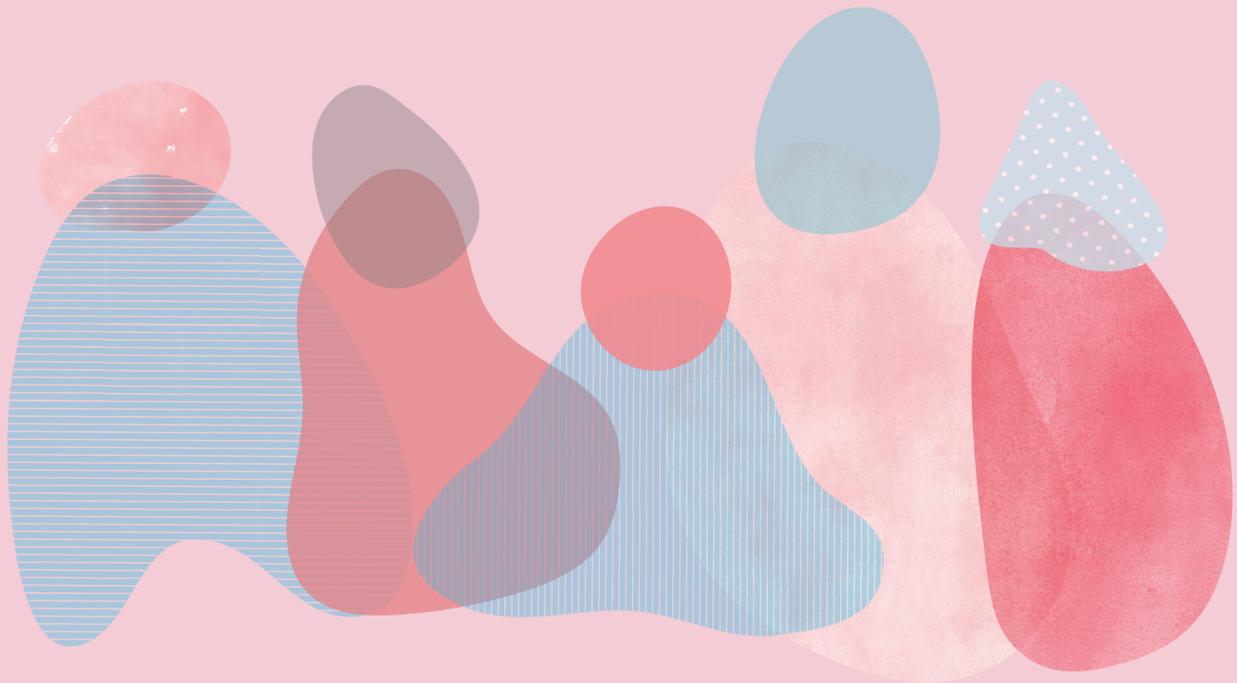


# EQUALITY BILL

## 2019



CENTRE FOR  
LAW & POLICY  
RESEARCH

## The Equality Bill 2019

*An Act to give effect to Article 14 and 15 of the Constitution of India 1950, so as to prevent and prohibit discrimination and harassment; to promote equality and to provide for matters connected therewith.*

### **PREAMBLE**

The nurturing of Indian democracy requires eradication of socio-economic inequalities, particularly those that are systematic in nature, which were perpetuated in our history by casteism, ableism and patriarchy, and which inflicted miseries to the majority of people living in India;

Although considerable stride has been made in restructuring and transforming society and its institutions, systematic inequalities and unfair discrimination remain profoundly embedded in social structures, practices and behavior, disparaging the aspirations of India's constitutional democracy;

The basis for substantively redressing these conditions lies in the Constitution, which upholds the values of human dignity, equality, non-discrimination on grounds of ascriptive identities in a united society where all may flourish;

India also has obligations under binding treaties and customary international law in the sphere of human rights, which promote equality and prohibit discrimination. Among these obligations are those recognized in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of all forms of Racial Discrimination, the Yogyakarta Principles;

Article 41 of the Indian Constitution provisions for the enactment of the national legislation to promote equality and prohibit discrimination. This implies the advancement, by special legal and other measures of historically disadvantaged, individuals, communities and social groups who were dispossessed of their belongings, deprived of human dignity and who continue to endure the consequences,

The Hon'ble Supreme in *Navtej Johar v. Union of India*, recognized that sex includes sex stereotypes, gender identity and sexual orientation. While it recognized the rights of sexual and gender minorities, there is a need for legislation to protect and articulate these rights;

In *Tehseen Poonawala v. Union of India and Others*, the Hon'ble Supreme Court for the first time recognized that lynching is an affront to the rule of law and to the values of the Constitution and recommend that a separate offence for lynching with adequate punishment be recognized and also directed a special law to be enacted.

