

LEGISLATIVE DEPARTMENT : LEGISLATIVE
BRANCH

NOTIFICATION

The 31st December 1986

No.LGL.32/85/108.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT No. XX OF 1986

(Received the assent of the President on 12th December, 1986)

THE ASSAM LOKAYUKTA AND
UPA-LOKAYUKTA ACT, 1985

AN
ACT

to make provisions for appointment and functions of Lokayukta and Upa-Lokayuktas in Assam.

Whereas it is expedient to make provisions for the appointment of Lokayukta and Upa-Lokayuktas in Assam for the investigation of grievances and allegations against Ministers, Legislators and other public servants in certain cases and for matters connected therewith.

It is hereby enacted in the Thirty-sixth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Assam Lokayukta and Upa-Lokayuktas Act, 1985.

(2) It extends to the whole of the State of Assam and applies also to the public servants posted outside Assam in connection with the affairs of the State of Assam.

(3) It shall come into force at once.

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

- (a) "action" means action taken by way of decision, recommendation or finding or in any other manner, and includes failure to act, and all other expression connoting action shall be construed accordingly;
- (b) "allegation", in relation to a public servant, means any affirmation that such public servant:—
- (i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;
 - (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motive; or
 - (iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;
- (c) "competent authority", in relation to a public servant, means,—
- (i) in the case of a Minister or Secretary or Member of the Legislative Assembly—the Chief Minister;
 - * (ii) in the case of any other public servant—the Chief Secretary;
- (d) "grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration;
- (e) "Lokayukta" means a person appointed as the Lokayukta and "Upa-Lokayukta" means a person appointed as an Upa-Lokayukta under Section 3;
- (f) "mal-administration" means action taken or purporting to have been taken in exercise of administrative functions in any case,—
- (i) where such action or the administrative procedure or practice governing such action is un-reasonable, unjust, oppressive or improperly discriminatory; or

* By Notification No. PLA-193/83, dated 20th January, 1989

- (ii) where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay;
- (g) "Minister" means a member (other than the Chief Minister) of the Council of Ministers, by whatever name called for the State of Assam, that is to say a Minister, a Minister of State or a Deputy Minister and also includes Chief Parliamentary Secretary and Parliamentary Secretary;
- (h) "Officer" means a person appointed to a public service or post in connection with the affairs of the State of Assam;
- (i) "Prescribed" means prescribed by rules made under this Act;
- (j) "Public servant" denotes a person falling under any of the following descriptions, and includes subject to the provisions of sub-section (4) of Section 8, a person who at any time in the past fell under any of the following descriptions, namely:
- (i) every Minister referred to in clause (g);
 - (ii) every member of the Legislative Assembly of the State of Assam not being the Chief Minister or Minister referred to in clause (g);
 - (iii) every officer referred to in clause (h);
 - * (iv) Chief Executive Councillor, Deputy Chief Executive Councillor, Members and Chairman of the Mahkuma Parishad;
 - * (v) President of the Anchalik Panchayat;
 - * (vi) President and Secretary of the Gaon Panchayat;
 - * (vii) Chairman/Vice Chairman and Ward Commissioners of Municipal Board or Town Committee;

* Renumbered by Assam Act No. XI of 1990.

- *(viii) Mayor, Deputy Mayor, and Councillors of a Municipal Corporation;
- *(ix) Chief Executive Member, the Executive Members, the Chairman and the Members of the Autonomous District Councils and Regional Councils established under the Sixth Schedule to the Constitution of India and their employees;
- *(x) a non-official Chairman including every office bearer of that description by whatever name called or the Managing Director of a district level central society or of an apex society registered under any law relating to Co-operative Societies for the time being in force;

Explanation.—In this sub-clause, "central society" means a co-operative society which includes in its membership other co-operative societies, and "apex society" means a State level central society;

*(xi) every person in the service or pay of,—

- (a) any local authority in State of Assam which is notified by the State Government in this behalf in the Official Gazette;
- (b) any corporation not being a local authority established by or under an Assam or Central Act and owned or controlled by the State Government which is notified by the State Government in this behalf in the Official Gazette;
- (c) any Government company within the meaning of Section 617 of the Companies Act, 1956 (Central Act I of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the State Government or any company which is a subsidiary of a company in which not less than fifty-one per cent of the paid-up share capital is held by the State Government and which is notified by the State Government in this behalf in the Official Gazette;

* Renumbered by Assam Act No. XI of 1990.

(d) any society registered under the Societies Registration Act, 1860, which is owned or controlled by the State Government and which is notified by that Government in this behalf in the Official Gazette;

(e) "Secretary" means Chief Secretary, Additional Chief Secretary, Commissioner, Secretary, to the Government of Assam and includes a Special Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary and also a Special Officer to the Government of Assam.

