

Chapter IX

Vigilance Set up for the State

Vigilance Setup for the State

The Administrative Reforms Commission examined the existing vigilance set-up of the State and after hearing the views of senior officials connected with the vigilance matters the Commission makes the following recommendations.

State Vigilance Commission

The Government Notification No.PLA/78/97 dated 30-10-81 as well as Government Resolution dated 30th September 1964 have adequately enumerated the functions of the State Vigilance Commission (One man Commission), but it appears that the Notification issued on 3rd August 2001, which is in force now does not explicitly spell out the scope and functions of the State Vigilance Commission. Therefore, Government may modify the Notification NO.PLA(V)80/2001/5 of 3-8-01 and re-issue the Notification incorporating proviso mentioned below-

“With a view to strengthening the vigilance measures for prevention of corruption, the State Government have decided to set up a one man State Vigilance Commission headed by the State Vigilance Commissioner and lay down its powers and functions in succeeding paragraphs.

The powers and functions of the State Vigilance Commission will be as follows:-

The State Vigilance Commission will have jurisdiction and powers in respect of matters to which the executive power of the State extends;

1. To cause an enquiry or investigation to be made into:
 - (a) any complaint that a public servant had exercised or refrained from exercising his powers for improper or corrupt purposes;
 - (b) any complaint of corruption, misconduct, lack of integrity or other kinds of malpractice or misdemeanor on the part of the public servant including members of the All India Services serving in connection with the affairs of the State Government;
2. To take over under its control such complaints, information or cases as it may consider necessary for further action which may be either:-
 - (i) to ask the State Anti-Corruption Branch to register a case and investigate it. The Anti-Corruption Branch will inform the

Commission of the result of the investigation and if the Anti-Corruption Branch is of the view that a prosecution should be launched;

- (a) will forward the final report of the investigation to the Political Department through the State Vigilance Commission, if sanction for such prosecution is required under any law to be issued in the name of the Governor. Comments of the Administrative Department on the investigation report will be obtained by the Political Department. Such comments with other relevant records will be forwarded to the Commission within 30 days of receipt of the report, who will advise whether or not prosecution should be sanctioned.
 - (b) if any authority other than the Governor is competent to sanction prosecution, the Anti-Corruption Branch will forward to such authority the investigation report for sanction for prosecution. If such authority does not propose to accord sanction sought for by the Anti-Corruption Branch, it will forward the case together with its view and other relevant records to the Commission for advice through the Political Department. Further, action will be taken by the authority concerned after considering the advice of the Commission, or
- (ii) to ask the Anti-Corruption Branch to make an enquiry. The Anti-Corruption Branch will furnish the report of the enquiry together with other relevant records to the Vigilance Commission who will then advise the Administrative Department as to the course of further action to be taken or
 - iii) to entrust the matter for enquiry to the Administrative Department concerned. In such cases, the Appointing Authority will immediately make a preliminary enquiry to verify the allegations and will submit his report together with other relevant records to the Commission. The Commission will advise the department concerned as to the further action to be taken.
3. The Vigilance Commission will, where it considers necessary, formulate proposals for the prevention and control of corruption and may;
 - a) advise Government regarding changes in procedure and practice with a view to eliminating changes of corruption;

- b) the State Vigilance Commission will have authority to scrutinize and guide State Government Departments and other Agencies and organizations under the control of the State Government in the spheres of execution of works particularly with regard to proceedings for award of contracts, purchase of stores, supplies, procurement of inputs, grant of permit, license lease etc involving accrual of revenue to State Government, as well as outflow of money from the State Exchequer.
 - c) advise about methods/procedures for redress of public grievances;
 - d) call for reports, returns, statements and other information as may be necessary from all departments/offices/corporate State Undertakings so as to enable it to exercise general check and supervision over the vigilance and ante-corruption works in the departments/ offices/ undertakings;
 - e) obtain information about action taken on its recommendation.
 - f) submit an annual report to Government about its activities drawing their attention to any recommendations made by it in respect of the functions enumerated above and which has not been accepted or acted upon and a copy of the report together with a memorandum explaining the reasons for non acceptance of any recommendations of the Commission will be laid by the Government before the Legislature.
4. The Vigilance Commission will formulate its own regulations for the conduct of its business.
 5. The State Vigilance Commission will be attached to the Political Department but in exercise of its powers and functions it will not be subordinate to any department and will have the same measures of independence and authority as the State Public Service Commission.
 6. The State Vigilance Commission may where necessary, initiate proposals for prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.”

The Administrative Reforms Commission further recommends that-

- (A) There should be fixed tenure of three years, for the State Vigilance Commissioner but not beyond the age of 65 years. Functioning of the Directorate of Vigilance and Anti-corruption should be under the control and supervision of the State Vigilance Commission. There should be a competent legal and prosecution cell attached to the Directorate.
- (B) Enactment of Corrupt Public Servant (Forfeiture of Property) Act should be expedited, and the Central Act, the Benami Transaction (Prohibition) Act, 1968 should be implemented in the State. Submission of Annual Property Return by all the public servants should be made mandatory by amending existing law or by enactment of new law.
- (C) **State Vigilance Commission** should monitor the functioning of Chief Vigilance officers attached to different Departments.
- (D) **Eligibility of State Vigilance Commissioner:**

State Vigilance Commissioner should be appointed amongst persons-

Who have been or are in All India Service holding a post not below the rank of Additional Chief Secretary of the State having knowledge and experience in the matters relating to vigilance, policy making, and administration including police administration.