This Act aims to facilitate the transition to a democratic and just society, united in its diversity, marked by human interactions that are caring and compassionate and guided by the principles of equality, equity, justice, human dignity and freedom

BE it therefore enacted by the Parliament of the Republic of India as follows:-

## **Chapter I Preliminary**

### **1. Preliminary**

- (1) This Act may be called the Equality Act 2019
  - (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,
- a. "Adverse effect" includes the withholding of a benefit given to others, including minimal, symbolic or nominal adverse effects or detriments;
  - b. "Age" includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, whether lower or advanced age<sup>1</sup>;
  - c. "Appropriate Government" means in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006, the Central Government; and in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;
  - d. "Boycott" means any call for or practice of any social, economic, political, cultural or other form of avoidance, ostracism, excommunication, expulsion or exclusion that is targeted against or likely to adversely affect any person or groups on one or more protected characteristics;

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<sup>1</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, South Africa

- e. Care-giver” means any person including parents and other family members who with or without payment provides care, support or assistance to a child, person with disability and people with mental illness;
- f. “Caste” includes all identified castes in India and includes the Scheduled Castes recognized under Article 341 of the Constitution;
- g. “complainant” means any person who alleges any contravention of this Act and who institutes proceedings in terms of the Act;
- h. “consumer" means any person who buys, hires, seeks to buy or seeks to hire any goods from a trader or avails of or seeks to avail of any services of a service provider, and also includes non-commercial service-users;
- i. “descent” includes group of persons who share a common ancestry, consanguinity, kinship or lineage;
- j. “Disability” means persons living with physical and psycho-social disabilities as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 and the Mental Health Care Act 2016;
- k. “Discrimination” means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage, denies reasonable accommodation, or withholds benefits, opportunities and advantages from any person on one or more protected characteristics;
- l. Educational institution” means places/centres where educational instructions are imparted according to the specific norms and include schools, colleges and institutions of higher learning established whether recognized or not recognized by an appropriate Government;
- m. “Employee" means any person (including an apprentice) employed on wages in any establishment, factory, company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, including any person who holds a post under the Central Government or a State Government;
- n. “Establishment” includes a Government establishment and private establishment
- o. “Employer” means –

- (i) In relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
  - (ii) In any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.  
Explanation – For the purposes of this sub-clause, “management” includes the person or board or committee responsible for the formulation and administration of policies for such organization;
  - (iii) In relation to a workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
  - (iv) In relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;
- p. “Ethnicity” means ethnic minority groups with a common kinship network, distinct national or cultural tradition in a given geographical area;
- q. “Gender identity” means an individual’s assertion of their gender, which may or may not correspond with the sex assigned at birth. Gender identity includes ‘gender expression’ which is each person’s presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references.<sup>2</sup>
- r. "Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in the Companies Act, 2013 and includes a Department of the Government;
- s. “Gender reassignment” means if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.<sup>3</sup>
- t. “Harassment” means any unwanted physical, verbal or non-verbal conduct which demeans, humiliates or creates a hostile or intimidating environment or is calculated

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<sup>2</sup> Yogyakarta Principles and Yogyakarta Plus 10

<sup>3</sup> Yogyakarta Principles

to induce submission by actual or threatened adverse consequences and which is related to:

- (i) sex, gender or sexual orientation; or
  - (ii) a person's membership or presumed membership of a group identified by one or more of the protected characteristics or a characteristic associated with such group.<sup>4</sup>
- u. HIV / AIDS status means an individual who is HIV positive or a person who has Acquired Immune Deficiency Syndrome as defined under the HIV / AIDS (Prevention and Control) Act 2017;
  - v. "Health" means the state of complete physical, mental, and social well-being and not merely the absence of disease and infirmity<sup>5</sup>;
  - w. "Inclusive education" means a system of education wherein students with diverse genders, socio-economic and regional background learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students<sup>6</sup>;
  - x. "Institution" means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with protected characteristics;
  - y. "Intersex" means people who are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies;
  - z. "Landlord" includes, but is not limited to, any person who is a landholder, seller, lessor, proprietor, housing society, hotel, motel, innkeeper, owner, estate or letting agency, board and lodgings provider or any other person providing residential, commercial, agricultural, or industrial property, for sale, lease or rent for temporary or permanent occupation or use;
  - aa. "Linguistic identity" includes any person or group with a distinct language, dialect, or script in a relevant geographical area;

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<sup>4</sup> SA Act

<sup>5</sup>WHO definition on health

<sup>6</sup> Section 2 (m), Rights of Persons with Disabilities Act, 2016

- bb. "Local authority" means a Municipality or a Panchayat, as defined in clause (e) and clause (f) of Article 243 of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006; and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs;
- cc. "Lynching" means where two or more persons willfully cause bodily injury or any act or series of acts of violence on any other person, or aiding, abetting such act/acts thereof, whether spontaneous or planned, on the basis of any actual or perceived protected characteristic<sup>7</sup>
- dd. "marital status" includes the status or condition of being single, married, divorced, separated, widowed or in a relationship whether with a person of the same or another sex, involving a commitment to reciprocal support in a relationship<sup>8</sup>;
- ee. "migrant" means any person residing on a short, or long-term basis in places other than his / her place of permanent residence within the country;
- ff. "Person" includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, in India or outside India, any corporation established by or under any Central or State Act or any company including a Government company incorporated under the Companies Act, 1956, any Limited Liability Partnership under the Limited Liability Partnership Act, 2008, any body corporate incorporated by or under the laws of a country outside India, club, society, trust, trustee, non-governmental organization, panchayat, jamaat, a co-operative society registered under any law relating to co-operative societies, a local authority, political party, and every other artificial juridical person;<sup>9</sup>
- gg. "Pregnancy" includes reproductive choices, intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy<sup>10</sup>;
- hh. "Private establishment" means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify;

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<sup>7</sup> US Justice from Lynching Act and the Manipur Ordinance

<sup>8</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa, Pg 4

<sup>9</sup> HIV Act and Shashi Tharoor Bill

<sup>10</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa, Pg 5

- ii. "Public building" means a Government or private building, used or accessed by the public, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, courts, railway stations or platforms, roadways bus stands or terminus, airports or waterways;
  