3. Appointment of Lokayukta and Upa-Lokayuktas.—(1) For the purpose of conducting investigations, in accordance with the provisions of this Act, the Governor shall, by warrant under his hand and seal appoint a person to be known as the Lokayukta and one or more persons to be known as the Upa-Lokayukta or Upa-Loksyuktas:

Provided that,—

- (a) the Lokayukta shall be appointed after consultation with the Chief Justice of the Gauhati High Court, the Speaker and the leader of the Opposition in the Assam Legislative Assembly, and if there be no such Leader a person elected in this behalf by the members of the opposition in that House in such manner as the Speaker may direct;
- (b) the Upa-Lokayukta or Upa-Lokayuktas shall be appointed after consultation with the Lokayukta:

Provided further that where the Speaker of the Legislative Assembly is satisfied that circumstances exist on account of which it is not practicable to clause (a) of the preceding proviso, he may intimate the Governor the name of any other member of the Opposition in the Legislative Assembly who may be consulted under that clause instead of the Leader of the Opposition.

(2) Every person appointed as the Lokayukta or an Upa-Lokayukta shall before entering upon his office, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose in the First Schedule.

* Renumbered by Assam Act No. XI of 1990.

(3) The Upa-Lokayuktas shall be subject to the administrative control of the Lokayukta and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokayukta may issue such general or special directions as he may consider necessary to the Upa-Lokayukta:

Provided that nothing in this sub-section shall be construed to authorise the Lokayukta to question any finding, conclusion or recommendation of an Upa-Lokayukta.

4. Lokayukta or Upa-Lokayukta to Hold No Other Office.—(1) The Lokayukta shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

Provided that the qualifications laid down in this sub-section shall not apply to the person already appointed as a Lokayukta prior to coming into force of (Amendment) Act, 1990.

(2) The Upa-Lokayukta shall be a person who is or has been a Judge of a High Court.

(3) The Lokayukta or Upa-Lokayukta, as the case may be, shall be a person who is not or never has been a member, of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit other than his office as the Lokayukta or an Upa-Lokayukta or as the case may be, or connected with any political party or carry on any business or practice any profession and accordingly, before he enters upon his office as the Lokayukta or Upa-Lokayukta, as the case, may be, shall—

(a) if he is a sitting Judge of the Supreme Court or the Chief Justice or a Judge of a High Court, as the case may be, or hold any other office of trust or profit, resign such office; or

(b) if he is connected with any political party, sever such connection with it; or

(c) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

* Substituted by Assam Act No. XI of 1990

(d) if he is practising any profession suspend practice of such profession.

5. Term of Office and other conditions of service of Lokayukta and Upa-Lokayukta.—(1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of 67 years whichever is earlier.*

Provided that—

- (a) the Lokayukta or an Upa-Lokayukta may by writing under his hand addressed to the Governor, resign his office;
- (b) the Lokayukta or an Upa-Lokayukta may be removed from office in the manner specified in Section 6.

(2) If the office of the Lokayukta or an Upa-Lokayukta becomes vacant or if the Lokayukta or an Upa-Lokayukta is by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, these duties shall until some other person appointed under Section 5 enters upon such office or, as the case may be, until the Lokayukta or such Upa-Lokayukta resumes his duties be performed,—

- (a) Where the office of the Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Upa-Lokayukta or if there are two or more Upa-Lokayuktas by such one of the Upa-Lokayuktas as the Governor may by order direct;
- (b) Where the office of an Upa-Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta himself, or if the Lokayukta so directs by the other Upa-Lokayukta or as the case may be specified in the direction.

(3) On ceasing to hold office the Lokayukta or an Upa-Lokayukta shall be ineligible for further employment (whether as the Lokayukta or an Upa-Lokayukta) or in any other capacity under the Government of Assam or for any

* Substituted by Assam Act No. XI of 1990.

employment under, or office in any such local authority, corporation, Government company or society as is referred to in sub-clause (iv) of clause (j) of Section 2.

* (4) (a) The Lokayukta shall be entitled to such pay, allowances, pension, privileges and other conditions of service, as may be admissible, to the Supreme Court Judge or the Chief Justice of the High Court, as the case may be, from time to time.

(b) The Upa-Lokayukta shall be entitled to such pay, allowances, pension, privileges and other conditions of service, as may be admissible, to the Judge of a High Court from time to time.

(c) The pay and allowances and pension, privileges and other conditions of service of the Lokayukta or Upa-Lokayukta shall not be varied to his dis-advantage during the tenure of his offices;

* (5) If the Lokayukta or Upa-Lokayukta at the time of his appointment is in receipt of a pension (other than a disability or widow pension) in respect of any previous service under the Government of India or any of his predecessor Government, his salary in respect of his service as the Lokayukta or as the Upa-Lokayukta, as the case may be, shall be reduced—

- (a) by the amount of that pension; and
- (b) if he has before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof by the amount of that portion of the pension; and
- (c) if he has before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

* Substituted by Assam Act No. XI of 1990.

Provided further that the allowances and pension, if any, payable to, and other conditions of service of the Lokayukta or an Upa-Lokayukta shall not be varied to his disadvantage after his appointment.

