

THE MIZORAM LOKAYUKTA (AMENDMENT) BILL, 2024

A Bill

further to amend the Mizoram Lokayukta Act, 2014.

Be it enacted by the Legislative Assembly of Mizoram in the Seventy Fifth Year of the Republic of India as follows, namely:-

1. Short Title, Extent and Commencement.-

- (1) This Act may be called the Mizoram Lokayukta (Amendment) Bill, 2024
- (2) It shall have the like extent as the Principal Act.
- (3) It shall come into force on the date of publication in the Official Gazette.

2. Amendment to section 3.-

In sub-section (3), the following clause shall be added-

“(c) A person appointed as Chairperson or Member of Lokayukta shall, before entering upon his office, make and subscribe before the Governor, an oath or affirmation in the form as prescribed/set out in the Schedule”.

3. Amendment to section 4.-

(1) In sub-section (3), the following second proviso shall be added-

“Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee”.

(2) Sub-section (4) shall be substituted by the following-

“The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokayukta”.

4. Amendment to section 5.-

In sub-section (1), the words “if there are any Member(s)” shall be omitted.

5. Amendment to section 6.-

The word “Lokayukta” shall be substituted by the words “Chairperson and Members”.

6. Amendment to section 7.-

(1) In clause (ii), the words “if so appointed” shall be omitted.

(2) In proviso to section 7, the words “if any” shall be omitted.

7. Amendment to section 8.-

In sub-section (1) the words “if so appointed” shall be omitted.

8. Amendment to section 9.-

In sub-section (1), the words “if there are any members” shall be omitted.

9. Amendment to section 10.-

(1) In the heading, the words “Director of Inquiry and Prosecution” shall be substituted by the words “Chief Inquiry Officer and Public Prosecutor”.

(2) In sub-section (2), the words “Director of Inquiry and Prosecution not below the rank of the Additional Secretary” shall be substituted by the words “Chief Inquiry Officer and a Public Prosecutor not below the rank of the Deputy Secretary”.

10. Amendment to section 11.- Chapter III of the Mizoram Lokayukta Act, 2014 (hereinafter referred to as the Principal Act) shall be substituted by the following namely:-

“CONSTITUTION OF INQUIRY WING AND PROSECUTION WING”

11. Constitution of Wings:

(1) The Lokayukta shall, by notification, constitute an Inquiry Wing and a Prosecution Wing headed by the Chief Inquiry Officer and the Public Prosecutor respectively for the purpose of inquiry and prosecution of public servants in relation to any complaint before the Lokayukta under this Act.

11. A INQUIRY WING

(1) The Lokayukta shall, by notification, constitute an Inquiry Wing headed by the Chief Inquiry Officer for the purpose of Inquiry of public servants in relation to any complaint before the Lokayukta under this Act :

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Department as may be required by the Lokayukta, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of this Wing shall have the same powers as are conferred upon the Lokayukta under section 27(1) of this Act.

11. B PROSECUTION WING

(1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by the Public Prosecutor for the purpose of prosecution of public servants in relation to any case filed by the Lokayukta under this Act.

(2) The Public Prosecutor shall, after having been so directed by the Lokayukta, file a case in accordance with the findings of the investigation report, before the Special Court. All necessary steps shall be taken by the Public Prosecutor appointed by Lokayukta for Prosecution of the offence punishable under the Prevention of Corruption Act, 1988 or any other relevant laws.

(3) The case referred to under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973”.

11. Amendment to section 13.-

(1) In sub-section (1) (a) of the Principal Act, the words “Speaker or Deputy Speaker” shall be substituted by the words “Deputy Chief Minister, Minister or Minister of State”.

(2) In sub-section (1) (b) of the principal Act, the words “Minister of the State” shall be substituted by the words “Speaker or Deputy Speaker”.

(3) Proviso to sub-section (3) of section 13 of the Principal Act shall be substituted by the following, namely:-

“Provided that no action under this Act shall be initiated against the person serving under the Central Government or any other Authority/Organisation without obtaining approval from Competent Authority of the Central Government or such Authority/Organization.”

12. Amendment to section 14.-

Proviso shall be inserted to section 14 as follows, namely:-

“Provided that any complaint filed before any Special Agency or Authority other than the Lokayukta subsequent to commencement of this Act shall be continued before such Agency or Authority.”

13. Amendment to section 19.-

In section 19 of the Principal Act,

(1) In sub-section (2), the words, figures and symbols “45 (forty five) days” shall be substituted by the words, figures and symbols “90 (ninety) days”.

(2) In sub-section (3), the words “make recommendations” shall be substituted by the words “take a decision”.

(3) In sub-section (3) (b), the word “recommend” shall be inserted before the word “any”.