- jj. "Place of public accommodation": Each of the following establishments which serves the public is a place of public accommodation:
  - (i) Any inn, hotel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
  - (ii) Any restaurant, cafeteria, lunchroom, lunch counter, mess, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any petrol station;
  - (iii) Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
  - (iv) Any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.<sup>11</sup>
  
- kk. "Political opinion" means any person or persons holding political belief, ideas opinion, thoughts, in accordance with their conscience;
  
- ll. "Protected characteristics" are-
  - (i) caste, race, ethnicity, descent, sex, sexual orientation, gender identity, gender expression, tribe, nationality, disability, marital status, pregnancy, health (including HIV / AIDS status), occupation, political opinion and belief, linguistic identity, place of birth, age, migration, religion, refugee status, socio-economic status, occupation, food preference or any combination of these characteristics;
  - (ii) Any other characteristic where discrimination based on such characteristic causes or perpetuates systemic disadvantage, undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (i) and is notified by the Equality Commission as a protected characteristic.

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<sup>11</sup> US Civil Rights Act

- mm. “Race” means any person who belongs to an ethnic group that shares common physical attributes comprising a comprehensive class of persons with a common descent or place of origin<sup>12</sup>;
- nn. “Reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons related to protected characteristics the enjoyment or exercise of rights equally with others;
- oo. “Refugee” means persons who are forced to flee their country or are unable to return to their country of nationality based on a well-founded fear of being subjected to violence, genocide and/ or persecution on grounds of race religion, nationality, political opinion or membership to any social group<sup>13</sup>;
- pp. “Religion” means individuals and groups having faith in recognized or unrecognized sects within any religion, the religion of an individual's parent, an individual's religion before or after a conversion or reconversion, atheism and agnosticism<sup>14</sup>;
- qq. “Segregation” means any use of force, coercion or manipulation, or the threat thereof with the objective of preventing a person from interacting with, relating to, marrying, eating with, living with, socializing with, visiting, working with, or contracting with another because of a protected characteristic. <sup>15</sup>
- rr. “Sex” refers to a set of biological attributes primarily associated with physical and physiological features including chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. Sex includes:
- (i) gender;
  - (ii) a sex stereotype;
  - (iii) sex characteristics, including intersex traits.
- ss. “Sexual orientation” means a person’s capacity for sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or

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<sup>12</sup>Modified version of the definition of “Race” found in Black’s Law Dictionary, 10th Edition, pp 1423 where “Race” is defined as “An ethnical stock; a great division of mankind having in common certain distinguishing physical peculiarities constituting a comprehensive class appearing or appearing to be derived from a distinct primitive source. A tribal or national stock, a division or subdivision of one of the great racial stocks of mankind distinguishes by minor peculiarities. Descent.”

<sup>13</sup><https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

<sup>14</sup> Borrowed from Shashi Tharoor’s bill and modified.

<sup>15</sup> Shashi Tharoor’s Bill.

more than one gender and includes homosexuality, heterosexuality, bisexuality or any other sexual orientation;<sup>16</sup>

- tt. “Socio-economic status” means a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low income, homelessness, or lack of or low-level educational qualifications<sup>17</sup>;
- uu. “Tribe” includes Schedule Tribes recognized in Article 342 and Sixth Schedule of the Constitution and indigenous tribes under the Fifth Schedule for Central India and any tribe, including nomadic tribes;<sup>18</sup>
- vv. “Victimization” means subjecting or threatening to subject a person or anyone associated with a person, to any detriment or adverse effect for:
  - (i) Making a complaint before a relevant authority asserting one’s rights under this Act; or
  - (ii) Initiating any proceedings against another person under this Act; or
  - (iii) Assisting or providing support to another person in making a complaint and asserting their rights under this Act; or
  - (iv) Refusing to engage in prohibited conduct under Chapter II of this Act; or
  - (v) Seeking protection under this Act; or
  - (vi) Providing evidence in a proceeding or inquiry before a relevant authority under this Act; or
  - (vii) Making an allegation concerning contraventions of this Act; or
  - (viii) Seeking information in relation to compliance with this Act; or
  - (ix) Carrying out any functions in relation to implementing this Act.
- xx. “Workplace” includes –
  - (i) Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society
  - (ii) Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

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<sup>16</sup> Yogyakarta Principles

<sup>17</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, South Africa

<sup>18</sup><https://www.tribal.nic.in/FRA/data/LandandGovernanceunderFifthSchedule.pdf>

- (iii) Hospitals or nursing homes;
- (iv) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) A dwelling place or a house;

## **CHAPTER II**

### **Prohibited Conduct**

#### **3. Prohibition of Discrimination**

Neither the State nor any person may discriminate against any person directly or indirectly, or discriminate on any of the protected characteristics.

##### **Direct and Indirect Discrimination**

- (1) Direct discrimination shall be deemed to occur where any person is treated less favourably than another is, has been or would be treated in a comparable situation, due to any of the protected characteristics.<sup>19</sup> It also includes detrimental acts or omissions on the basis of protected characteristics where there is no comparable similar situation.

*Illustration: An employer refuses to interview a candidate because she belongs to a scheduled caste. This is direct discrimination based on caste.*

- (2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons with any of the protected characteristics at a particular disadvantage or would have a disproportionately negative impact on them.