(6) Removal of Lokayukta or Upa-Lokayukta.—(1) Subject to the provisions of Article 311 of the Constitution, the Lokayukta or an Upa-Lokayukta may be removed from his office by the Government on the ground of misbehaviour or incapacity and on no other ground:

Provided that the inquiry required to be held under Clause (2) of the said Article before such removal,—

- (i) in respect of Lokayukta shall only be held by a person appointed by the Governor being a person who is or has been a Judge of the Supreme Court or a Chief Justice of a High Court, and
- (ii) in respect of an Upa-Lokayukta shall be held by a person appointed by the Governor being a person who is or has been a Judge of the Supreme Court or who is or has been a Judge of a High Court.

(2) The person appointed under the proviso to sub-section (1) shall submit the report of his inquiry to the Governor who shall, as soon as may be cause it to be laid before the State Legislature.

(3) Notwithstanding anything contained in sub-section (1), the Governor shall not remove the Lokayukta or an Upa-Lokayukta unless an address by the State Legislature supported by a majority of the total membership of that House and a majority of not less than two thirds of the members of that House present and voting has been presented to the Governor in the same session for such removal.

7. Matters which may be investigated by Lokayukta or Upa-Lokayukta.—(1) Subject to the provision of this Act and on a complaint involving a grievance or an allegation

being made in that behalf the Lokayukta may investigate any action which is taken by, or with the general or specific approval of—

- (i) a Minister or a Secretary; and
- (ii) any public servant referred to in sub-clause (ii) or sub-clause (iv) of clause (j) of Section 2; or
- (iii) any other public servant being a public servant of a class or sub-class of public servants notified by the State Government in consultation with the Lokayukta in this behalf.

(2) Subject to the provisions of this Act and on a complaint involving a grievance or an allegation being made in that behalf, an Upa-Lokayukta may investigate any action which is taken by or with the general or specific approval of any public servant not being a Minister Secretary or other public servant referred to in sub-section (1).

(3) Notwithstanding anything contained in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any action which may be investigated by an Upa-Lokayukta under that sub-section.

Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by an Upa-Lokayukta under this Act, and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation related to a matter which is not assigned to him by such order.

8. Matters not subject to investigation—(1) Except as hereinafter provided, the Lokayukta or an Upa-Lokayukta shall not conduct any investigation under this Act.

- (a) except on a complaint made under and in accordance with Section 9; or

(b) in the case of a complaint involving a grievance in respect of any action,—

(i) if such action relates to any matter specified in the * Second Schedule; or

(ii) if the complainant has or had any remedy by way of proceeding before a Tribunal or Court of Law:

Provided that nothing in sub-clause (ii) shall prevent the Lokayukta or an Upa-Lokayukta from conducting an investigation if he is satisfied that such person could not or cannot, for sufficient cause, have recourse to a remedy referred to in that sub-clause.

(2) The Lokayukta or an Upa-Lokayukta shall not investigate any action,—

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1950 (Central Act 37 of 1950), by the Government of India or by the State Government; or

(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952 (Central Act 69 of 1952), by the Government of India or by the State Government.

(3) The Lokayukta or an Upa-Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under Section 19.

(4) The Lokayukta or an Upa-Lokayukta shall not investigate,—

(a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

* Substituted by Assam Act No. XI of 1990.

- (b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place;

Provided that the Lokayukta or Una-Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfied him that he had sufficient cause for not making the complaint within the period specified in that clause.

(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Una-Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

(6) The Lokayukta or an Una-Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) excluding Chief Executive Councillor of Mahatma Parishad, Mayor of a Municipal Corporation, Chief Executive Member of autonomous District Council of Sub-clause (v) of clause (i) of Section 2.

9. Provisions relating to complaints.—(1) Subject to the provision of this Act, a complaint may be made under this Act to the Lokayukta or an Una-Lokayukta,—

- (a) in the case of an grievance by the person aggrieved other than a public servant;
- (b) in the case of an allegation by any person other than a public servant;

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate, or as the case may be by any person who is authorized by him in this behalf.

(2) Every complaint shall be accompanied by the complainant's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a Magistrate of First Class together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this section as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings and affidavits respectively.

(4) Not less than three copies of the complaints as well as of each of its annexures shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions shall not be entertained.

(6) Notwithstanding anything contained in sub-sections (1) to (5), or in any other enactment, any letter written to the Lokayukta or Upa-Lokayukta by a person in police custody, or in a gaol or any asylum or other place for insane persons shall be forwarded to the addressee unopened and without delay by the police officer or other persons in charge of such gaol, asylum or other place, and the Lokayukta or Upa-Lokayukta, as the case may be, may entertain it and treat it as a complaint but no action in respect of such complaint shall be taken unless it is accompanied or subsequently supported by an affidavit under sub-section (2).

16. Procedure in respect of investigations.—(1) Where the Lokayukta or an Upa-Lokayukta proposes (after making such preliminary inquiry, if any, as he deems fit) to conduct any investigation under this Act, he,—

(a) shall forward a copy of the complaint to the public servant concerned and the competent authority concerned;

(b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint; and

(c) may make such orders as to the safe custody of documents relevant to the investigation, as he deems fit.

