima facie satisfied that allegation or grievances against any action is likely to be substantiated either wholly or partly, he may, by a report in writing, recommend to the public functionary concerned to stay the implementation or enforcement of the decision or action complained against, or to take such mandatory or preventive action on such terms and conditions, as he may specify in his report.

Section-16: Interim Report.

- (1) The Lokayukta or Upa- Lokayukta, as the case maybe, may forward an interim report to the competent authority recommending grant of interim relief to the complainant if he is satisfied at any stage of preliminary inquiry or investigation that the complainant has sustained injustice or undue hardship in consequence of any decision or action of a public functionary and that the grievance complained of should be redressed expeditiously.
- (2) The Lokayukta or Upa- Lokayukta, as the case may be, may at any stage of inquiry or investigation under this Act, forward an interim report to the competent authority recommending to take such action as may be considered necessary by him against the public functionary, pending inquiry or investigation-
 - (a) To safeguard wastage or damage of public property or public revenue by the administrative acts of the public functionary;
 - (b) To prevent further acts of misconduct of the public functionary;
 - (c) To prevent the public functionary from secreting the assets earned by him allegedly by corrupt means;

Section-17: Utilisation of services of other persons.

- (1) The Lokayukta or Upa- Lokayukta in addition to the officials of Lokayukta may for the purpose of conducting a preliminary inquiry or an investigation under this Act, utilize the services of:
 - (a) Any officer or investigation agency of the State Government with prior intimation to the competent authority of the State Government;
 - (b) Any officer or investigation agency of Central Government, with the consent of that Government;
- (2) Any officer, agency or person whose services are utilized under sub-section (1) may, subject to the direction and control of the Lokayukta or Upa- Lokayukta, as the case may be:
 - (a) Summon and enforce the attendance of any person and examine him;
 - (b) Require the discovery and production of any document; and
 - (c) Requisition any public record or copy thereof from any office.
- (3) The officer, agency or person whose services are utilized under sub-section (1) shall enquire into the matter and submit a report to the Lokayukta or Upa- Lokayukta, as the case may be, within such period as may be specified by him in this behalf.
- (4) Any officer agency or person whose services are utilized under sub-section (1) shall act under the directions of the Lokayukta or Upa- Lokayukta, as the case may be, and they may be paid such remuneration and expenses as may be allowed by the Lokayukta or Upa- Lokayukta, as the case may be.

Section-18: Power of Inspection.

The Lokayukta or Upa-Lokayukta or any officer authorized by him shall have the power to inspect any office of the State Government, Local Authority, Corporation, Government Company, Society, University in connection with preliminary inquiry or investigation of any complaint involving a grievance or an allegation under this Act.

Section- 19: Secrecy of preliminary inquiry or investigation.

Every preliminary inquiry or investigation under this Act shall be conducted in private and, in particular, the identity of the complainant and the public functionary affected by the preliminary inquiry or investigation shall not be disclosed to the public or the press or published in any manner before or during the preliminary inquiry or investigation.

Provided that the Lokayukta or Upa- Lokayukta may in his discretion, for the reasons to be recorded in writing, allow the publication or proceeding of his investigation or a part thereof at any stage of the proceedings.

Section- 20: Secrecy of Information.

