

## **THE KARNATAKA LOKAYUKTA (AMENDMENT) ORDINANCE, 2006**

An Ordinance further to amend the Karnataka Lokayukta Act, 1984

Whereas, the Karnataka Legislative Council is not in session and the Governor of Karnataka is satisfied that the circumstances exist which render it necessary for him to take immediate action further to amend the Karnataka Lokayukta Act 1984 for the purposes hereinafter appearing:

Now, therefore in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Karnataka is pleased to promulgate the following Ordinance, namely:-

**1. Short title and commencement:-** (1) This Ordinance may be called the Karnataka Lokayukta (Amendment) Ordinance 2006.

(2) Clause (4) of Section 4 shall be deemed to have come into force on 1<sup>st</sup> day of April 2002 and other provisions shall come into force at once.

**2. Amendment of Section 2** - In section 2 of the Karnataka Lokayukta Act, 1984 (Karnataka Act 4 of 1985) (hereinafter referred to as the Principal Act),-

(1) in clause (1),-

- (i) for the words “recommendation or finding or in any other manner and includes” the words “recommendation, finding or” shall be substituted;
- (ii) for the words “and all other” the words “and includes any conduct amounting to criminal misconduct stated in sub-section (1) of section 13 of the Prevention of Corruption Act 1988 (Central Act 49 of 1988 ) and all other” shall be substituted;

(2) in item (e) of clause (12), after the words “ a statutory body” the words “or a society” shall be inserted;

(3) in clause (13), for the words “means a Secretary” the words “means the Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Secretary, a Secretary-II or a Special Secretary” shall be substituted.

**3. Amendment of Section 3** - In section 3 of the Principal Act,-

(1) in the heading, for the word “Appointment” the words “Constitution of Lokayukta Institution and appointment” shall be substituted;

(2) in sub-section (1), for the words and punctuation “the Governor shall appoint a person to be known as the Lokayukta and one or more persons to be known as the Upalokayukta or Upalokayuktas.” the words, figure, brackets and punctuation “there shall be constituted an institution to be known as Karnataka Lokayukta which shall consist of person to be known as Lokayukta and one or more persons to be known as Upalokayukta or Upalokayuktas, appointed by the Governor and such other officers and employees referred to in sub-sections (1) and (3) of section 15. The Lokayukta shall be the Head of the Karnataka Lokayukta.” shall be substituted.

(3) after sub-section (3), the following sub-section shall be inserted namely:-

“(4) In all suits and other legal proceedings by or against the Karnataka Lokayukta the pleading shall be signed and verified by and all process in such suits and proceedings shall be issued to, and be served on, the Registrar.

**4. Amendment of Section 7** - In section 7 of the Principal Act,-

(1) in sub- section (1),-

(a) for clause (iv), the following clause shall be substituted, namely:-

“(iv) any other public servant; ”

(b) at the end, add the following, namely,-

“or such action can be or could have been, in his opinion recorded in writing, the subject of a grievance or an allegation.”

(2) in sub-section (2),-

(i) for the words “other public servant referred to in sub-section (1)” the words “any other public servant holding a post or office carrying either a fixed pay, salary or remuneration of more than rupees twenty thousand or a pay scale the minimum of which is more than rupees ten thousand, as may be revised from time to time” shall be substituted;

(ii) after the words “opinion of the Upalokayukta” the words “recorded in writing” shall be inserted;

(3) in sub-section (3), for the words “two or more”, the words “an Upalokayukta, is or two or more” shall be substituted;

(4) in sub-section (4), after the words and figures “sub-sections (1) to (3)” the words “when the office of an Upalokayukta is vacant by reason of his death, resignation, retirement, removal or otherwise or” shall be inserted;

(5) after sub-section (4), the following sub-section and proviso shall be inserted, namely:-

“(5) Notwithstanding anything contained in sub-section (1) to (4) the Lokayukta may,-

(i) if an Upalokayukta so desires in writing, withdraw at any stage, a complaint or an investigation pending before that Upalokayukta, for investigation by himself or by the other Upalokayukta, if any;

(ii) for reasons to be recorded in writing, transfer at any stage a complaint or an investigation pending before him to an Upalokayukta for disposal and notwithstanding anything contained in sub-sections (1) and (2) that Upalokayukta may dispose of that matter;

Provided that nothing in this sub-section shall be construed as empowering the Lokayukta or Upalokayukta to revise or review

any decision, finding or recommendation recorded earlier by the Upalokayukta or Lokayukta, as the case may be.”