(2) Every such investigation shall be conducted in private, and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation:

Provided that the Lokayukta or an Upa-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he for reasons to be recorded in writing, thinks fit to do so.

(3) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of the case.

(4) The Lokayukta or an Upa-Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or, an allegation, if in his opinion—

(a) The complaint is frivolous or vexatious or is not made in good faith; or

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokayukta or an Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

(7) The provisions of this Act shall be in addition to and not in derogation of the provisions of the Prevention of Corruption Act, 1988 or any other law for the time being in force.

(8) If the Lokayukta declines to inquire into any matter against any person who may be his close relation and in case there is no Upa-Lokayukta in the Lokayukta Organisation, in that event the Lokayukta shall submit a report to the Governor with a request to refer the matter in dispute to the Chief Justice of the High Court of the State for his opinion and to decide the dispute in conformity with such opinion."

11. Evidence.—(1) Subject to the provisions of this Section for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lokayukta or an Upa-Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish such information or produce any such documents.

(2) For the purpose of any such investigation (including the preliminary enquiry) the Lokayukta or an Upa-Lokayukta shall have all the powers of Civil Court while trying a suit under the Code of Civil Procedure 1908 (Central Act 5 of 1908), in respect of the following matters namely—

* Added by Assam Act No. XI of 1990.

- (a) summoning and enforcing the attendance of any person 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 documents;
- (f) such other matters as may be prescribed.

(3) Any proceeding before the Lokayukta or an Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the India Penal Code (Central Act 45 of 1860).

(4) Subject to the provisions of sub-section (5) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the State Government or any public servant whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purpose of any investigation under this Act and the State Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule of law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document;—

- (a) as might prejudice the security of the State or the defence or international relations of India (including India's relations with the Govt. of any other country or with any international organisation) or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any Committee of that Cabinet ;

and for the purpose of this sub-section a certificate issued by the Chief Secretary certifying that any information answer or portion of a document is of the nature specified in clause (a) or clause (b) shall be binding and conclusive.

(6) Subject to the provisions of sub-section (4) no person shall be compelled for the purpose of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

12. Reports of Lokayukta & Upa-Lokayuktas.—(1) If after investigation of any action in respect of which a complaint involving a grievance has been made the Lokayukta or an Upa-Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person the Lokayukta or Upa-Lokayukta shall by a report in writing recommend to the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-section (1), shall within one month of the expiry of the time specified in the report, intimate or cause to be intimated to the Lokayukta, or as the case may be, the Upa-Lokayukta, the action taken for compliance with the report.

(3) If after investigation of any action in respect of which a complaint involving an allegation has been made the Lokayukta or an Upa-Lokayukta is satisfied that such allegation can be substantiated either wholly or partly he shall by report in writing communicate his findings and recommendations alongwith the relevant documents materials and other evidence to the competent authority.

(4) The competent authority shall intimate within three months of the date of receipt of the report, the

Lokayukta or, as the case may be, the Upa-Lokayukta, the action taken on the basis of the report.

(5) If the Lokayukta or the Upa-Lokayukta is satisfied with the action taken on his recommendations or findings referred to in sub-sections (1) and (3) he shall cause the case under information to the complainant the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned.

(6) The Lokayukta and the Upa-Lokayukta shall present annually a consolidated report on the performance of their functions under this Act to the Governor.

(7) On receipt of a special report under sub-section (5) or the annual report under sub-section (6), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the State Legislature.

(8) Subject to the provisions of sub-section (2) of Section 10, the Lokayukta may at his discretion make available from time to time the substance of cases closed or otherwise disposed of by him or by an Upa-Lokayukta, which may appear to him to be of general, public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

13. Action in case of false complaint.— (1) Notwithstanding anything contained in any other provision of this Act every person who wilfully or maliciously makes any false complaint under this Act shall on conviction, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) No Court, except a Court of Session, in the case of a complaint investigated by the Lokayukta or a Court of Magistrate, First Class in case of a complaint investigated by an Upa-Lokayukta shall take cognizance of the offence under subsection (1).

(3) No such Court shall take cognizance of such offence as aforesaid except on a complaint in writing made by the Public Prosecutor at the direction of the Lokayukta or Upa-Lokayukta, as the case may be, and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it, anything contained in the Code of Criminal Procedure, 1973, notwithstanding.

(4) Such Court on conviction of the person making false complaint may award, out of the amount of fine, to the complainant such amount of compensation as it thinks fit.

(5) If at any stage of a proceeding under this Act before the Lokayukta or an Upa-Lokayukta it appears to him that any person appearing in such proceeding or any person who filed an affidavit in support of a complaint made under this Act had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceedings, the Lokayukta or Upa-Lokayukta, as the case may be, may, if satisfied that it is necessary and expedient in the interest of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973 and sentence him to imprisonment for a term which may extend to six months or to fine which may extend to five thousand rupees or both.