*Illustrations.— 1. An employer pays part-time workers at a lower hourly rate than full-time workers, for doing the same work. A majority of part-time workers in his establishment are women but a majority of full-time workers are men. This is prima facie indirect discrimination in relation to sex.*

##### **Multiple and Intersectional Discrimination<sup>20</sup>**

- (3) Multiple discrimination is a situation where a person can experience discrimination on two or several grounds. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable. Multiple and intersectional discrimination amounts to compounded or

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<sup>19</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>

<sup>20</sup> S. Fredman - <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2016/07/Intersectional-discrimination-in-EU-gender-equality-and-non-discrimination-law.pdf>

aggravated discrimination and shall entitle the complainant to claim additional damages, protection measures and any special remedies.

**Discrimination by Association**

- (4) Discrimination by association is discrimination against persons on the basis of their association with a person with one or more protected characteristic.

*Illustration: - The mother of a child with a disability may be discriminated against by a potential employer who fears that she may be a less engaged or available worker because of her child;*

**Systemic or Structural Discrimination**

- (5) Structural or systemic discrimination is reflected in hidden or overt patterns of institutional behaviour, cultural traditions and social norms and/or rules that discriminate against members with any protected characteristics.

**4. Affirmative Action, Burden of Proof and Motive**

- (1) Affirmative action measures including reservation or any positive measures designed to protect or advance persons or categories of persons disadvantaged by any of the protected characteristics shall not constitute discrimination under this Bill.
- (2) Burden of Proof: If the Complainant makes out a prima facie case of discrimination, the burden of proof would be on the Respondent to prove that the discrimination did not take place as alleged or that the conduct is not based on one or more grounds;
- (3) In determining whether any act or omission constitutes discrimination, the following factors shall be considered irrelevant- <sup>21</sup>
- a. The motive of the person engaging in conduct that constitutes direct discrimination; or
  - b. Whether a person is aware that the conduct in question amounts to direct discrimination or adversely affected the other party; or
  - c. The consent of a person or group to allow themselves to be subjected to any conduct that constitutes discrimination.

**5. Prohibition of Hate Speech**

Subject to the proviso in section 8, no person may publish, propagate, advocate or communicate words, images or any speech or expression, including audio-visual or digital representation, that could reasonably be construed to demonstrate a clear intention to:

- a. Be hurtful
- b. Be harmful or to incite harm
- c. Promote or propagate hatred

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<sup>21</sup>Borrowed from Section 8 (2) of the Victoria Act.

against persons or groups with any of the protected characteristics.

Provided that *bona fide* engagement in artistic creativity; academic, scientific or critical enquiry; and fair and accurate reporting in public interest is not precluded by this section.

## **6. Prohibition of Harassment**

- (1) No person may subject any person to harassment.
- (2) In determining whether any conduct amounts to harassment, it shall be taken from the point of a view of a reasonable person having the protected characteristics who has been harassed and in light of relevant historical and social context.

## **7. Prohibition of dissemination and publication of information that unfairly discriminates<sup>22</sup>**

No person may

- a. Disseminate or broadcast any information including audio, visual or digital productions
- b. publish or display any material

that could reasonably be construed or reasonably be understood to demonstrate a clear intention to discriminate against any person or groups with one or more protected characteristics;

Provided that *bona fide* engagement in artistic creativity, academic, scientific or critical enquiry and fair and accurate reporting in public interest is not precluded by this section.

## **8. Segregation and Boycott**

Neither the State nor any person shall engage in any conduct, action or omission that constitutes segregation or boycott against persons or groups on one or more of the protected characteristics.

## **9. Prohibition and the Offence of Lynching**

- (1) No person or group shall engage in any conduct that constitutes lynching under this Act.
- (2) Whoever commits an act of lynching,-<sup>23</sup>
  - a. If the act results in causing hurt to the victim, persons found guilty of lynching shall be punished with imprisonment for a term up to seven years, or a fine up to Rupees one lakh, or both;
  - b. If the act results in causing grievous injury to the victim, persons found guilty shall be punished with rigorous imprisonment for a term up to seven years, or a fine up to Rupees three lakhs, or both; and

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<sup>22</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (South Africa).

<sup>23</sup> Manipur Ordinance 2018

- c. If the act results in the death of the victim, persons found guilty of lynching shall be punished with imprisonment for life, or a fine up to Rupees five lakhs, or both.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person who knows or has reasonable cause to believe that an act of lynching is being planned or carried out by any group of persons shall immediately report such act to the local police station.<sup>24</sup>

## **10. Victimization**

Neither the State nor any person shall engage in any conduct that constitutes victimization.

## **CHAPTER III Prohibition of Discrimination in Certain Areas**

### **11. Employment**

- (1) It shall be an unlawful employment practice for an employer –
- a. To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment, because of any of the protected characteristics;
  - b. To limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of any of the protected characteristics;
  - c. To allocate work to any person or group in a manner that perpetuates stereotypes, stigma or is discriminatory because of one or more protected characteristics without giving due consideration to such person's choice.
- (2) Employment agencies: It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his or her protected characteristics or to classify or refer for employment any individual on the basis of his or her protected characteristics;
- (3) Labour organization / Trade Union Practices: It shall be an unlawful employment practice for a trade union or a labour organization-
- a. To exclude or to expel from its membership, or otherwise to discriminate against, any individual on the ground of any protected characteristic.
  - b. To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or

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<sup>24</sup> Borrowed the mandatory reporting standard established under Section 19 (1) POCSO Act, 2012

would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of any protected characteristic; or

- c. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) Training programs:

It shall be an unlawful employment practice for any employer, labour organization, organization controlling apprenticeship or other training or retraining, including in-service training programs to discriminate against any individual because of his or her protected characteristics in admission to, or employment in, any program established to provide apprenticeship or other training due to any protected characteristics;

(5) Exceptions: Notwithstanding any other provision of this sub-section (1),

- a. It shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, to classify its membership or to classify or refer for employment any individual, or for an employer, or organization controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of any of the protected characteristics where such ground is a *bona fide* occupational qualification reasonably necessary for the normal operation of that particular business or enterprise,
- b. It shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion or linguistic minority if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion or linguistic minority.
- c. It shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a *bona fide* seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of any of the protected characteristics;
- d. It shall not be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of any of the protected characteristics.

