The Protection of Human Rights Act, 1993

Act 10 of 1994. 45 sections. Bare Act with the official footnotes.

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[8th January, 1994.]

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Section 1. Short title, extent and commencement

(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India:

[1]* * * * *

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

[1] The proviso omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

Section 2. Definitions

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

(a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;

(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

[1][(ba) "Chief Commissioner" means the Chief Commissioner for Persons with Disabilities referred to in sub-section (1) of section 74 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);]

(c) "Commission" means the National Human Rights Commission constituted under section 3;

(d) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

(e) "Human Rights Court" means the Human Rights Court specified under section 30;

[2][(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;]

[3][(g) "Member" means a Member of the Commission or of the State Commission, as the case may be;]

[1][(ga) "National Commission for Backward Classes" means the National Commission for Backward Classes constituted under section 3 of the National Commission for Backward Classes Act, 1993 (27 of 1993);]

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3

of the National Commission for Minorities Act, 1992 (19 of 1992);

[4][(ha) "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006);]

[5][(i) "National Commission for the Scheduled Castes" means the National Commission for the Scheduled Castes referred to in article 338 of the Constitution;

(ia) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled Tribes referred to in article 338A of the Constitution;]

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code (45 of 1860);

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

State Amendment

Ladakh (UT).-

Section 2.-Omit sub-section (2). [Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

[1] Ins. by Act 19 of 2019, s. 2 (w.e.f. 2-8-2019).

[2] Subs. by Act 43 of 2006, s. 2, for clause (f) (w.e.f. 23-11-2006).

[3] Subs. by s. 2, ibid., for clause (g) (w.e.f. 23-11-2006).

[4] Ins. by Act 19 of 2019, s. 2 (w.e.f. 2-8-2019).

[5] Subs. by Act 43 of 2006, s. 2, for clause (i) (w.e.f. 23-11-2006).

CHAPTER II THE NATIONAL HUMAN RIGHTS COMMISSION

Section 3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights 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 Chairperson who has been a [1][Chief Justice of India or a Judge] of the Supreme Court;

(b) one Member who is, or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) [2][three Members out of which at least one shall be a woman] to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. (3) The Chairpersons of the [3][the National Commission for Backward Classes, the National Commission for Minorities, the National Commission for Protection of Child Rights], [4][the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes] and the [5][the National Commission for Women and the Chief Commissioner for Persons with Disabilities] shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and [6][shall, subject to control of the Chairperson, exercise all administrative and financial powers (except judicial functions and the power to make regulations under section 40B)].

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

[1] Subs. by Act 19 of 2019, s. 3, for "Chief Justice" (w.e.f. 2-8-2019).

[2] Subs. by s. 3, ibid., for "two Members" (w.e.f. 2-8-2019).

[3] Subs. by s. 3, ibid., for "National Commission for Minorities" (w.e.f. 2-8-2019).

[4] Subs. by Act 43 of 2006, s. 3, for "the National Commission for the Scheduled Castes and Scheduled Tribes" (w.e.f. 23-11-2006).

[5] Subs. by Act 19 of 2019, s. 3, for "National Commission for Women" (w.e.f. 2-8-2019).

[6] Subs. by Act 19 of 2019, s. 3, for certain words (w.e.f. 2-8-2019).

Section 4. Appointment of Chairperson and other Members

(1) The Chairperson and [1][the Members] shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

(a) the Prime Minister | -chairperson;

(b) Speaker of the House of the People | -member;

(c) Minister in-charge of the Ministry of Home -member; Affairs in the Government of India

(d) Leader of the Opposition in the House of | -member;

the People

(e) Leader of the Opposition in the Council of | -member;

States

(f) Deputy Chairman of the Council of States | -member:

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any [2][vacancy of any member in the Committee referred to in the first proviso to sub-section (1)].

[1] Subs. by Act 43 of 2006, s. 4, for "other Members" (w.e.f. 23-11-2006).

[2] Subs. by s. 4, ibid., for "vacancy in the Committee" (w.e.f. 23-11-2006).

Section 5. Resignation and removal of Chairperson and Members

[1][(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.]

[1] Subs. by s. 5, ibid., for section 5 (w.e.f. 23-11-2006).