(6) When any such offence as is described in Section 175, Section 178, Section 179 or Section 180 of the Indian Penal Code is committed in the view or presence of the Lokayukta or Upa-Lokayukta, he may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term

which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

(7) In every case tried under sub-section (6), the Lokayukta or Upa-Lokayukta, as the case may be, shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

(8) Any person, convicted on a trial held under sub-section (j) or sub-section (i) may appeal to the High Court, and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall, so far as they are applicable, apply to appeals under this sub-section, and the Appellate Court may alter or reverse the finding or reduce or reverse the sentence appealed against.

(9) The provisions of sub-sections (5), (6), (7), and (8) shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973, but nothing in these sub-sections shall affect the power of the Lokayukta or Upa-Lokayukta, as the case may be, to proceed under sub-section (3) in respect of any offence, where it does not choose to proceed under sub-sections (2), (6) and (7).

(10) Words and expressions used in sub-sections (5) to (9) and not defined in this Act shall have the same meanings as in the Code of Criminal Procedure, 1973.

14. Staff of Lokayukta and Upa-Lokayukta.—(1) The Lokayukta may appoint, or authorise an Upa-Lokayukta or any officer subordinate to the Lokayukta or an Upa-Lokayukta to appoint, officers and other employees to assist the Lokayukta and the Upa-Lokayukta in the discharge of their functions under this Act.

Provided that nothing in this sub-section shall be construed to prevent any person who holds a post under the Central or the State Government from being appointed on deputation with the consent of that Government.

(2) The number and categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokayukta and Upa-Lokayuktas shall be such as may be determined by general or special order of the State Government, made after consultation with the Lokayukta.

(3) Without prejudice to the provisions of sub-section (1) the Lokayukta or an Upa-Lokayukta may for the purpose of conducting investigations under this Act utilise the services of:—

(i) any officer or investigation agency of the State or Central Government with the concurrence of that Government;

(ii) any other person or agency.

15. Secrecy of Information.—(1) Any information obtained by the Lokayukta or the Upa-Lokayukta or members of their staff in the course of or for the purpose of any investigation under this Act, and any evidence recorded or collected in connection with such information shall subject to the provisions of the proviso to sub-section (2) of section 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), no Court shall be entitled to compel the Lokayukta or an Upa-Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars:—

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report, or

(b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act 10 of 1923), or an offence of giving or fabricating false evidence under the Indian Penal Code, 1860 (Central Act 45 of 1860) or for purposes of any trial of an offence under Section 13 or any proceedings under section 16; or

(c) for such other purposes as may be prescribed ;

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta or an Upa-Lokayukta as the case may be, with respect to any documents or information specified in the notice or any class of documents or information so specified that in the opinion of the State Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such notice is given, nothing in this Act shall be construed as authorising or requiring the Lokayukta, the Upa-Lokayukta or any member of their staff, unless the Lokayukta or the Upa-Lokayukta, for reasons to be recorded, is of the opinion that disclosure of such documents or information involves no public interest, to communicate to any person any documents or information specified in the notice or any document or information of a class so specified.

16. Intentional insult or interruption 5a, or bringing into disrepute, Lokayukta or Upa-Lokayukta.—(1) Whoever intentionally offers any insult, or causes any interruption to the Lokayukta or an Upa-Lokayukta while the Lokayukta or the Upa-Lokayukta is conducting any investigation under this Act shall on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or an Upa-Lokayukta into disrepute shall on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine or with both.

(3) The provisions of sub-sections (2) to (6) of Section 199 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said Section 199 subject to the modification that no complaint in respect of such offence shall be made by the public prosecutor except with the previous sanction.—

- (a) in the case of an offence against the Lokayukta, of the Lokayukta;
- (b) in the case of an offence against an Upa-Lokayukta, of the Upa-Lokayukta concerned.

17. Protection.—(1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or the Upa-Lokayukta or against any officer, employee, agency or person referred to in Section 14 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta or the Upa-Lokayukta shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or the Upa-Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in any court.

18. Conferment of additional functions of Lokayukta & Upa-Lokayukta etc.—(1) The State Government may, by notification published in the Official Gazette and after consultation with the Lokayukta, confer on the Lokayukta or an Upa-Lokayukta as the case may be, such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The State Government may by order in writing and after consultation with the Lokayukta, confer on the Lokayukta or an Upa-Lokayukta such powers of a supervisory nature over agencies, authorities or officers set-up, constituted or appointed by the State Government for the eradication of corruption.

(3) The State Government may by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokayukta to investigate any action being an action in respect of which a complaint may be made under this Act to the Lokayukta or an Upa-Lokayukta and notwithstanding anything contained in this Act the Lokayukta shall comply with such order :

Provided that the Lokayukta may entrust investigation of any such action (being action in respect of which a complaint may be made under this Act to an Upa-Lokayukta) to an Upa-Lokayukta.

(4) When any additional functions are conferred on the Lokayukta or an Upa-Lokayukta under sub-section (1) or when the Lokayukta or an Upa-Lokayukta is to investigate any action under sub-section (3), the Lokayukta or Upa-Lokayukta shall exercise the same powers and discharge the same function as he would in the case of any investigation made on a complaint involving an allegation and the provisions of this Act shall apply accordingly.