(6) Anti-Discrimination Policies

- a. All establishments having more than 20 employees shall ensure that they have an “Anti-discrimination Policy” in place, which is published and implemented.
- b. All establishments having more than 20 employees shall ensure that they have an “Anti-discrimination Complaints Committee” in place to address complaints of discrimination at the workplace against persons with protected characteristics. The Anti-Discrimination Committee shall consist of persons with different protected characteristics who comprise at least half the total strength of the Committee;
- c. All establishments having more than 20 employees shall make provisions for regular training to sensitize all employees on issues of anti-discrimination and diversity promotion practices.

## **12. Education**

(1) An educational authority must not discriminate against a person on any of the protected characteristics:

- a. In deciding who should be admitted as a student; or
- b. By refusing, or failing to accept, the person's application for admission as a student; or
- c. In the terms on which the authority admits the person as a student;
- d. By denying or limiting access to any benefit provided by the authority; or
- e. By expelling the student; or
- f. By disclosing the identity of students with one or more protected characteristics; or
- g. By subjecting the student to any other detriment.

(2) Reasonable Accommodation

Every educational authority must make reasonable adjustments for person with a disability that he or she requires in order to participate in or continue to participate in or derive or continue to derive any substantial benefit from an educational program of an educational authority.

In determining whether an adjustment is reasonable, all relevant facts and circumstances must be considered, including—

- a. The nature of his or her disability;
- b. The nature of the adjustment required to accommodate the person’s disability;
- c. The effect on the person’s ability to:
  - i. Achieve learning outcomes
  - ii. Participate in courses or programs
  - iii. Work independently;
- d. The effect on the educational authority, staff, other students or any other person making the adjustment.

(3) Exceptions

- a. An educational authority that operates an educational institution or program wholly or mainly for students of a particular sex, gender, religion, age or age group or students with a general or particular disability may exclude from that institution or program,

people who are not of the particular sex, religious belief, age or age group, provided however that transgender and intersex persons who identify with the gender / sex to which the institution caters to are not denied admission;

- b. An educational authority may select students for an educational program on the basis of an admission scheme that has a minimum qualifying age.
- (4) All educational institutions shall-
- a. Ensure that all staff and students have equal access to the institution's amenities and infrastructure; and
  - b. Take active steps to end any form of segregation in the classroom, cafeteria or other spaces in the premises by drafting and publishing a policy prohibiting segregation; and
  - c. Ensure that all students and staff with protected characteristics are treated equally; and
  - d. Adopt effective measures to progressively realize the rights of persons with disabilities as mandated under Chapter III of the Rights of Persons with Disabilities Act, 2016; and
  - e. Specifically, in the case of transgender persons, all educational institutions shall ensure that they are allowed to use toilets of their choice that is in line with the gender that they identify with; and
  - f. Ensure that no form of gender control shall be imposed on persons with protected characteristics on grounds of gender identity or sexual orientation. In this regard, the educational institution shall review its existing policies on employment and admission and ensure that they do not disadvantage persons with the aforementioned protected characteristics; and
  - g. All educational institutions shall ensure that both staff and students undergo regular sensitivity trainings to promote better access for all and a discrimination-free environment; and
  - h. All educational institutions shall draft and publish an "Anti-Discrimination Policy" that is applicable to all students and staff members who are part of such institution; and
  - i. All educational institutions shall establish an "Anti-Discrimination Committee" to address complaints of discrimination. The Anti-Discrimination Committee shall consist of persons with different protected characteristics who comprise at least half the total strength of the committee; and
  - j. All undergraduate, post-graduate and doctoral degree programmes recognized by the University Grants Commissions shall include one mandatory course on anti-discrimination as part of the regular curriculum regardless of the field of study; and
  - k. In the case of curriculum for schools, the National Council for Educational Research and Training shall ensure that topics on discrimination, diversity and civic education are made a mandatory part of all social sciences textbooks from class 5. Further, all

curricular boards including the Central Board of Secondary Education, Council for Indian School Certificate Examinations, State Boards and international curricular boards such as the General Certificate for Secondary Education and the International Baccalaureate shall mandate all affiliate schools to include curricula on discrimination, diversity and civic education.; and

- l. The National Council for Teacher Education shall conduct regular pre-service and in-service teacher training certification courses on anti-discrimination and promotion of equality for all teachers. A substantial part of such teacher training programmes shall also be aimed at equipping teachers tackle discriminatory attitudes among children in the classroom; and
- m. The University Grants Commission shall also administer in-service and pre-service teacher training courses on anti-discrimination and promotion of equality; and
- n. All private or public universities established under separate Central or State legislations shall ensure that their courses teach mandatory courses in anti-discrimination and equality regardless of the field of study.

### **13. Prohibition against discrimination or segregation in places of public accommodation**

- (1) Equal access: All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on any of the protected characteristics.
- (2) The provisions of this sub-section shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (1).

