

# THE JAMMU AND KASHMIR STATE VIGILANCE COMMISSION ACT, 2011.

[19<sup>th</sup> January, 2011]

## (Act No. I of 2011)

An Act to provide for the constitution of State Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, Samvat 2006 by public servants, corporations established in the State by or under any Act of the Parliament or the Act of State Legislature, Government companies, societies and local authorities owned or controlled by the Government and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of Jammu and Kashmir in the Sixty-first Year of the Republic of India as follows: –

**1. Short title, extent and commencement.** – (1) This Act may be called the Jammu and Kashmir State Vigilance Commission Act, 2011.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force from the date of its publication in the Government Gazette.

**2. Definitions.** – In this Act, unless the context otherwise requires, –

- (a) “Chief Vigilance Commissioner” means the Chief Vigilance Commissioner appointed under sub-section (1) of section 4;
- (b) “Commission” means the State Vigilance Commission constituted under sub-section (1) of section 3;
- (c) “Director” means the Director of Vigilance appointed under section 22;
- (d) “Government” means the Government of Jammu and Kashmir;
- (e) “Government company” means a Government company within the meaning of the Companies Act 1956;
- (f) “prescribed” means prescribed by rules made under this Act;

- (g) “public servant” means the public servant as defined under section 21 of the Jammu and Kashmir State Ranbir Penal Code and includes all officers and employees of the Corporations established in the State by or under any Act of Parliament or the State Legislature, government companies, societies and Local Authorities owned or controlled by the Central Government or by the State Government;
- (h) “State” means the State of Jammu and Kashmir;
- (i) “Vigilance Commissioner” means a Vigilance Commissioner appointed under sub-section (1) of section 4;
- (j) “Vigilance Organization” means the Vigilance Organization established under sub-section (1) of section 10 of the Prevention of Corruption Act, Samvat 2006.

**3. Constitution of State Vigilance Commission. – (1)**

There shall be constituted a body to be known as the State Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of–

- (a) a Chief Vigilance Commissioner – Chairperson;
- (b) not more than two Vigilance Commissioners – Members.

(3) The Chief Vigilance Commissioner shall be appointed from amongst persons who are holding or have held a post in Indian Administrative Service or a post in any Civil Services of the Union or the State not below the rank of a Principal Secretary to Government having knowledge and experience in the matters relating to vigilance, law and finance.

(4) The Vigilance Commissioners shall be appointed from amongst persons who are holding a post in Indian Administrative Service or a post in any Civil Services of the Union or the State not below the rank of a Commissioner/Secretary to Government having knowledge and experience in the matters relating to vigilance, law and finance.

(5) The Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(6) The headquarters of the Commission shall be at such place as the Government may by notification specify.

**4. Appointment of Chief Vigilance Commissioner and Vigilance Commissioners.** – (1) The Chief Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the Government on the recommendation of a Committee consisting of–

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|---|---|--------------|
| (a) the Chief Minister  | – | Chairperson; |
| (b) a Senior Minister to be nominated by the Chief Minister.        | - | Member;      |
| (c) the Minister of Law and Parliamentary Affairs                   | – | Member;      |
| (d) the Leader of the Opposition, in the State Legislative Assembly | – | Member.      |

**Explanation:** –For the purposes of this sub-section, ‘the Leader of the Opposition in the State Legislative Assembly’ shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the State Legislative Assembly.

(2) The Committee referred to in sub-section (1) shall recommend a panel of three persons for each post to the Cabinet for appointment.

(3) No appointment of Chief Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

**5. Terms and other conditions of service of Chief Vigilance Commissioner.** – (1) Subject to the provisions of sub-sections (3) and (4), the Chief Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. The Chief Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he retires on attaining the age of superannuation, whichever is earlier:

Provided that every Vigilance Commissioner, on ceasing to hold the office, shall be eligible for appointment as the Chief

Vigilance Commissioner in the manner specified in sub-section (1) of section 4:

Provided further that the term of the Vigilance Commissioner, if appointed as the Chief Vigilance Commissioner, shall not be more than four years in aggregate as the Vigilance Commissioner and the Chief Vigilance Commissioner.

(3) The Chief Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the Chief Minister, or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

(4) The Chief Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the Chief Minister, resign his office.

(5) The Chief Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Chief Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

- (a) any appointment which is required by law to be made by the Governor by warrant under his hand and seal.
- (b) further employment to any office of profit under the Government of India or the Government of the State.