**5. Amendment of Section 8** - In sub-section (2) of section 8 of the Principal Act, -

(i) in item (c), for the word “six” the word “twelve” shall be substituted;

(ii) in item (d), for the word “five” the word “seven” shall be substituted.

**6. Amendment of Section 9** - In section 9 of the Principal Act.-

(1) the following proviso shall be added to sub-section (1), namely:-

“Provided that in case of a grievance, if the person aggrieved is dead or for any reason, unable to act for himself, the complaint may be made or if it is already made, may be prosecuted by his legal representatives or by any other person who is authorized by him in writing in this behalf.”

(2) in sub-section (3),-

(i) in clause (a), after the word “complaint” the following shall be inserted namely.-

“ and in the case of an investigation initiated suo-motu by him, the reasons recorded by him to initiate the investigation under sub-section (1) or (2), as the case may be, of section 7,”;

(ii) in clause (b) after the word “complaint;” the word “or opinion as the case may be;” shall be inserted.

(3) after sub-section (7), the following sub-sections shall be inserted, namely.-

“(8) (a) If, during the course of preliminary inquiry or investigation under this Act, the Lokayukta or Upalokayukta is prima facie satisfied that, -

(i) the grievance in respect of any action is likely to be sustained either wholly or partly, he may, forward an interim report to the competent Authority, recommending grant of interim relief to the complainant or that the grievance complained of, shall be redressed expeditiously or both; or

(ii) the allegation in respect of any action is likely to be sustained either wholly or partly, he may, forward an Interim Report to the competent authority recommending to take such action as may be considered necessary by him against a public servant, including his suspension, if he is a public servant falling under item (d) or (g) of clause(12) of Section 2, pending enquiry or investigation.

(b) A copy of the recommendation made under clause (a) shall be sent to the complainant.”

(9) The Lokayukta or Upalokayukta may visit office of any public servant to further the purposes and objects of this Act.”

**7. Amendment of Section 11 - In section 11 of the principal Act.-**

(1) in sub-section (1), after the words “Lokayukta or an Upalokayukta” the words and figures “or others whose services are utilised under sub-section (3) of section 15” shall be inserted:

(2) in sub-section (2),-

(a) after the words “Lokayukta or an Upalokayukta” the words and figures “or others whose services are utilised under sub-section (3) of section 15” shall be inserted:

(b) after clause (e), the following clause shall be inserted, namely:-

“(e1) ordering payment of compensatory costs in respect of a false or vexatious complaint;

(e2) ordering costs for causing delay; and

(3) in sub-section (3), after the words “Lokayukta or an Upalokayukta” the words and figures “or others whose services are utilised under sub-section (3) of section 15” shall be inserted.

**8. Amendment of Section 12** - In section 12 of the Principal Act,

(i) in sub-section (1) add the following at the end, namely:-

“and send a copy of the recommendation to the complainant.”

(ii) in sub-section (6), for the words “his functions and that of the Upalokayukata ” the words “the Karnataka Lokayukta” shall be substituted.

**9. Amendment of Section 13** - In section 13 of the Principal Act, in sub-section (1) after the words “accept or reject the declaration” appearing at two places, the words “after giving an opportunity of being heard” shall be inserted.

**10. Amendment of Section 14** - In section 14 of the Principal Act, for the words “into any complaint” the words “under this Act by” shall be substituted.

**11. Amendment of Section 15** - In Section 15 of the Principal Act -

(1) in sub-section (3), for the words “any other agency” appearing in clause (b), the words “any person or any other agency” shall be substituted;

(2) in the proviso to sub-section (4) after the words “ Provided that” the words “when the office of the Lokayukta is vacant by reason of his death, resignation, retirement, removal or otherwise or” shall be inserted.