### **14. Healthcare**

- (1) No person or groups with one or more protected characteristics shall be denied access to emergency healthcare at any public or private healthcare institution.
- (2) No person or group with one or more protected characteristics shall be denied medical treatment, hospitalization, diagnostic tests, medical procedures, consultations or any other allied services related to healthcare.
- (3) No public or private healthcare institution, medical professional, or any other person performing any allied functions shall breach patient confidentiality by revealing any information about the person's health condition, prescribed medication and any other ancillary information to any third party, unless such information is required by a court of law or in the case of a medical emergency concerning such person.
- (4) No public or private healthcare institution, medical professionals, paramedical persons or any other person engaged in an ancillary function shall deny any woman, transgender person or person with disability the right to choose in the case of pregnancy, or safe abortion. Further, no person shall be discriminated against, or denied access to prenatal and neonatal care or the right to safe abortion on the grounds of marital status.

Provided that the healthcare professional shall act in the best interest of the patient in the case of a medical emergency or complication arising out of pregnancy that poses a threat to the person's life.

- (5) No health insurance provider, including private health insurance providers recognised by the Insurance Regulatory and Development Authority of India, shall discriminate against any person or group with relevant protected characteristics while formulating insurance policies for such groups, determining insurance premiums, or providing coverage. Insurance providers are duty-bound to ensure adequate and timely insurance coverage, affordable premiums, ease in filing claims and disbursement of funds related to the claim for persons with relevant characteristics.
- (6) The Insurance Regulatory and Development Authority of India shall make adequate changes to its consumer protection policies to ensure that persons with relevant protected characteristics are provided access to insurance policies and adequate coverage under insurance policies immediately upon purchase of a health insurance policy.
- (7) No insurance provider shall deny coverage or reject an insurance claim on grounds of age, pre-existing health condition, gender identity, disability or pregnancy. Further, no transgender person shall be denied insurance coverage for medical treatment related to Sex Reassignment Surgery or Hormone Replacement Therapy.
- (8) The appropriate government shall take progressive measures to promote access to healthcare services, health insurance, obtaining medication and other allied health services for all persons or groups with protected characteristics.
- (9) All public and private healthcare establishments that employ more than 20 people shall ensure that they establish and publish an "Anti-Discrimination Policy". The Anti-Discrimination Committee shall consist of persons with different protected characteristics who comprise at least half the total strength of the committee.
- (10) All abovementioned establishments shall constitute an "Anti-Discrimination Committee" to tackle issues of discrimination faced by employees or persons who access healthcare.

## **15. Housing and Land**

- (1) No person with one or more protected characteristics shall be denied or face discontinuation of, or unfair discrimination with regard to the right to reside, purchase, rent, or otherwise occupy any property;<sup>25</sup>
- (2) No person with one or more protected characteristics shall be evicted because of one or more protected characteristics, from any kind of accommodation, housing or housing related services by the landlord, agent of the landlord or by any other occupant of the same building.

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<sup>25</sup> The HIV/AIDS Prevention and Control Act 2017

- (3) No person shall perform any discriminatory advertisement practices in sale or renting any residential property such as disclosing preferences, limitation or discrimination based on any protected categories of persons.
- (4) Where there are more than 20 units within one housing colony, society or other form collective living, a “Residents Welfare Association” shall be constituted. The resident welfare association shall establish an “Anti- Discrimination Committee” that investigates the issues regarding discrimination in respective premises. The Anti-Discrimination Committee shall consist of persons with different protected characteristics who comprise at least half the total strength of the committee
- (5) The Residents Welfare Associations shall ensure that no person or group with protected characteristics faces discriminatory treatment in the context of services provided to residents in that premises or barriers to accessing their property.

## **CHAPTER IV**

### **Duty to Promote Equality**

#### **16. Duty of the State to promote equality<sup>26</sup>**

- (1) The State has a duty and responsibility to promote and achieve equality.
- (2) The State must, where necessary and with the assistance of relevant constitutional and statutory institutions:
  - a. Develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality;
  - b. Take measures to develop and implement programmes in order to promote equality;
  - c. Develop action plans to address direct and indirect discrimination, hate speech, harassment or lynching;
  - d. Where necessary enact further legislation that seeks to promote equality in line with the objectives of this Act;
  - e. Develop codes of practice in order to promote equality and develop guidelines and code in respect of reasonable accommodation;
  - f. Provide assistance, advice and training on issues of equality;
  - g. Develop appropriate internal mechanisms for organisations, both public and private, to deal with complaints of unfair discrimination, hate speech or harassment;
  - h. Conduct information and awareness campaigns to popularize this Act.

#### **17. Public sector equality duty<sup>27</sup>**

All appropriate authorities must, in the exercise of its functions, have due regard to the need to—

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<sup>26</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa

<sup>27</sup> UK Equality Act

- a. Eliminate discrimination, harassment, victimization and any other conduct that is prohibited by or under this Act;
- b. Remove or minimize disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- c. Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- d. Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

18. Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

### **19. Diversity Index**

- (1) Every public authority, educational institutions and employers with more than twenty employees shall calculate, publish and report a Diversity Index to the Central Equality Commission, in a form prescribed by the Central Equality Commission.
- (2) The first Diversity Index under sub-section (1) shall be prepared within three years of the enactment of this Act and shall be prepared annually thereafter.
- (3) Every public authority shall undertake due measures to progressively realize diversification in all aspects of their work and at all levels of their workforce.
- (4) Every private person performing public function shall undertake measures to progressively realize diversification in the aspects of their work and work force related to the discharge of their public function.