(7) The salary and allowances payable to, and the other conditions of service, of—

- (a) the Chief Vigilance Commissioner shall be the same as those of the Chairman of the Public Service Commission;
- (b) the Vigilance Commissioner shall be the same as those of a Member of the Public Service Commission:

Provided that if the Chief Vigilance Commissioner is at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of the State, his salary in respect of the service as the Chief Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and

pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Vigilance Commissioner is at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a corporation established by or under any Central Act or the Act of State Legislature or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Vigilance Commissioner, shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salary, allowances and pension payable to, and the other conditions of service of, the Chief Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

**6. Removal of Chief Vigilance Commissioner and Vigilance Commissioner.** – (1) Subject to the provisions of sub-section (3), the Chief Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office by the Government on the ground of proved misbehaviour or incapacity after an inquiry conducted by a Sitting or a retired Judge of the High Court, on a reference made to him by the Government, has, reported that the Chief Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The Government may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Inquiry Officer under sub-section (1) until the Government has passed orders on receipt of the report of the Inquiry Officer on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Government may by order remove from office the Chief Vigilance Commissioner or any Vigilance Commissioner if the Chief Vigilance Commissioner or such Vigilance Commissioner, as the case may be,–

- (a) is adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Government, involves moral turpitude; or

- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the Government, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Chief Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

**7. Power to make rules by the Government for staff. –**

The Government may, in consultation with the Commission, make rules with respect to staff strength of the Commission and their conditions of service:

Provided that the staff shall be provided by the Government on deputation basis subject to the condition that no staff member shall continue in the Commission beyond a period of three years.

**8. Functions and powers of State Vigilance Commission.–** (1) The functions and powers of the Commission shall be to–

- (a) exercise superintendence over the functioning of the Vigilance Organization in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, Samvat 2006 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1989 be charged at the same trial;
- (b) give directions to the Vigilance Organization for the purpose of discharging the responsibility entrusted to it under the Prevention of Corruption Act, Samvat 2006:

Provided that while exercising the powers of superintendence under clause (a) or giving directions

under this clause, the Commission shall not exercise powers in such a manner so as to require the Vigilance Organization to investigate or dispose of any case in a particular manner;

- (c) inquire or cause an inquiry or investigation to be made on a reference made by the Government wherein it is alleged that a public servant being an employee of the Government or a corporation established in the State by or under, any Central Act or the Act of State Legislature, Government company, society and any local authority owned or controlled by the Government, has committed an offence under the Prevention of Corruption Act, Samvat 2006 or an offence with which a public servant may, under the Code of Criminal Procedure, 1989 be charged at the same trial;
- (d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, Samvat 2006 and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1989 be charged at the same trial;
- (e) review the progress of investigations conducted by the Vigilance Organization into offences alleged to have been committed under the Prevention of Corruption Act, Samvat 2006 or the public servant may, under the Code of Criminal Procedure, 1989, be charged at the same trial;
- (f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, Samvat 2006;
- (g) tender advice to the Government, corporations established in the State by or under any Central Act or the Act of State Legislature, Government companies, societies and local authorities owned or controlled by the Government on such matters as may be referred to it by the Government, said Government companies, societies and local

authorities owned or controlled by the Central Government or the State Government or otherwise;

- (h) exercise superintendence over the vigilance administration of the various Departments of the Government or corporations established in the State by or under any Central Act or the Act of State Legislature, Government companies, societies and local authorities owned or controlled by the Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matter.

(2) The persons referred to in clause (d) of sub-section (1) are as follows: –

- (a) members of All-India Services serving in connection with the affairs of the State Government;
- (b) all other public servants as defined under section 21 of the Jammu and Kashmir State Ranbir Penal Code;
- (c) all officers and employees of the corporations established in the State by or under any Central Act or any Act of State Legislature, Government companies, societies and other local authorities, owned or controlled by the Central Government or the State Government, as the Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

**9. Proceedings of Commission.** – (1) The proceedings of the Commission shall be conducted at its headquarters.

(2) The Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Chief Vigilance Commissioner and other Vigilance Commissioners.

(3) Save as provided in sub-section (2), all business of the Commission shall, as far as possible, be transacted unanimously.

(4) Subject to the provisions of sub-section (3), if the Chief Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

(5) The Chief Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior-most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(6) No act or proceeding of the Commission shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as the Chief Vigilance Commissioner or as a Vigilance Commissioner; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

**10. Vigilance Commissioner to act as Chief Vigilance Commissioner in certain circumstances.** – (1) In the event of the occurrence of any vacancy in the office of the Chief Vigilance Commissioner by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Vigilance Commissioners to act as the Chief Vigilance Commissioner until the appointment of a new Chief Vigilance Commissioner to fill such vacancy.

(2) When the Chief Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chief Vigilance Commissioner until the date on which the Chief Vigilance Commissioner resumes his duties.

**11. Power relating to inquiries.** – The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure Samvat. 1977 and in particular, in respect of the following matters, namely: –

- (a) summoning and enforcing the attendance of any person from any part of India and examining 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 other documents; and
- (f) any other matter which may be prescribed.

**12. Proceedings before Commission to be judicial proceedings.** – The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1989 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Jammu and Kashmir Ranbir Penal Code, Samvat 1989.

**13. Annual report.** – (1) It shall be the duty of the Commission to present annually to the Governor a report as to the work done by the Commission within six months of the close of the year under report.

(2) On receipt of such report, the Governor shall cause the same to be laid before each House of State Legislature.

**14. Protection of action taken in good faith.** – No suit, prosecution or other legal proceeding shall lie against the Commission, the Chief Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

**15. Chief Vigilance Commissioner, Vigilance Commissioner and staff to be public servants.** – The Chief Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Jammu and Kashmir State Ranbir Penal Code.