(3) after the sub-section (4), the following sub-section shall be inserted, namely.-

“(5) The Lokayukta shall exercise superintendence over the functioning of, and issue directions to and review the progress of the complaints and the investigations pending with, the officers and employees referred to in sub-section (1) or the persons or agencies referred to sub-section (3).”

**12. Amendment of Section 17** - In section 17 of the Principal Act, in the heading, in sub-section (1) and in sub-section (2), after the words “Upalokayukta” wherever they occur, the words “or others whose services are utilised under sub-section (3) of section 15,” shall be inserted.

**13. Amendment of Section 22** - After sub-section (2) of section 22 of the Principal Act, the following sub-section shall be inserted, namely:-

“(3) Notwithstanding anything contained in the Karnataka Minister’s salaries and Allowances Act, 1956 (Karnataka Act 5 of 1957) and Karnataka Legislature Salaries, Pension and Allowances Act, 1956 (Karnataka Act 2 of 1957), but without prejudice to the provisions of sub-section (2), no public servant referred to in sub clauses (a) to (c) of clause (12) of section 2, who fails to submit a statement of his assets and liabilities as required under sub-section (1) shall be eligible and entitled for any salary, allowance and other monetary benefits as admissible to him under the said enactments from the date of publication of his name under sub-section (2) till he submits such statement.

**14. Insertion Section 22A** - After Section 22 of the Principal Act, the following Section shall be inserted, namely:-

“**22A. Act to be in addition to any other law** - The provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceedings which might apart from this Act, be instituted against him.”

**15. Validation:-** Notwithstanding anything contained in any judgment, decree or order of any court, any action taken by the

Lokayukta under the Principal Act, prior to the commencement of this Ordinance, shall be deemed to have been taken under the Principal Act as amended by this Ordinance and no such action including investigation, proceeding, enquiry or recommendation made thereon shall be deemed to be invalid by reason only that, at the time when such action was taken, the Lokayukta had no powers to take such action under the Principal Act and no jurisdiction exercised by the Lokayukta under the Principal Act shall be called in question before any court, authority or tribunal.

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**STATEMENT OF OBJECTS AND REASONS**

In view of the decision reported in AIR 1998 SC 3047 (State of Karnataka V/s. Kempaiah) the proposed amendment to clause (1) of Sec.2 is necessitated to enlarge the scope of the definition of 'action' to include criminal misconduct also.

While a person in the service or pay of a society is a public servant according to Sec.2(12)(g)(iv), the proposed amendment to item (e) of clause (12) is necessitated to extend the scope of the same to include the class of the public servants mentioned therein in relation to the society also.

To elaborately include the different categories of Secretaries, the proposed amendment to clause (13) of Sec.2 is necessary.

To have the Lokayukta Institution having Lokayukta and Upa-Lokayukta or Upa-Lokayutkas, with Lokayukta as the Head, the proposed amendment in regard to heading and sub-section (1) of Sec.3 and consequent amendment in sub-section (6) of Section 12, is necessary.

To deprecate the practice of impeding the Lokayukta or Upa-Lokayukta as parties to Suits and other legal proceedings, they being Statutory Authorities, their representation by the Registrar being necessary, the proposed amendment to Sub-Section (3) is necessary.

To confer on the Lokayukta, the jurisdiction to investigate any action which is taken by or with the general or specific approval of all the public servants defined in clause (12) of Sec.2,

the proposed amendment in regard to clause (4) of sub-section (1) of Section 7 is necessary.

The suo-moto power of Lokayukta, had been originally engrafted in sub-section (1) of Sec.7, but was deleted with effect from 16.6.1986 by Act No.31/1986. Without suo-moto powers being conferred on the Lokayukta, the functioning of the office of the Lokayukta in regard to the public servants and Government servants referred to in sub-section (1) of Section 7 would be practically impossible. Hence the proposed amendment in regard to suo-motu power for the Lokayukta is necessary.

Having regard to the existing class of public servants to be notified by the State Government, according to clause (iv) of sub-section (1) of Section 7, certain anomalous position has arisen, in view of the decision reported in ILR 2004 Kar.3892 (Prof. S.N.Hegde v/s. The Lokayukta and Others). Hence the proposed amendments in regard to sub-section (2) of Section 7 is necessary. Further, by the proposed amendment, the Upa-Lokayukta is required to record his opinion in writing for exercising his suo-motu power.