Section 6. Term of office of Chairperson and Members

[1][(1) A person appointed as Chairperson shall hold office for a term of [2][three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier [3][and shall be eligible for re-appointment].

(2) A person appointed as a Member shall hold office for a term of [2][three years] from the date on which he enters upon his office and shall be eligible for re-appointment [4]***:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.]

[1] Subs. by Act 43 of 2006 s. 6, for section 6 (w.e.f. 23-11-2006).

[2] Subs. by Act 19 of 2019, s. 4, for "five years" (w.e.f. 2-8-2019).

[3] Ins. by s. 4, ibid (w.e.f. 2-8-2019).

[4] The words "for another term of five years" omitted by Act 19 of 2019, s. 4 (w.e.f. 2-8-2019).

Section 7. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

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

Section 8. Terms and conditions of service of Chairperson and Members

[1][The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.]

[1] Subs. by Act 43 of 2006, s. 7, for section (8) (w.e.f. 23-11-2006).

Section 9. Vacancies, etc., not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

Section 10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

[1][(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure.]

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

[1] Subs. by s. 8, ibid., for sub-section (2) (w.e.f. 23-11-2006).

Section 11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission-

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

CHAPTER III FUNCTIONS AND POWERS OF THE COMMISSION

Section 12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [1][or on a direction or order of any court], into complaint of-

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

[2][(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

[1] Ins. by Act 43 of 2006, s. 9 (w.e.f. 23-11-2006).

[2] Subs. by s. 9, ibid., for clause (c) (w.e.f. 23-11-2006).

Section 13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) 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) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) 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 Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

[1][(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.]

[1] Ins. by Act 43 of 2006, s.10 (w.e.f. 23-11-2006).

Section 14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Section 15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement-

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

Section 16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission-

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER IV PROCEDURE

Section 17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that-

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Section 18. Steps during and after inquiry

[1][The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.]

[1] Subs. by Act 43 of 2006, s. 11, for section 18 (w.e.f. 23-11-2006).

Section 19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

Section 20. Annual and special reports of the Commission

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

CHAPTER V STATE HUMAN RIGHTS COMMISSIONS

Section 21. Constitution of State Human Rights Commission

(1) A State Government may constitute a body to be known as the.....(name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

[1][(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of-

(a) a Chairperson who has been a [2][Chief Justice or a Judge] of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.]

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and [3][shall, subject to control of the Chairperson, exercise all administrative and financial powers of the State Commission].

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

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

[4]* * * * *

[5][(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.]

[6][(7) Subject to the provisions of section 12, the Central Government may, by order, confer upon the State Commission the functions relating to human rights being discharged by the Union territories, [7][other than Union territory of Delhi, Union territory of Jammu and Kashmir and Union territory of Ladakh].

(8) The functions relating to human rights in case of [8][Union territory of Delhi, Union territory of Jammu and Kashmir and Union territory of Ladakh] shall be dealt with by the Commission.]

[1] Subs. by Act 43 of 2006, s. 12, for sub-section (2) (w.e.f. 23-11-2006).

[2] Subs. by Act 19 of 2019, s. 5, for "Chief Justice" (w.e.f. 2-8-2019).

[3] Subs. by Act 19 of 2019, s. 5, for "shall exercise such powers and discharge such functions of the State Commission as it may delegate to him" (w.e.f. 2-8-2019).

[4] The second proviso omitted by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E) dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

[5] Ins. by Act 43 of 2006, s. 12 (w.e.f. 23-11-2006).

[6] Ins. by Act 19 of 2019, s. 5 (w.e.f. 2-8-2019).

[7] Subs. by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E), for "other than Union territory of Delhi" dated (18-3-2020) and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

[8] Subs. by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, vide notification No. S.O. 1123(E), for "Union territory of Delhi" and vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

Section 22. Appointment of Chairperson and [1][Members] of State Commission

(1) The Chairperson and [1][Members] shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of-

(a) the Chief Minister | -chairperson;

(b) Speaker of the Legislative Assembly -member;

(c) Minister in-charge of the Department | -member;

of Home in that State

(d) Leader of the Opposition in the | -member:

Legislative Assembly

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:

Provided also that no sitting Judge of a High Court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of [2][any vacancy of any Member in the Committee referred to in sub-section (1)].