(4) In sub-section (4), the words, figures and symbols “45 (forty five) days” shall be substituted by the words, figures and symbols “90 (ninety) days”

and for reasons to be recorded in writing, within a further period of 60 (sixty) days”.

(5) In sub-section (5), the words, figures and symbols “subject to the provisions of section 17A of the Prevention of Corruption Act, 1988 and section 6 of the Delhi Special Police Establishment Act, 1946,” shall be inserted between the words “agency” and “to carry out”.

(6) In proviso to sub-section (5), the words “three months” shall be substituted by the words “six months”.

(7) In sub-section (7) (b), the word “recommend” shall be inserted before the word “any”.

14. Amendment to section 23.-

The words “or may authorise any investigating agency to file a case” shall be inserted between the words “the Lokayukta may file a case” and “in the Special Court”.

15. Amendment to section 25.-

In section 25 of the Principal Act,

(1) In clause (b), the words “and after completion of the investigation” shall be omitted.

(2) Clause (c) shall be substituted by the following:-

“(c) on completion of the investigation, to order prosecution of the accused before the Special Court and also

(i) to recommend punishment of any kind including dismissal, removal or reduction in rank or any other punishment prescribed by any law or rules in force.

(ii) to impose recovery of the loss caused to the public against the erring public servants after giving them full opportunities of being heard. In the event of non-execution by the Government, the reason for non-execution shall be laid before the Mizoram Legislative Assembly in its first session after the expiry of six months. While recommending any action Lokayukta will duly consider distinction between bonafide action and an action with malafide intention, and also error of judgement with and without ill-will;”

16. Amendment to section 28.-

In sub-section (1), the words, figures and symbols “subject to the provisions of section 6 of the Delhi Special Police Establishment Act, 1946” shall be inserted after the symbol and words (CBI).

17. Amendment to section 43.-

Section 43 of the Principal Act shall be substituted by the following namely:-

“43. On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed.”

18. Amendment to section 55.-

The symbol “;” shall be inserted between the words “jurisdiction” and “powers”. The word “modification” shall be substituted by the words “modifications made and”.

19. Amendment to section 56.-

The words “and that the word ‘Lokpal’, wherever it occurs in that section, shall be construed as Lokayukta” shall be inserted after the word “apply”.

20. Amendment to section 58.-

In clause (c) and (d) of sub-section (2) of section 58 of the Principal Act, the figure “20” shall be substituted by the figure “19”.

STATEMENT OF OBJECTS AND REASONS

The Mizoram Lokayukta Act, 2014 was prepared urgently due to certain circumstances prevailing at the relevant period of time. There are some provisions which are not compatible with the requirements of actual working of the Mizoram Lokayukta and therefore, need rectification by way of an amendment.

1. While amending section 3(3) of the Mizoram Lokayukta Act, 2014 in 2016, clause (c) regarding subscription of oath before the Governor by the chairperson and member was deleted by mistake and hence, proposed to be inserted again in the present amendment.
2. There is no provision for considering any person by the selection Committee other than the persons recommended by the Search Committee for appointment of Chairperson and Members. Hence, it is proposed to insert a second proviso to section 4(3). Further, there is no procedure prescribed in the Rules for selecting the Chairperson and members of the Lokayukta although it is reflected in section 4(4). Therefore, it is proposed to substitute the sub-section in line with the Lokpal and Lokayuktas Act, 2013.
3. In section 5(1) regarding appointment of Chairperson and Members, the words 'if there are any Member(s)' are found superfluous and hence, proposed to be deleted.
4. In Mizoram, the term 'Lokayukta' is used to denote the office of the Lokayukta. In section 6, the term 'Lokayukta' is proposed to be substituted by the words 'Chairperson and Members' to avoid confusion.

5. In clause (ii) of section 7, the words 'if so appointed' are found superfluous. Similarly, the words 'if any' in the proviso and hence, are proposed to be deleted.
6. In section 8(1), the words 'if so appointed' are found superfluous and hence, proposed to be deleted.
7. In section 9(1), the words 'if there are any members' are found superfluous and hence, proposed to be deleted.
8. Since both Inquiry and Prosecution cannot function together, the post of Director of Inquiry and Prosecution needs to be redesignated as Chief Inquiry Officer and a separate Prosecution Wing is proposed to be headed by a Public Prosecutor. Moreover, the rank of the redesignated Chief Inquiry Officer is proposed to be downgraded to the rank of Deputy Secretary to be at par with the existing rank of Public Prosecutor. Hence, necessary modification needs to be made in the heading of section 10 as well as in sub-section (2).
9. The provisions under section 11 of the Act are regarding the constitution of the Directorate of Inquiry and Prosecution and the powers and functions of the Director of Inquiry and Prosecution and other staff under the Directorate. The proposed amendment mainly deals with having separate wings for Inquiry and Prosecution respectively as both the Investigation and Prosecution cannot function together or under a single umbrella. The function of Investigation is outside the Court while the function of prosecution is inside the Court and Hon'ble Supreme Court in a number of cases directed that the two wings cannot be headed by single authority for the ends of justice. Hence, a separate Inquiry Wing and a Prosecution Wing, headed by the Chief Inquiry Officer and the Public

Prosecutor respectively need to be created. Consequently, the powers and functions of each Wing must be laid down.