20. All public authorities while making a rule, regulation, policy or strategic decision shall give due regard to eliminate all forms of discrimination to promote equality and diversity. In particular, public authorities shall ensure that take progressive steps in ensuring the elimination of intersectional discrimination.

### **21. Responsibility of persons operating in the public domain<sup>28</sup>**

All persons who are directly or indirectly contracting with the State or carrying on a public function have an obligation to promote equality by:

- a. Adopting equality plans, codes, regulatory mechanisms and other appropriate measures for the effective promotion of equality in the spheres of their operation;
- b. Enforcing and monitoring the implementation of the equality plans, codes and regulatory mechanisms;
- c. Submitting regular reports to the relevant monitoring authorities or institutions as provided under the Rules.

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<sup>28</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa

## **22. Social commitment by all persons to promote equality<sup>29</sup>**

- (1) All persons, non-governmental organisations, community-based organisations and traditional institutions must promote equality in their relationships with other bodies and in their public activities.
- (2) Appropriate authorities shall introduce regulations requiring companies, firms, partnerships, clubs, sports organisations, corporate entities and associations, where appropriate and in a manner proportional to their size and resources, to prepare equality plans and abide by prescribed codes of practice or report to a body or institution on measures to promote equality.

## **23. Reasonable Accommodation**

- (1) All private and public institutions that perform public functions, provide public services such as education or healthcare shall be duty-bound to make reasonable accommodation in the case of persons or groups with one or more protected characteristics in accordance with Chapter IV of the Bill.
- (2) Any other specifically named actors shall ensure that they comply with the provisions of this Bill in making reasonable accommodation for persons with one or more protected characteristics.

## **CHAPTER V Equality Courts**

### **24. Constitution of Equality Courts**

- (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of District Courts as “Equality Courts” at the District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:
- (2) Such Equality Court shall exercise all jurisdiction exercisable by the District Court under any law for the time being in force in respect of any proceedings under this Act.
- (3) The State Government shall, after consultation with the High Court, by notification, extend, reduce or alter the local limits of the area to which the jurisdiction of the Equality Court extends.
- (4) Every judge presiding over a designated Equality Court shall receive prior training on this Act, in the manner as may be prescribed under the Rules.

### **25. Rules and Court proceedings**

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<sup>29</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa

- (1) The provisions of the Code of Civil Procedure, 1908, civil rules of practice, and all rules and regulations connected therewith shall govern the conduct of proceedings of the Equality Court.
- (2) All proceedings before the court must be conducted in open court, except in so far as the Equality Court may direct otherwise in the interests of the administration of justice.

## **26. Institution of proceedings**

- (1) Any person alleging direct discrimination, indirect discrimination, intersectional discrimination, harassment, segregation, boycott, hate speech, violation of the prohibition on dissemination or any other action in terms of or under this Act, may institute proceedings in the Equality Court in the manner as prescribed in the Code of Civil Procedure, 1908.
- (2) The term “Any person” in sub-section (1) includes -
  - (a) any person acting in their own interest;
  - (b) any person acting on behalf of another person who cannot act in their own name;
  - (c) any person acting as a member of, or in the interests of, a group or class of persons;
  - (d) any association acting in the interests of its members;
  - (e) any person acting in the public interest;
  - (f) the Equality Commission.
- (3) The Equality Courts shall hear and dispose of any proceedings initiated under this Act in accordance with sub-section (1) within a period of six months from the date of on which the proceedings are initiated.

## **27. Powers and functions of the Equality Court**

- (1) The Equality Court may, at any stage of the proceedings, call upon the Equality Commission to provide assistance with investigation and inquiry into the incident and submit a report within a period of 15 days.
- (2) The Equality Court may, during or after the proceedings, refer its concerns in any proceedings before it, particularly in the case of persistent contravention or failure to comply with the provisions of this Act, to the Equality Commission for further investigation in accordance with the procedure prescribed under Chapter VI.

## **28. Remedies**

- (1) In any proceeding initiated under the provisions of this Act, the Equality Court may make one or more appropriate orders or decree, as the case may be, including:
  - (a) Declaratory relief;
  - (b) Settlement between the parties;
  - (c) Payment of damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering;
  - (d) Restraining unfair discriminatory practices or directing that specific steps be taken to stop the practice of direct discrimination, indirect discrimination, intersectional

- discrimination, harassment, segregation, boycott, hate speech, violation of the prohibition on dissemination as alleged;
- (e) Making specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
  - (f) Implementation of special measures to address the practice of direct discrimination, indirect discrimination, intersectional discrimination, harassment, segregation, boycott, hate speech, violation of the prohibition on dissemination;
  - (g) Issuance of an unconditional apology;
  - (h) Requiring the respondent to undergo an audit of specific policies or practices as determined by the Equality Court and make regular progress reports to the Equality Commission regarding the implementation of such order;
  - (i) An appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
  - (j) An order directing reasonable accommodation of a group or class of persons by the respondent;
  - (k) Providing affirmative action in the nature of the court-ordered implementation of measures
  - (l) Interim relief, including injunctive relief restraining the defendant from violating the provisions of this Act;
  - (m) An appropriate order of costs against any party to the proceedings;
  - (n) An order to comply with any provision of the Act.
- (2) All temporary injunctions and interlocutory orders passed by an Equality Court shall be deemed to be orders under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 and any application in relation to the breach of such an order shall be treated as an application made under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908.
- (3) Any order made under sub-section (1) of this provision may be executed by the plaintiff in accordance with Order XXI of the Code of Civil Procedure, 1908.