- (1) Any information obtained by the Lokayukta or Upa- Lokayukta or the member of his staff or any other officer, person or agency referred to in Section 17, in the course of or for the purpose of any preliminary enquiry or any investigation under this Act, and any evidence recorded or collected in relation to such information, shall, subject to the provision of Section 19 be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act 1872, no Court shall be entitled to compel the Lokayukta or Upa- Lokayukta or any such member, officer, person or agency or any public functionary 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 such information or evidence:
 - (a) For the purpose of any report to be made under this Act, or for the purpose of any action or proceeding to be taken on such report; or
 - (b) For the purpose of any proceedings, for any offence under the Official Secrets Act, 1923, or for the an offence of giving or fabricating false evidence under Section 193 of the Indian Penal Code, 1860, or for the purpose of trial of any offence under Section 22, 23 or for the purpose of any proceedings under Section 24.
 - (c) For such other purposes as may be prescribed.
- (3) An officer or other authority prescribed in this behalf may communicate in writing to the Lokayukta or Up-Lokayukta, as the case may be, with respect to any document or information specified therein or any class of documents so specified, that in the opinion of the State Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest; and where such communication is made, nothing in this Act, shall be construed as authorising or requiring the Lokayukta or Upa-Lokayukta, or any member of his staff or any other officer, person or agency to disclose or communicate to any person any document or information specified in the communication or any document or information of class so specified.
- (4) Any person convicted on a trial held under sub-section (1) or sub-section (2) may appeal to the High Court of the State and such appeal may be entertained, heard and decided by a Bench consisting of not less than two judges of the High Court.

- (5) The provision of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Section-21: Prosecution for false complaints-

- (1) Notwithstanding anything contained in this Act, whoever makes any false, frivolous vexatious complaints under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine or with both.
- (2) No Court, except a Court of Session, shall take cognizance of an offence under sub-section (1).
- (3) No Court of Session shall take cognizance of an offence under sub-section (1) except on a complaint made by 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.
- (4) The Court of Session on conviction of the person making false, frivolous or vexatious complaint, may award, out of the amount of fine, to the public functionary against whom such false complaints has been made, such amount of compensation as it deems fit.
- (5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code Criminal Procedure, 1973.

Section-22 : Power to punish for contempt:

- (1) The Lokayukta or Upa-Lokayukta shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has, and for this purpose, the provisions of the contempt of Courts Act, 1971, shall have effect subject to the modification that-
- (a) The references therein to High Court shall be construed as including a reference to the Lokayukta or Upa-Lokayukta, as the case may be; and,
- (b) Section 18 and Section 19 of the Act shall not apply to the Lokayukta or Upa-Lokayukta.
- (2) The Lokayukta or Upa-Lokayukta shall be deemed to be Court within the meaning of Contempt of Courts Act.

Section-23: Intentional Insult or interruption to, or Bringing into Disrepute, the Lokayukta or Upa-Lokayukta or his delegatee.

- (1) Whoever, intentionally offers any insult or causes any interruption or obstruction to the Lokayukta or Upa-Lokayukta or his delegatee while the Lokayukta or Upa-Lokayukta or his delegatee is conducting any inquiry or investigation under this Act, shall, on conviction, be punished with a 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 Upa-Lokayukta or his delegatee 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 Section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said Section 199, subject to the modification that no complaint in respect of such offence shall be made by the public prosecutor, except with the previous sanction -
- (a) In the case of an offence against the Lokayukta or his delegatee, of the Lokayukta;
 - (b) In the case of an offence against Upa-Lokayukta or his delegatee, or the Upa-Lokayukta concerned.

Section-24: Protection of action taken in good faith.

- (1) No suit, prosecution or other legal proceedings shall lie against the Lokayukta or Upa-Lokayukta or against any member of the staff of the office of the Lokayukta or any officer, agency or person referred to in Section 17, in respect of anything which is done or intended to be done in good faith under this Act.
- (2) Save as otherwise provided in this Act, no proceedings, decision, order, or any report of the Lokayukta or Upa-Lokayukta, as the case may be, including any recommendation made there under, shall be liable to be challenged, reviewed, quashed, modified or called in question in any manner whatsoever in any Court or Tribunal.

Section-25 : Reports of Lokayukta or Upa-Lokayukta.