10. In section 13, Deputy Chief Minister is not included in the jurisdiction in respect of inquiry and hence, is proposed to be inserted while also re-arranging the words in clause (a) and (b). Further, the State Government is not competent to sanction approval for conducting inquiry, investigation and prosecution in respect of persons serving under the Central Government as well as persons serving under any other Authority/Organization. Hence, requiring to obtain approval from competent authority in respect of persons serving under any other Authority/Organization needs to be reflected in addition to persons serving under the Central Government in Proviso to sub-section(3) of section 13.

11. The provisions of section 14 of the Act provides that any matter or proceeding relating to allegation of corruption under the Prevention of Corruption Act, 1988 pending before any agency or authority prior to commencement of the Act shall stand transferred to the Lokayukta excepting cases pending before the court. Since the existing provisions of the Lokayukta Act does not specify as to how complaints received by other agency are to be dealt with after the commencement of the Act, a need is felt to add a proviso to allow any complaint filed before any Special Agency or authority to continue before such agency or authority.

12. Section 19(3) needs to be amended by substituting the words 'make recommendations' with the words 'take a decision'. In clause (b), the word 'recommend' needs to be inserted since the Lokayukta does not have jurisdiction over disciplinary proceedings. Similarly, the word 'recommend' needs to be added in section 19(7)(b).

13. In view of the hard terrain of the state, the timeline of 45 (forty five) days given for completion of preliminary inquiry in section 19(2) and (4) needs to be extended at least in line with the Lokpal and Lokayuktas Act, 2013 which is “90 (ninety) days and for reasons to be recorded in writing, within a further period of 60 (sixty) days”.
14. Section 19(5) needs to be amended by requiring to proceed subject to the provisions of Section 17A of the Prevention of Corruption Act, 1988 and Section 6 of the Delhi Special Police Establishment Act, 1946. As the Central laws have primacy over State laws as per the constitutional provision, the provisions need to be amended. Also, in proviso to section 19(5), the words “three months” may be extended to “six months’ which is in line with the Lokpal and Lokayuktas Act, 2013.
15. The Lokayukta can file a case in the Special Court. If any other investigating agency is utilised by the Lokayukta, it can also authorise the investigating agency to file a case in the Special Court. This provision needs to be inserted in section 23.
16. The words in section 25(b) and (c) need to be rephrased due to typing mistake in the original Act and some words have been slightly modified for easy understanding.
17. In Section 28(1), the requirement for observing the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 needs to be incorporated.
18. Section 43 of the Act may be amended in line with the amendment made to section 44 of the Lokpal & Lokayuktas Act, 2013.

19. In section 55, slight correction is made in the sentence and punctuation mark “,” (comma) is added.

20. Section 56 provides for applicability of Whistleblowers Protection Act to Mizoram Lokayukta Act, 2014 and slight addition is made by adding the words ‘and that the word ‘Lokpal’, wherever it occurs in that section, shall be construed as ‘Lokayukta’.

21. In Clause (c) and (d) of Sub-Section (2) of section 58 of the Act, the wrong figure “20” may be substituted by the correct figure “19”.

Aizawl, the _____ February, 2024

(LALDUHOMA)
Chief Minister
Govt. of Mizoram

FINANCIAL MEMORANDUM

There will be a financial implication (savings) of Rs. 73,743/- per month and Rs. 8,84,916/- annually for downgradation and redesignation of the post of Director of Inquiry and Prosecution to Chief Inquiry Officer from Level-13A to Level-12 to be at par with the post of Public Prosecutor under the Mizoram Lokayukta.

Pay in Level-12		Pay in Level-13A	
Pay (Level-12)	78,800	Pay (Level-13A)	1,31,100
DA (32%)	25,216	DA (32%)	41,952
HRA (9%)	7,092	HRA (9%)	11,799
SCA (Part C)	3,400	SCA (Part C)	3,400
Total	Rs.1,14,508	Total	Rs.1,88,251

Savings in one month : Rs.73,743
Savings in one year : Rs.8,84,916

Further, there will be no financial implication for redesignation of the post of Deputy Director of Inquiry and Prosecution to Inquiry Officer.

Dated : Aizawl

The _____ February, 2024

(LALDUHOMA)
Chief Minister
Govt. of Mizoram

