

An Ordinance to provide for trial of offences committed by persons indulging in corrupt practices during implementation of Government Schemes and Programmes as brought out by social audit and for matters connected therewith and incidental thereto

Whereas Government is implementing many development schemes and programmes, either fully or partly funded from the State Exchequer, meant for the economic betterment of the poor,

And whereas social audit is being conducted by the Government as a means to empower the people and to facilitate a public scrutiny of the implementation of the Government development schemes and programmes in the utilization of funds in the prescribed manner,

And whereas several irregularities in the execution of the above schemes and programmes are being brought to the notice of the Government causing a great concern.

And whereas due to the large number of such irregularities being brought out in the social audits, and it has become necessary to curb such activities by suitably punishing the persons responsible for such offences

And whereas it has become expedient to establish Special Mobile Courts for trial of offences found to have been committed in the social audit and to facilitate expeditious disposal of these cases,

And whereas, the Legislature of the State is not now in session and the Governor of Andhra Pradesh is satisfied that circumstances exist which render it necessary for him to take immediate action

Now, therefore, in exercise of the powers conferred by Clause (1) of article 213 of the Constitution of India, the Governor hereby promulgates the following Ordinance:

1. Short title, extent and commencement

(1) This Ordinance may be called the Andhra Pradesh Social Audit (Punishment of Corrupt Practices) Ordinance, 2011.

(2) It extends to the whole of Andhra Pradesh and applies to all persons residing in the State of Andhra Pradesh or concerned with the implementation of various Government schemes and programmes subjected to social audit.

2. Definitions

(1) In this Ordinance, unless the context otherwise requires,-

- a) "Assistant Project Director" means an officer appointed by Commissioner Rural Development for overlooking implementation of the schemes and programmes above the Mandal level
- b) "Corrupt practice" means an act or omission made by any functionary entrusted with a task by the concerned Authority of Government with the intention of defrauding Government or depriving the beneficiaries for whom the various Government schemes and programmes are intended.
- c) "Court" means a Special Mobile Court established under Section 3

- d) "Government" means the State Government of Andhra Pradesh
- e) "Notification" means the Notification published in the Andhra Pradesh Gazette and the word notified shall may be construed accordingly.
- f) "Observer" means an officer not less than the rank of Tahsildar working in a district deputed by the District Collector to attend the Social Audit Gram Sabha.
- g) "Offence" means any act or omission made punishable under this Ordinance.
- h) "Prescribed" means prescribed by the Government by rules made under this Ordinance.
- i) "Social Audit Gram Sabha" means a Gram Sabha specially convened on the conclusion of the social audit process in which the Social Audit report is read out.
- j) "Social Audit Mandal Public Hearing" means the social audit public hearing at the Mandal level conducted by the District Collector, or any other officer authorised on his behalf, in the manner prescribed under Social Audit rules.
- k) "Social Audit Rules" means the rules made by Government for conduct of social audit for various Government schemes and programmes from time to time.
- l) "Social Audit" means public auditing of the details of implementation of any Government schemes and programmes including by way of ground level verification of works, pay orders or other records with reference to beneficiaries of the scheme and programmes conducted by the primary stakeholders with the active involvement of the Society for Social Audit, Accountability and Transparency (SSAAT).
- m) "Social Auditors" means the beneficiaries or members from the beneficiary families identified by the SSAAT, trained in Social Audit processes and who will carry out the Social Audits and present the findings in the Social Audit Gram Sabha.
- n) "Society for Social Audit, Accountability and Transparency (SSAAT)" means the Society, which is the apex body at the State level for overseeing the process of social audits, registered by the Government under the Andhra Pradesh Societies Registration Act 2001 mandated to facilitate conducting of social audit of various Government schemes and programmes.
- o) "Special Magistrate" means the Magistrate appointed as such under Section 3.