- (E) **Selection of State Vigilance Commissioner:**

Every appointment of in the post of State Vigilance Commissioner shall be made after obtaining recommendation of a committee consisting of-

- Chief Minister
- Speaker of the Legislative Assembly
- A sitting Judge of the High Court (to be nominated by the Chief Justice) or the Chairman, Assam Human Rights Commission.

State Vigilance Commissioner should enjoy the status of the Chief Secretary of the State. State Vigilance Commissioner should be appointed by the Governor by warrant under his hand and seal, and he should be administered the oath of office.

On ceasing to hold office, the State Vigilance Commissioner shall be ineligible for further employment to any office of profit under the State Government.

State Vigilance Commission should have a Secretary, whose rank should be Joint Secretary to the State Government or above, and other office staff.

Chief Vigilance Officers:

The Commission makes following recommendation re: selection, duties & functions of Departmental Vigilance officers

- (I) In each department there should be a part time Chief Vigilance Officer who should assist the Head of Department in all vigilance matter. As the Vigilance Officer constitutes an important link between government departments/organizations and the State Vigilance Commission, the Administrative Reforms Commission recommends that the following procedure should be laid down in the matter of appointment of Chief Vigilance Officer: (I) The Chief Vigilance Officer should be a fairly high ranking officer in the department not below the rank of Additional/Joint Head of Department and he should be appointed as Chief Vigilance Officer in consultation with the State Vigilance Commission.
- (II) This should be a specified tenure post and Chief Vigilance Officer should not be transferred without consultation with the State Vigilance Commission.
- (III) The Officer to be given the additional charge of the post of Chief Vigilance Officer should be one who is not involved in sensitive matters like recruitments, purchase, award of contract etc.

Role and function of the Chief Vigilance Officer:

The role and functions of the Chief Vigilance Officer should be divided into two parts i.e. Preventive and Punitive.

Preventive Side: The Chief Vigilance Officer should examine in details the existing rules and procedures of the department/organization with a view to eliminate or minimize the scope for corruption or malpractices.

He/ She will identify the sensitive/ corruption-prone spots in the department/organization and keep an eye on persons posted in such areas.

He/She will plan and enforce surprise as well as regular inspection to detect the system failure and existence of corruption or malpractices, particularly at the cutting edge level.

He/ She will maintain proper surveillance of officers/employees of doubtful integrity and also ensure compliance of conduct rules relating to integrity of officers/employees like timely submission of annual property return, detection of benami transactions, employment of interested persons working in the private firms doing business with a particular department/organization etc.

Punitive Side: The Chief Vigilance Officer will ensure speedy processing of vigilance cases at all stages. For proper conduct of departmental proceeding he/she will ensure that charge sheet of and other necessary documents are carefully prepared and materials required to be forwarded to the Inquiring Officer are carefully sorted out and sent promptly and also ensure appointment of Inquiring Officer as well as Presenting Officer for expeditious disposal of departmental proceeding within the time frame prescribed under the Rules. When an officer/employee is suspended pending departmental enquiry, the suspending authority must satisfy itself that there are specific materials to establish prima-facie case against the delinquent person and the departmental proceedings drawn up must be completed within 180 days of the date of suspension of the person. If for reasons beyond control, the proceedings could not be completed within the specified time, the matter must be brought to the State Vigilance Commission with reasons recorded for the delay. State Vigilance Commissioner should examine the case and if he/she is not satisfied with the reason/reasons adduced, he/she would ask the concerned department to reinstate the person and to initiate penal action against the person/persons for whose negligence the matter could not be disposed of within the stipulated period.

If any vigilance case is given to an investigating agency like Anti-corruption, the Chief Vigilance Officer will render cooperation and proper assistance to such agency for expeditious completion of the investigation/enquiry.

The Chief Vigilance Officer will submit quarterly report in a prescribed format to the State Vigilance Commission with copy to the concerned Head of the Department/Organization and Administrative Department of State Government.

Directorate of Financial Inspection

On examination, the Commission found that Directorate of Financial Inspections have also been set up by the State Government with a view to ensuring strict financial discipline in the various departments as well as for effecting implementation of “The Assam Financial Inspection of Departmental Sanction and Implementation of Scheme Rules, 1982”. As per the aforesaid Rules, the Director should submit his inspection reports monthly after having complete test check the schemes as referred to Rule 4(a) and Finance Department shall proceed with the reports and review the action taken on them quarterly. State Vigilance Commission should have authority to ensure that provisions of the Rules are complied with properly.

Moreover, the State Vigilance Commission should have authority to utilize the services of this Directorate whenever the Commission feels necessary. For this purpose, the Directorate should be activated by providing all necessary infrastructure so that task assigned by the State Vigilance Commission could be undertaken vigorously within stipulated time frame.

Lokayukta

In a democratic set up Lokayukta is a very important institution for safeguarding the ethical values of public administration particularly pertaining to public figures who are democratically elected to hold high offices. But the way this important Institution has been functioning in Assam since its inception, there is nothing to cheer, and there is hardly any justification to retain this set up at public cost.

But the Commission feels that for the interest of democracy, this institution should continue as a vibrant organization performing its statutory functions as enumerated in the *Assam Lokayukta and Upa-Lukayukta Act 1985*, with immediate structural and functional reforms to ensure government’s accountability to the people, and to be an effective mechanism for the redressal of public grievances.

At present both the posts of Lokayukta and Upa-Lokayukta are vacant and as a result, the Lokayukta office is not functioning. Government should immediately initiate steps to appoint a Lokayukta as per provisions of the ‘*Assam Lokayukta and Upa-Lukayukta Act 1985*’. If a Chief Justice of a High Court or a Supreme Court Judge sitting or retired willing to take up the assignment is not available a Upa-Lokayukta should be appointed who can resume the duties of Lokayukta as per provisions of the aforesaid Act.