19. Power to exclude complaints against certain classes of public servants.—(1) The State Government may in consultation with the Lokayukta and on being satisfied that it is necessary or expedient in the public interest so to do exclude, by notification in the Official Gazette, complaints involving a grievance or an allegation against persons belonging to any class of public servants specified in the notification, from the jurisdiction of the Lokayukta or, as the case may be, Upa-Lokayukta.

Provided that no such notification shall be issued in respect of public servants holding posts carrying a minimum salary (excluding allowances) of one thousand rupees or more.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in more than one successive sessions, and if before the expiry of the said period, the House agrees in making any modification in the notification or the House agrees that the notification should be annulled and notifies such decision in the Official Gazette, the notification shall, from the date of publication of such decision, 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 any thing previously done by virtue of that notification.

20. *Power to delegate.*—The Lokayukta or an Upa-Lokayukta may, by a general or special order in writing direct that any powers conferred or duties imposed on him by or under this Act, (except the powers to make reports to the Governor under Section 12), may also be exercised or discharged by such of the officers, employees or agencies referred to in Section 14, as may be specified in the order,

21. *Power to make rules.*—The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the authorities for the purpose required to be prescribed under subclause (ii) of clause (c) of Section 2:

(b) the allowances and pension if any, payable to and other conditions of service of, the Lokayukta and Upa-Lokayukta:

(c) the form, if any, in which, complaints may be made and the fees, if any, which may be charged and the security, if any for costs of the person against whom, an allegation is made which may be required to be furnished in respect thereof:

(d) the powers of a Civil Court which may be exercised by the Lokayukta or an Upa-Lokayukta:

(e) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provisions and provision is in the opinion of the State Government necessary for the proper implementation of this Act.

(3) Every rule made under this Act shall be laid as soon as may be, after it is made, before 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 successive sessions, and if during the said period the House agrees in making any modification in the rule or the House agrees that the rule should be annulled and notifies such decision in the Official Gazette, the rule shall, from the date of publication of such notification, 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 rule.

22. Removal of doubts.—For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokayukta, or an Upa-Lokayukta to investigate into any allegation against—

- (a) (i) the Chief Justice or any Judge of the High Court;
- (ii) Officers and staff of the High Court;
- (iii) Members of the Assam Judicial Service as defined in Clause (b) of Article 236 of the Constitution;
- (b) the Chairman or any Member of the Assam Public Service Commission;
- (c) the Speaker and the Deputy Speaker of the Assam Legislative Assembly and the staff of the State Legislature.

THE FIRST SCHEDULE

[See Section 3 (2)]

I — — — — — having been appointed Lokayukta/Upa-Lokayukta do swear in the name of God solemnly affirm that I will bear faith and allegiance to the constitution of India, as by law established and I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will.

THE SECOND SCHEDULE

(See Section 3 (1) (b) (i))

(a) Action taken for the purpose of investigating crime or protecting the security of the State.

* Second Schedule deleted and Third Schedule renumbered as "Second Schedule" by Assam Act, No XI of 1990.

(b) Action taken in the exercise of powers in relation to determining whether a matter shall go to, or shall continue to be prosecuted in Court or not.

(c) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration of the State Government or of the local authority or other corporation, company or society, as the case may be, with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligations.

(d) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters, relating to conditions of service of public servants but not including action relating to claims, for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

(e) Grant of honours and awards.

Sd./—
K. LASKAR,
Joint Secretary to the Govt. of Assam,
Legislative Department.

ASSAM ACT NO XIV OF 1987

(Received the assent of the President on 10th June, 1987)

THE ASSAM LOKAYUKTA AND UPA-LOKAYUKTAS (AMENDMENT) ACT, 1987.

An

Act

to amend the Assam Lokayukta and Upa-Lokayuktas Act, 1985.

Whereas it is expedient to amend the Assam Lokayukta and Upa-Lokayuktas Act, 1985, hereinafter referred to as the principal Act,

It is hereby enacted in the Thirty-eighth Year of the Republic of India as follows:—

1. Short title, extent & commencement.—(1) This Act may be called the Assam Lokayukta and Upa-Lokayukta (Amendment) Act, 1987.

(2) It shall have the like extent as the principal Act.

(3) It shall be deemed to have come into force on the 31st day of December, 1986.

2. Amendment of title and other provisions of Assam Act No. XX of 1986.— In the principal Act for the word "Up-Lokayukta", in the title and wherever it occurs, the word "Upa-Lokayukta" shall be substituted.

3. Amendment of Section 22.—In the principal Act, for Section 22, the following section shall be substituted, namely:—

"22. For the removal of doubts, it hereby declared that nothing in the Act shall be construed to authorise the Lokayukta and Upa-Lokayukta to investigate into any allegation against—

- (a) (i) the Chief Justice or any Judge of the High Court;
- (ii) Officers and staff of the High Court;
- (iii) Members of the Assam Judicial Service as defined in clause (b) of Article 230 of the Constitution;
- (b) the Chairman or any Member of the Assam Public Service Commission;
- (c) the Speaker and the Deputy Speaker of the Assam Legislative Assembly and the staff of the State Legislature.