- (1) (a) If, after investigation of any action involving a grievance, the Lokayukta or Upa-Lokayukta, as the case may be, 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 hardship shall be remedied or redressed in such manner and within such time as may be specified in the report, including -
 - (i) That any practice on which a decision, recommendation, act or omission was based should be altered or reviewed; or
 - (ii) That any law on which a decision, recommendation, act or omission was based should be altered or modified; or
 - (iii) That reasons should be given for any decision, recommendation, act or omission; or
 - (iv) That any other steps as is legally permissible may be taken.
- (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 to the Lokayukta or Upa-Lokayukta, as the case may be, the action taken on the report.
- (3) If, after investigation of any action involving an allegation, the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that such allegation is substantiated either wholly or partly, he shall by a report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority concerned.
- (4) (a) The Competent authority in the case of a public functionary other than the Chief Minister, or a Member of the State Legislature, shall examine the report forwarded to it under sub-section (3) and without any further inquiry, take action on the basis of the recommendation and within ninety days from the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or Upa-Lokayukta, as the case may be, the action taken or proposed to be taken on the basis of the report.

(b) The Lokayukta shall send his report in respect of a complaint against the Chief Minister or the Member of State Legislature with his recommendation to the Governor who shall take such action as he may deem fit or expedient on the report.

(c) The report of the Lokayukta and the order passed by the Governor shall be laid on the table of the Legislative Assembly.

- (5) If the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied with the action taken or proposed to be taken on his recommendation referred to in sub-section (1) or sub-section (3), he shall close the case under information to the complainant if any, the public functionary and the competent authority concerned: but where he is not 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, if any.
- (6) The Lokayukta shall present annually a consolidated report on the administration of this Act to the Governor.
- (7) On the receipt of a 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 State Legislature within four months from the date of the receipt of the report by the Governor or till the Legislature meets next, whichever is later.
- (8) If the Annual Report is not laid in the State Legislature within the time provided in sub-section (7), the Lokayukta shall be free to make the Report public in the manner he may choose.
- (9) The Lokayukta or Upa-Lokayukta, as the case may be, 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 a general, public, academic or professional interest in such manner and to such persons as he may deem appropriate.

Section-26: Initiation of Prosecution.

- (1) Without prejudice to the generality of the provisions contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, the Lokayukta shall have the power to grant sanction for prosecution for any matter pending before it or for enquiry or investigation into any complaint against any public servant.
- (2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous approval of the Lokayukta.
- (3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been prescribed therein.
- (4) The provisions contained in sub-sections (1) to (3) shall be without prejudice to the generality of the provisions contained in Article 311 and Article 320(3)(c) of the Constitution of India.

Section-27: Staff of the office of the Lokayukta.

- (1) The Lokayukta, after necessary administrative, financial and other approvals of the State Government in this behalf, may appoint officers and other employees to assist the Lokayukta and Upa-Lokayukta in the discharge of their functions under this Act.

- (2) The categories of officers and employees who may be appointed under sub-section(1), their salaries, allowances and other conditions of service and the administrative powers of the Lokayukta shall be such as may be prescribed by the State Government.
- (3) The State Government in consultation with Lokayukta shall provide for the adequate number and categories of staff of the investigating agency to assist the Lokayukta and Upa-Lokayukta in the discharge of their functions under this Act.
- (4) The services of the officers and employees other than those appointed by the Lokayukta under sub-section (1) shall not be taken back before the expiry of the period of deputation by the State Government without prior concurrence of the Lokayukta.
- (5) In the discharge of their functions under this Act, the officers and employees, referred to in sub-section (1) shall be subject to the exclusive administrative control and directions of the Lokayukta.

Section-28: Conferment of additional function on Lokayukta or Upa-Lokayukta.

- (1) The Governor may, by notification and after consultation with the Lokayukta or Upa-Lokayukta, confer such additional functions in relation to the redressal of grievances and eradication of corruption as may be specified in the notification.
- (2) The Governor may, by order in writing and with the concurrence of the Lokayukta, confer on the Lokayukta or Upa-Lokayukta such powers of supervisory nature over agencies, authorities or officers set up, constituted or appointed by the State Government for the eradication of corruption as may be specified in the order.
- (3) When any additional functions are conferred on the Lokayukta or Upa-Lokayukta under sub-section (1), 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 the complaint involving an allegation, and the provisions of this Acts shall apply accordingly.