- 3. Power to establish special Mobile Courts.**
- (1) The State Government may, by notification in the Official Gazette, establish one or more Special Mobile Court(s) in a district or for contiguous districts where social audit has been carried out to try the offences under this Ordinance.
 - (2) A person shall not be qualified for appointment as a special Magistrate to a Special Mobile Court under this Ordinance unless he is or has been a 1st Class Judicial Magistrate under the Code of Criminal Procedure, 1973.
- 4. Cases triable by Special Magistrat**
- (1) Every offence punishable under this Ordinance shall be tried by the Special Magistrate for the area within which it was committed.
 - (2) When trying any case, a Special Magistrate may also try any offence, other than an offence specified under this Ordinance, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Magistrate shall, as far as practicable, hold the trial of an offence in the village where the offence is committed and as far as possible on a day-to-day basis.
- 5. Persons authorised to enquire and report** (1) Notwithstanding anything contained in the **Code of Criminal Procedure, 1973**, Social Auditors deployed by SSAAT shall be empowered to enquire into any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be.
- (2) Assistant Project Director shall, based on the report of the social audit or on the direction issued by the Commissioner Rural Development, file a complaint before the Special Court under this Act.
- 6. Cognizance of offences** The Special Court shall take cognizance of the offence and proceed in accordance with the provisions under Chapter XX of the Code of Criminal Procedure 1973.
- 7. Appointment of Special Prosecutor** Government shall appoint Special Prosecutors from out of a panel of advocates prepared in consultation with the District Judge, for prosecuting the offences under this Ordinance on such terms and conditions as may be prescribed.
- provided that no advocate having experience of less than five years shall be eligible for such appointment as Special Prosecutor.
- 8. Trial of offences** In trial of offences punishable under this Ordinance, the procedure specified under the provisions 251 to 259 of the Code of Criminal Procedure 1973 shall be followed.
- 9. Offences and penalties** (1) Whoever, entrusted with the responsibility of performing any functions by the Government in relation to the implementation of any Government scheme or programme, prepares or participates in preparation of fraudulent records, or tampers a record, to defraud the government or the beneficiaries for whom the programme is intended shall be punished with imprisonment of either description for a term which shall not be less than three months and may extend to two years and shall also be liable to fine.
- (2) Whoever, entrusted with the responsibility for dispensing a benefit to the targeted people, in implementation of any Government scheme or programme, misappropriates the benefit, either partially or fully, either on his own or in collusion with others shall be punished with imprisonment of either description for a term which shall not be less than three months and may extend to two years and shall also be liable to fine.
- (3) Whoever, entrusted with the responsibility of performing any functions by the Government in relation to the implementation of any Government scheme or programme, commits a corrupt practice under this Ordinance, shall be punished with imprisonment of either description for a term which shall be not less than three months but which may extend to two years and shall also be liable to fine.
- (4) Whoever conspires to commit, or attempts to commit or abets to commit any offence punishable under this Ordinance, shall be punished with imprisonment of either description for a term which shall not be less than three months and may extend to three years and shall also be liable to fine.

10. Appeal (1) Any person convicted on a trial held by a Special Magistrate under this Ordinance may appeal to the under section 374 Cr PC shall be disposed off within 3 months from the date of filing such appeal.
- (2) If an order of acquittal is passed by the Special Magistrate, an appeal lies to the Sessions Court/High Court.
11. Matters to be taken into consideration for fixing fine (1) Where a sentence of fine is imposed under Section 9, the Court, while fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.
- (2) The Special Magistrate, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.
12. Previous sanction not necessary (1) Notwithstanding anything contained in Code of Criminal Procedure 1973 or in any other law, no previous sanction shall be necessary for the Special Court before taking cognizance of an offence punishable under section 3 alleged to have been committed by a public servant.
13. Accused person to be a competent witness (1) Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:
- Provided that-
- (a) He shall not be called as a witness except at his own request;
- (b) His failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
14. Protection to social audit teams and its members for actions taken in good faith No civil or criminal proceedings shall be taken by the accused against the social audit teams or their members for any acts done in good faith under the provisions of this Ordinance.
15. Ordinance to be in addition to any other law The provisions of this Ordinance 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 proceeding which might, apart from this Act, be instituted against him.

16. Power to issue directions

The Government may, from time to time, issue such orders, instructions and directions not inconsistent with the provisions of this Ordinance and the rules made thereunder to the officers for the proper administration of the provisions of this Ordinance, which shall be complied with by such officers and other persons.

17. Power to make Rules

(1) The State Government may, by notification, make rules for carrying out all or any of the purposes of this Ordinance.

(2) Every rule made under this Ordinance shall, immediately after it is made, be laid before the Legislature of the State, if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following the Legislature agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.