[1] Subs. by Act 43 of 2006, s. 13, for "other Members" (w.e.f. 23-11-2006).

[2] Subs. by Act 43 of 2006, s. 13, for "any vacancy in the Committee" (w.e.f. 23-11-2006).

Section 23. Resignation and Removal of Chairperson or a Member of the State Commission

[1][[2][(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.

(1A) Subject to the provisions of sub-section (2), the Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member, as the case may be, ought on any such ground to be removed.]

(2) Notwithstanding anything in [3][sub-section (1A)] the President may by order remove from office the Chairperson or any [4][Member] if the Chairperson or such [4][Member], as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

[1] Subs. by s. 14, ibid., for "Removal of a Member of the State Commission" (w.e.f. 23-11-2006).

[2] Subs. by s. 14, ibid., for sub-section (1) (w.e.f. 23-11-2006).

[3] Subs. by s. 14, ibid., for "sub-section (1)" (w.e.f. 23-11-2006).

[4] Subs. by s. 14, ibid., for "other Member" (w.e.f. 23-11-2006).

Section 24. Term of office of Chairperson and Members of the State Commission

[1][(1) A person appointed as Chairperson shall hold office for a term of [2][three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier [3][and shall be eligible for re-appointment].

(2) A person appointed as a Member shall hold office for a term of [2][three years] from the date on which he enters upon his office and shall be eligible for re-appointment [4]***:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.]

[1] Subs. by Act 43 of 2006, s. 15, for section 24 (w.e.f. 23-11-2006).

[2] Subs. by Act 19 of 2019, s. 6, for "five years" (w.e.f. 2-8-2019).

[3] Ins. by s. 6, ibid. (w.e.f. 2-8-2019).

[4] The words "for another term of five years" omitted by Act 19 of 2019, s. 6 (w.e.f. 2-8-2019).

Section 25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

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

Section 26. Terms and conditions of service of Chairperson and Members of State Commission

[1][The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.]

[1] Subs. by Act 43 of 2006, s.16, for section 26 (w.e.f. 23-11-2006).

Section 27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission-

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

Section 28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

Section 29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to "Commission" shall be construed as references to "State Commission";

(b) in section 10, in sub-section (3), for the word "Secretary-General", the word "Secretary" shall be substituted;

(c) in section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words "Central Government or any" shall be omitted.

CHAPTER VI HUMAN RIGHTS COURTS

Section 30. Human Rights Courts

For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted,

for such offences under any other law for the time being in force.

Section 31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER VII FINANCE, ACCOUNTS AND AUDIT

Section 32. Grants by the Central Government

(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

Section 33. Grants by the State Government

(1) The State Government shall, after due, appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

Section 34. Accounts and audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

Section 35. Accounts and audit of State Commission

(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VIII MISCELLANEOUS

Section 36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

Section 37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

Section 38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report, paper or proceedings.

Section 39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Section 40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry 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 salaries and allowances and other terms and conditions of service of the [1][Chairperson and Members] under section 8;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

(c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

(e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 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 rule or both Houses agree that the rule should not be made, the rule 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 rule.

[1] Subs. by Act 43 of 2006, s.17, for "Members" (w.e.f. 23-11-2006).

Section 40A. Power to make rules retrospectively

[1][The power to make rules under clause (b) of sub-section (2) of section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.]

[1] Ins. by Act 49 of 2000, s. 2 (w.e.f. 11-12-2000).

Section 40B. Power of Commission to make regulations

[1][(1) Subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out 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 procedure to be followed by the Commission under sub-section (2) of section 10;

(b) the returns and statistics to be furnished by the State Commissions;

(c) any other matter which has to be, or may be, specified by regulations.

(3) Every regulation made by the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 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 or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, 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 regulation.]

[1] Ins. by Act 43 of 2006, s. 18 (w.e.f. 23-11-2006).

Section 41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry 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 salaries and allowances and other terms and conditions of service of [1][the Chairperson and Members] under section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

[1] Subs. by s. 19, ibid., for "the Members" (w.e.f. 23-11-2006).

Section 42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the 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 Parliament.

Section 43. Repeal and savings

(1) The Protection of Human Rights Ordinance, 1993 (Ord. 30 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

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