Section-29: Power to exclude complaints against certain classes of public functionaries.

- (1) The State Government may, on the recommendation of the Lokayukta and on being satisfied that it is necessary or expedient in the public interest so to do, exclude by notification, complaints involving an allegation, or grievance or both against persons belonging to any class of public functionaries specified in the notification, from the jurisdiction of the Lokayukta, or as the case may be, Upa-Lokayukta.
- (2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before the State Legislature and if, before the expiry of the session in which it is laid or the session immediately following, the House agree in making any modification that the notification shall be annulled and notify such decision, 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;

Provided that any such modification or annulment shall be without prejudice to the validity of anything previously done by virtue of the notification.

Section-30: Power to Delegate.

The Lokayukta or Upa-Lokayukta may, by general or special order in writing, direct that any power conferred or duties imposed on him by or under this Act (except the power to make report to the appropriate authority, or the power to punish for contempt or to order prosecution of a public servant under section 26 may also be exercised or discharged by such of the officers, employees, agencies referred to in Section 17, 18 or 27 as may be specified in the order.

Section-31: Public Servants to Submit Property Statement.

- (1) Every public servant, shall, within three months after the commencement of this Act and thereafter before the 30th June of every year, submit to the Lokayukta in the prescribed form a statement of his assets and liabilities held by him or by any person on his behalf.
- (2) If no such statement is received by the Lokayukta from any such public functionary within the time specified in sub-section (1), the Lokayukta shall make a report to that effect to the competent authority 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 the statement of his assets and liabilities, the Lokayukta may publish or cause to be published the names of such public functionary in two newspapers having wide circulation in the State.

Section-32: Power of the State Government to make Rules.

- (1) The State Government may, in consultation with the Lokayukta, by notification, make rules for the purpose of carrying into effect the provision of this Act.
- (2) Every rule made under this section shall immediately after it is made, be laid, before each House of the State Legislature, and if, before the expiry of the session in which it is so laid or the session immediately following, both House agree in making any modification in the rule, or both Houses agree in the annulment of the rule, the rule shall, from the date on which such modification or annulment is notified, or be of no effect, as the case may be.

Provided that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section-33: Power of Lokayukta to make Regulation.

- (1) The Lokayukta may, by notification, make such regulations, as he 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 matter, namely;
 - (a) Normal working hours of the office of the Lokayukta and holding of sittings of the Lokayukta and Upa-Lokayukta outside normal working hours;
 - (b) Holding of sitting of the Lokayukta or Upa-Lokayukta at places other than the place of ordinary sittings.
 - (c) Procedure which may be followed by the Lokayukta or Upa-Lokayukta for conducting proceedings including inquiry and investigation;
 - (d) Forms in which complaints may be made and the affidavits which may accompany such complaint and the fees if any which may be charged in respect thereof;

- (e) Such forms and notices as may be necessary in the opinion of the Lokayukta for carrying out the inquiry and investigation; and matters relating to staff, its appointment, conditions of service, not falling under Section 27 of the Act.

Section-34: Removal of Doubts.

For the removal of doubts, it is hereby declared that nothing in this Act shall be construed to authorise the Lokayukta or Upa-Lokayukta to investigate any complaint against:

- (a) The Chief Justice or any Judge of High Court, or a Judicial Officer of Subordinate Courts within the meaning of Chapter VI of Part VI of the Constitution of India.
- (b) Any officer or servant of any Court referred to in clause (a); the Chairman or a Member of the State Public Service Commission and any member of its staff;
- (c) The Election Commission and the Regional Commissioners referred to in Article 324 of the Constitution of India and the Chief Electoral Officer of the State.
- (d) The Speaker and the Deputy Speaker of the Legislative Assembly, and the staff of the State Legislature Secretariat;
- (e) Functionaries appointed under Article 323-A, 323-B, and 371-D of the Constitution of India or any member of their staff; and;
- (f) Any member of the staff of Governor Secretariat.