Sd/-

MR SAADULLAH,
Secretary to the Govt. of Assam,
Legislative Department.

ASSAM ACT NO. XI OF 1980

(Received the assent of the Governor on 9th May, 1980)

THE ASSAM LOKAYUKTA AND UPA-LOKAYUKTAS
(AMENDMENT) ACT, 1980

An
Act.

further to amend the Assam Lokayukta and Upa-Lokayuktas Act, 1981.

Preamble.—Whereas it is expedient further to amend the Assam Lokayukta and Upa-Lokayuktas Act, 1981 (Assam Act XX of 1981), hereinafter referred to as the principal Act, in the manner hereinafter appearing:

It is hereby enacted in the Forty-First Year of the Republic of India as follows:—

1. (1) This Act may be called the Assam Lokayukta and Upa-Lokayuktas (Amendment) Act, 1980.

(2) It shall have the like extent as the principal Act.

(3) It shall come into force at once.

2. In the principal Act, in Section 2, in clause (i) paragraphs (a), (b), (c) (d) (e), (f) and (g) of sub-clause (iv) and sub-clause (v) shall be renumbered as sub-clauses, "(iv)", "(v)", "(vi)", "(vii)", "(viii)", "(ix)", and "(x)" respectively. The existing paragraph (h) under so re-numbered sub-clause (ix) shall be read as paragraph (e).

3. Amendment of Section 4 of the Assam Act XX of 1981.—
In the principal Act for Section 4, the following Sections shall be substituted, namely:—

"4. (1) The Lokayukta shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

Provided that the qualifications laid down in this sub-section shall not apply to the person already appointed as a Lokayukta prior to coming into force of (Amendment) Act 1990.

(2) The Upa-Lokayukta shall be a person who is or has been a Judge of a High Court.

(3) The Lokayukta or Upa-Lokayukta, as the case may be, shall be a person who is not or never has been a member of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit, other than his office as the Lokayukta or an Upa-Lokayukta, as the case may be, or connected with any political party or carry on any business or practice any profession and accordingly, before he enters upon his office as the Lokayukta or Upa-Lokayukta, as the case may be, shall-

(a) if he is a sitting Judge of the Supreme Court or the Chief Justice or a Judge of a High Court as the case may be, or hold any other office of trust or profit, resign such office; or

(b) if he is connected with any political party, sever such connection with it; or

(c) if he is carrying on any business, sever his connection (so far as directing himself or ownership) with the conduct and management of such business; or

(d) if he is practising any profession suspend practice of such profession.

4. Amendment of Section 5 of the Assam Act XX of 1988.—
In the principal Act, in section 5-

(1) in sub-section (1), for the figure and words "48 years" the figure and word "67 years whichever is earlier" shall be substituted.

(2) for sub-section (4) the following sub-section shall be substituted, namely :-

"(4) (a) The Lokayukta shall be entitled to such pay, allowances, pension, privileges and other conditions of service as may be tenderable to the Supreme Court Judge or the Chief Justice of the High Court as the case may be, from time to time.

(b) The Upa-Lokayukta shall be entitled to such pay, allowances, pension, privileges and other conditions of service, as may be admissible, to the Judge of a High Court from time to time.

(c) The pay and allowances and pension, privileges and other conditions of service of the Lokayukta or Upa-Lokayukta shall not be varied to his disadvantage during the tenure of his office;

(3) for sub-section (5), the following sub-section shall be substituted, namely:—

"(3) If the Lokayukta or Upa-Lokayukta at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of his predecessor Government, his salary in respect of his service as the Lokayukta or as the Upa-Lokayukta, as the case may be, shall be reduced,

(a) by the amount of that pension; and

(b) if he has before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof by the amount of that portion of the pension; and

(c) if he has before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity."

5. Amendment of Section 8 of the Assam Act XX of 1936.—
In the principal Act, in Section 8, in sub-section (1) in paragraph (i) of clause (b), for the words "Third schedule" the words "Second Schedule" shall be substituted.

6. Amendment of Section 10 of the Assam Act XX of 1936.—
In the principal Act, in Section 10 after sub-section (6) the following sub-section shall be added, namely:—

(7) The provisions of this Act shall be in addition to and not in derogation of the provisions of the Prevention of Corruption Act, 1948 or any other law for the time being in force.

- (8) If the Lokayukta declines to inquire into any matter against any person who may be his close relation and in case there is no Upa-Lokayukta in the Lokayukta Organisation, in that event the Lokayukta shall submit a report to the Governor with a request to refer the matter in dispute to the Chief Justice of the High Court of the State for his opinion and to decide the dispute in conformity with such opinion."
7. In the principal Act, the Second Schedule shall be deleted and the existing "Third Schedule" shall be re-numbered as "Second Schedule".

Sd/-
K. LASKAR,
Secretary to the Govt. of Assam,
Legislative Department.