The proposed amendment to sub-section (3) of Sec.7 is necessary for the assignment of work to the Lokayukta and Upa-Lokayukta or Upa-Lokayuktas by the Lokayukta.

It is held in the decision reported in ILR 2004 Kar.3892 (Prof. S.N.Hegde Vs. The Lokayukta and Ors) that having regard to the meaning of the existing sub-section (4) of Section 7 the Lokayukta could not have discharged the functions of Upa-Lokayukta during the period Upa-Lokayukta had not been appointed from 1/4/2002 till new Upa-Lokayukta was appointed and consequently all the investigations and Reports of Lokayukta exercising the powers of Upa-Lokayukta were void. To remove this anomalous position and

to validate all the actions of Lokayukta during the period when the Upa-Lokayukta was not appointed from 1/4/2002 till new Upa-Lokayukta to sub-section (4) and its retrospective operation from 1/4/2002 and the proposed Validation clause is necessary. Consequent amendment to Section 15(4) is also necessary.

If, for any reason Upa-Lokayukta desires in writing for transfer a complaint or an investigation pending before him, by Lokayukta or other Upa-Lokayukta, if any or if Lokayukta desires to transfer any complaint or investigation for the reasons recorded in writing to transfer the case to Upalokayukta, the proposed sub-section (5) to Section 7 is necessary.

Considering the fact that the period of limitation prescribed in sub-section (2) of Section 8 was short and required to be extended, the proposed amendment to sub-section (2) of Section 8 is necessary.

To enable the legal representatives of the complainant or the disabled complainant the proposed proviso to sub-section (1) of Section 9 is necessary.

Since there was no provision in Sec.9 to enable the supply of the reasons for taking suo-motu action, the proposed amendment to clauses (a) and (b) of Sub-section (3) of Section 9 is necessary.

It is held in the decision reported in AIR 1996 SC 2450 (Ch.Rama Rao Vs. The Lokayukta and Others) that the power to submit final report with recommendation to take punitive or penal action includes power to submit interim report with recommendation to suspend an officer or to transfer him pending further investigation or preliminary verification to enable smooth enquiry or investigation. Hence, the proposed amendment for insertion of sub-section (8) to Sec.9 is necessary.

Having regard to the fact that Upa-Lokayukta has suo-motu powers of investigation and having regard to the proposed amendment seeking suo-motu powers to Lokayukta, it would be necessary for the Lokayukta or Upa-Lokayukta to visit office of any public servant to further the purpose or objects of this Act and as such the proposed amendment for insertion of sub-section (9) of Section 9 is necessary.

For the purpose of enabling utilization of the services of an individual to assist the Lokayukta or Upa-Lokayukta in the discharge of their functions, and to empower such persons and others whose services are utilized under sub-section (3) of Section 15 to collect information or documents or evidence and to treat proceedings pending before them as judicial proceedings, the proposed amendment to Sections 11, 15(3), 17 is necessary. Further, sub-clause (e) to sub-section (2) to Section 11 is added for payment of compensatory costs in respect of false or vexatious complaints and costs for causing delay.

In order to enable the complainant to know as to what recommendation is made in regard to redressal of his grievance the proposed amendment to sub-section (1) of Section 12 is necessary.

Hitherto, the public servants referred to in the existing Section 13 had no opportunity of being heard in regard to the declaration to vacate the posts held by him before the said declaration is accepted by the competent authority. Hence the proposed amendment is being given to them an opportunity of being heard.

As the investigation can be taken up not only on the basis of the complainant, but also suo-motu, the proposed amendment to Section 14 is necessary.

The proposed amendment to Section 15(4) is only to add the power of superintendence to the existing administrative and disciplinary control of Lokayukta.

The proposed amendment to section 22 is to compel the public servants to comply with the provisions of Section 22.

The proposed Section 22A is in furtherance of provisions of sub-section (7) of Section 9 and sub-section (2) of Section 24.