Section 35: Whistle Blower Protection:

The provisions of the Anti-Corruption, Grievance Redressal and Whistle Blowers Protection Act, 2011 shall apply *mutatis mutandis* to the State of Nagaland.

Section-36: Repeal and Saving.

- (1) The Resolution of the Nagaland Legislative Assembly constituting the State Vigilance Commission shall stand repealed from the date of appointment of the Lokayukta.
- (2) Notwithstanding such repeal, any act or thing done under the said Resolution shall be deemed to have been done under this Act.
- (3) All inquiries and investigations and other disciplinary proceedings pending before the Nagaland State Vigilance Commission and which have not been disposed of, shall stand transferred to and be continued by Lokayukta as if they were commenced before him under this Act.
- (4) Notwithstanding anything contained in this Act, initially the staff of the Lokayukta shall consist of the posts of the Nagaland State Vigilance Commission.

FIRST SCHEDULE

(See Section 3 (4))

I, _____ having been appointed Lokayukta/Upa-Lokayukta 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, favour, affection or ill-will.

SECOND SCHEDULE

[See Section 9(1)(a)]

- (a) Action taken for the purpose of investigating crimes or 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 of not.
- (c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers of supplier, except whose or the complaint alleges harassment gross delay in meeting contractual obligation.
- (d) Action taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claim which arise on retirement, removal on termination of service and such other action involving allegation of corruption in respect of appointment not barred under provision of section-35 of the Act.
- (e) Grant of honours and award.

PART-V

NOTIFICATION

Dated Kohima, the 15th September, 2022.

No.LAW/BILL/23-2/2021:: The Nagaland Lokayukta (Second Amendment) Act, 2021 (Act No.1 of 2022) duly assented by the Hon'ble Governor of Nagaland on 21.01.2022 is published herewith for general information.

Sd/-

H. CHINGAI PANJA

Under Secretary to the Government of Nagaland .

An Act to simplify and modify certain provisions of the Lokayukta Act, 2017 (Act 1 of 2018) and to impart clarity to some provisions in the said Act with a view to implement the Act smoothly and expeditiously.

Be it enacted by the Nagaland Legislative Assembly in the Seventy first year of the Republic of India as follows :-

CHAPTER -1

PRELIMINARY

- | | |
|---|--|
| 1. Short Title.
Extent and
Commencement | 1. This Act may be called the Nagaland Lokayukta (Second Amendment) Act ,2022.
2. It extend to the whole state of Nagaland and applies also to the public servant posted outside Nagaland in connection with the affairs of the State of Nagaland.
3. The provisions of this Act shall come into effect forthwith. |
|---|--|

CHAPTER – 2

2. In Section 3, for the sub-section (4), the following sub-section (4) shall be substituted namely:
- 4 (i) A person shall not be qualified for appointment as the Lokayukta unless he/she has been a judge of the Supreme Court or the Chief Justice of a High Court or a judge of High Court or a person qualified to be appointed as a High Court Judge or a person who has vast knowledge of law and experience in judicial matters or courts or a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty years in the matters relating to anti-corruption policy, public

administration, vigilance, finance including insurance and banking, law and management;

3. In Section 3, Sub-section (9) for the words "six months", the word "one year" shall be substituted.
4. In Section (5), sub-section (1), for the word "five ", the word "three" shall be substituted.
5. In Section 5, at the end of sub section (1), the following shall be added, namely:

(c) The term of Lokayukta may be extended beyond three years by two more years on mutual agreement between the Lokayukta and the State government.
6. In Section 32, sub-section (1), the following words "in consultation with Lokayukta" shall be deleted
7. In Section 33, sub-section 2(b), the following words shall be added after the words' ordinary sitting', namely; "within the State of Nagaland".

Sd/-

Neiphiu Rio
Chief Minister

i/c Personnel & Administrative Reforms Department