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
POLITICAL (A) DEPARTMENT
(LOKAYUKTA CELL)

NOTIFICATION

The 20th January, 1989

No. PLA. 193/88.—In exercise of the powers conferred by Section 21 of the Assam Lokayukta and Upa-Lokayuktas Act, 1985 (Assam Act XX of 1985), the Governor of Assam is pleased to make the following Rules, namely, the Assam Lokayukta and Upa-Lokayuktas Rules, 1988.

1. Short Title And Commencement.—(1) These Rules may be called the Assam Lokayukta and Upa-Lokayuktas Rules, 1988.

(2) They shall come into force at once.

2. In these Rules, unless there is anything repugnant in the subject or context,—

(1) "Governor" means the Governor of Assam ;

(2) "State Government" means the Government of Assam ;

(3) "Act" means the Assam Lokayukta and Upa-Lokayuktas Act, 1985 ;

(4) "Chief Secretary" means the Chief Secretary to the Government of Assam ;

(5) "Annexure" means the annexure to these rules ;

(6) "Complaint" means a complaint made under Section 9 of the Act.

3. Competent Authority.—The Chief Secretary shall be the competent authority in relation to the public servant referred to in sub-clause (i) of clause (c) of section 2 of the Act.

4. Manner of Lodging Complaint.—(1) Every complaint shall be made in the form set out in the Annexure.

(2) The complaint made under sub-rule (1) shall contain a statement in a concise form of the allegations made against the public servant and the material facts on which that allegation is based. It shall also indicate, as far as possible, the evidence by which the complainant proposes to prove each allegation.

(3) Every complaint shall bear the Court fee stamp of the value of 50 (fifty) paise.

5. Affidavit.—(1) Every complaint shall be supported by an affidavit duly sworn in by the complainant before a Magistrate of the first class or an officer duly authorised in this behalf.

(2) Every such affidavit shall be verified at the end by the complainant or by one of the complainants.

(3) The person verifying shall specify by reference to the numbered paragraphs of the affidavit what he verifies from his own knowledge and what he verifies upon information received and believed to be true. In the later case the sources of the information and the grounds of his belief shall also be stated.

6. Allowances And Other Terms And Conditions of Service of A Lokayukta and Upa-Lokayukta.—The allowances, pension and other terms and conditions of service of a Lokayukta or an Upa-Lokayukta shall be at par with those applicable either to the Judge of a High Court or of the Supreme Court, as the case may be.

ANNEXURE

(Ru'e-4)

(For office use)

(Not to be filled by the complainant)

Date of receipt

Number

Complaint form regarding "allegation" and "grievance" as defined in clause (b) and clause (d) of Section 2 of the Assam Lokayukta and Upa-Lokayukta's Act, 1989) to be filed before the Lokayukta / Upa - Lokayukta, Assam.

1. Name of the Complainant :

2. Father's or husband's name :

3. (a) Occupation :

(b) Whether you are a public servant or not ?

(c) If the complaint is on behalf of any other person, state your relationship with that person (Also annex documents, if any, to prove that you represent his estate or he has authorized you in this behalf).

4. Permanent address :

(a) Name :

(b) Place :

(c) Post Office and Police Station :

(d) District :

5. Address to which communications are to be sent.
- Name.
 - Place.
 - Post Office and Police Station.
 - District.
6. (1) Name, designation: as at the time of the matter complained against and present address (if known) of the person against whom complaint is being made.
- (2) Date when the cause for the complaint arose.
- (3) Reasons for delay in submitting the complaint (in case of complaint being time barred under subsection (4) of Section 8).
- (4) Whether any complaint was earlier made before a superior authority or proceedings taken before a Tribunal or a Court of Law? If so, with what result? If not, please briefly state the reasons.
7. Whether it is
- An allegation* (as defined in Section 2(b) of the Act)
 - or
 - A grievance + (as defined in Section 2(d) of the Act)
8. List of persons who have sworn affidavits in support of the complaint.

* Section 2(b)—"allegation", in relation to a public servant, means any affirmation that such public servant—

- (i) has abused his position so much to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;
- (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motive, or
- (iii) is guilty of corruption or lack of integrity in his capacity as such public servant.

+Section 2(d)—"grievance" means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration.

9. Are there other persons who have knowledge about the facts relating to the complaint whom you would like to be summoned by the Lokayukta / Ups-Lokayukta.
10. List of documents attached to the complaint including affidavit of the complainant.
11. The particulars of the complaint (here please state full fact of the complaint).

Note : The form can be copied out on plain paper by the complainant. Additional pages can be added, according to the requirements of the complaint.

P. C. SARMAH,
Secretary to the Govt. of Assam,
Political Department.



GOVERNMENT OF ASSAM.

The Assam Lokayukta and Upa-Lokayuktas
Act, 1985 (With Amendments)

AND

The Assam Lokayukta and Upa-Lokayuktas
Rules, 1988

POLITICAL (A) DEPARTMENT
GOVT. OF ASSAM
DISPUR, GUWAHATI-6.

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