**16. Report of any inquiry made on reference by Commission to be forwarded to that Commission.** – (1) The

report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Government and corporations established in the State by or under any Central Act or the Act of State Legislature, Government companies, societies and local authorities owned or controlled by the Central or the State Government, as the case may be, as to the further course of action.

(3) The Government and the corporations established in the State by or under any Central Act or the Act of State Legislature, Government companies, societies and other local authorities owned or controlled by the Central or the State Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Government, any corporation established in the State by or under any Central Act or the Act of State Legislature, Government company, society or local authority owned or controlled by the Central or the State Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.

**17. Power to call for information.** – The Commission may call for reports, returns and statements from the Government or corporations established in the State by or under any Central Act or the Act of State Legislature, Government companies, societies and other local authorities owned or controlled by the Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in the Government and in the said corporations, Government companies, societies and local authorities.

**18. Power to make rules.** – (1) The Government may, by notification in the Government Gazette, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: –

- (a) the number of members of the staff and their conditions of service under section 7;
- (b) any other power of the civil court to be prescribed under clause (f) of section 11; and

- (c) any other matter which is required to be, or may be, prescribed.

**19. Power to make regulations.** – (1) The Commission may, with the previous approval of the Government, by notification in the Government Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions 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 following matters, namely: –

- (a) the duties and the powers of the Secretary under sub-section (5) of section 3; and
- (b) the procedure to be followed by the Commission under sub-section (2) of section 9.

**20. Notification, rule etc. to be laid before State Legislature.** – Every notification issued under clause (c) of sub-section (2) of section 8 and every rule made by the Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before each House of the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or the regulation, or both Houses agree that the notification or the rule or the regulation should not be made, the notification or the rule or the regulation shall thereafter have effect only in such modified form or be of no effect, 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 notification or rule or regulation.

**21. Power to remove difficulties.** – (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature.

**22. Appointments etc. of officers of Vigilance Organization.** – Notwithstanding anything contained in the Prevention of Corruption Act, Samvat 2006 or any other law for the time being in force,–

- (a) the Government shall appoint a Director of Vigilance for the State on the recommendation of the Committee consisting of–
  - (i) Chief Secretary of the State – Chairperson;
  - (ii) Chief Vigilance Commissioner – Member;
  - (iii) Vigilance Commissioners – Members;
- (b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;
- (c) no person below the rank of Inspector General of Police shall be eligible for appointment as a Director of Vigilance; and
- (d) a Director of Vigilance shall not be transferred except with the previous consent of the Committee referred to in clause (a);

**23. Amendment of Act No XIII of Samvat 2006.** – In the Prevention of Corruption Act, Samvat 2006,–

I. In section 2,–

- (a) after clause (a) of sub-section (1), the following clause shall be inserted, namely: –
  - “(aa) “Director” shall mean the Director of Vigilance appointed under section 22 of the Jammu and Kashmir State Vigilance Commission Act, 2011.”;
  - and
- (b) after sub-section (2), the following sub-section shall be inserted, namely: –
  - “(3) Words and expressions used herein and not defined but defined in the Jammu and Kashmir State Vigilance Commission Act,

2011, shall have the meanings, respectively, assigned to them in that Act."

II. For sections 10 and 11, the following sections shall be substituted, namely: –

**“10. Establishment of the Vigilance Organization.** – (1) The Government shall, by notification in the Government Gazette, establish an organization for investigation of offences under this Act under the name of ‘Vigilance Organization’.

(2) The Organization shall consist of the Director and such other officers and staff subordinate to him as the Government may from time to time think fit to appoint.

(3) The qualification of officers (other than the Director) shall be such as prescribed by the Government by rules made under this Act.

(4) The Director and the officers and staff subordinate to him shall hold office for such term and on such conditions as the Government may from time to time determine.

**11. Superintendence and administration of the Vigilance Organization.** – (1) The superintendence of the Vigilance Organization in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, Samvat 2006, shall vest in the Commission.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said Organization in all other matters shall vest in the Government.

(3) The administration of the Vigilance Organization shall vest in the Director who shall exercise in respect of that Organization such of the powers exercisable by a Director-General of Police in respect of the police force as the Government may specify in this behalf.

**11-A. Terms and conditions of service of Director.** – The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

**11-B. Appointment for posts of Superintendent of Police and above, extension and curtailment of their tenure, etc.** – (1) The Committee referred to in section 22 of the Jammu

and Kashmir State Vigilance Commission Act, 2011 shall, after consulting the Director, recommend officers for appointment to the posts of the level of Superintendent of Police and above and also recommend the extension or curtailment of the tenure of such officers.

(2) On receipt of the recommendation under sub-section (1), the Government shall pass such orders as it thinks fit to give effect to the said recommendation.”

III. In section 12, the words “Vigilance Commissioner” wherever occurring, shall be substituted by the word “Director”.

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## **THE SCHEDULE**

**[See section 5 (3)]**

### **Form of oath or affirmation to be made by the Chief Vigilance Commissioner or Vigilance Commissioner**

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“I, A. B., having been appointed as the Chief Vigilance Commissioner (or Vigilance Commissioner) of the State Vigilance Commission do swear in the name of God /solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”.

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