## **29. Appeals**

- (1) Subject to sub-sections (3) and (4) of this provision, any person aggrieved by an order made by an Equality Court in terms of or under this Act may, within a period of ninety days from the date of the order, approach the High Court having jurisdiction in appeal, in the manner as prescribed under the Code of Civil Procedure, 1908.
- (2) A person aggrieved by a judgment, decree or final order of the High Court made under sub-section (1) may approach the Supreme Court on appeal within a period of sixty days from the date of the order, in the manner as prescribed under the Code of Civil Procedure, 1908.
- (3) Notwithstanding anything contained in any other law for the time being in force, no appeal or review shall be entertained against an order for settlement made under clause (l) of sub-section (1) of Section 31.

## **CHAPTER VI.**

### **The Equality Commission**

#### **30. Constitution of an Equality Commission<sup>30</sup>**

- (1) The Central Government shall constitute a body to be known as the Equality Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act.
- (2) The Equality Commission shall consist of:
  - (a) A Chairperson who has been a former Judge of the Supreme Court;
  - (b) The Chairperson of the National Human Rights Commission;
  - (c) The Chairperson of the National Commission for Women, Minorities, Scheduled Castes, Scheduled Tribes and Chief Commissioner for persons with disabilities;
  - (d) An expert in the field of human rights, especially the right to equality;
  - (e) Two representatives of civil society to be appointed from amongst persons having knowledge of, or experience in, matters relating to human rights particularly right to equality of Transgender/LGBTQ communities;

#### **31. Appointment of Chairperson and other Members**

- (1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal.
- (2) 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 Lok Sabha;
  - c. Ministers in-charge of the Ministry of Home/Social Justice and Empowerment ministries in the Government of India;
  - d. Leader of the Opposition in the Lok Sabha;
  - e. Leader of the Opposition in the Rajya Sabha;

#### **32. Resignation and removal of Chairperson and Members**

- (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign from his/her office.
- (2) 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—

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<sup>30</sup> The idea for the constitution of the Commission is taken from the National Human Rights Commission

- a. is adjudged an insolvent; or
- b. engages during his term of office in any paid employment outside the duties of his/her office; or
- c. is unfit to continue in office by reason of non-functioning of mind or body; or
- d. is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude;

### 33. Term of office of Chairperson and Members

- (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until she/he attains the age of seventy;
- (2) A person appointed as a Member shall hold office for a term of five years from the date on which she/he enters upon her/his office and shall be eligible for re-appointment for another term but not more than two terms;
- (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;
- (4) 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, authorized in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes her/his duties;
- (5) The members of the Equality Commission shall be entitled to such remuneration, allowances and other benefits as may be determined by the Parliament of India;

### 34. Powers and Functions of the Equality Commission<sup>31</sup>

The Equality Commission shall:

- (a) Advise the Government of India about the operation of this Act;
- (b) Audit laws, policies and practices with a view to eliminating discrimination;
- (c) Have the power to inquire, *suo motu* or on a petition presented to it by a victim/ survivor or any person on his behalf [or on a direction or order of any court], into complaint of violation of human rights particularly right to equality or abetment thereof; or negligence in the prevention of such violation;
- (d) Intervene in any proceeding involving any allegation of violation of any of the provisions of this Act, pending before a court with the approval of such court;
- (e) Direct the appropriate State authorities or institutions to assist complainants in instituting proceedings in court if assistance is needed, especially complainants who are disadvantaged;
- (f) Conduct investigations into cases and make recommendations as directed by the Court regarding any violation of this Act, particularly cases of discrimination, harassment or hate speech;
- (g) Conduct visits for the study of any cases of discrimination and make recommendations thereon to the Government;

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<sup>31</sup> With modification and changes for our bill borrowed from Protection of Human Rights Act <https://indiacode.nic.in/bitstream/123456789/1970/1/199410.pdf>

- (h) Review the safeguards provided by or under this Act for the protection of right to equality and other human rights and recommend measures for their effective implementation;
- (i) Study treaties and other international instruments on equality rights and make recommendations for their effective implementation;
- (j) Undertake and promote research in the field of intersectional discrimination based on protected characteristics;
- (k) Spread equality rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights under this act through publications, the media, seminars and other available means;
- (l) Identify, *suo motu* or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act;
- (m) Review the factors that inhibit the enjoyment of rights of persons on protected characteristics under this Act and recommend appropriate remedial measures;
- (n) To make such technical studies as are appropriate to effectuate the purposes and policies of this Act and to make the results of such studies available to the public;
- (o) To carry out educational and outreach activities including dissemination of information in different languages;
- (p) To cooperate with other departments and agencies in performance of educational or promotional activities and outreach activities;
- (q) Monitor utilisation of funds disbursed by the Central Government for the benefit of persons with protected characteristics;
- (r) Such other functions as it may consider necessary for the promotion of equality.

### **35. Powers of the Civil Court**

The Equality Commission shall, for the purpose of discharging its functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 in respect of the following matters, namely-

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents

### **36. Equality Education, Technical Assistance, and Training Revolving Fund**

- (1) There shall be established by the Central Government a revolving fund to be known as the “Equality Education, Technical Assistance, and Training Fund” (hereinafter in this subsection referred to as the “Fund”) and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to this Act and other laws administered by the Equality Commission.

- (2) Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.
- (3) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

### **37. Conduct of the business of the Commission**

- (1) The principal office of the Commission shall be in New Delhi but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary.
- (2) The Central Equality Commission shall conduct its business and proceedings at its meetings as it deems fit<sup>32</sup>;
- (3) The Commission shall submit an annual report to the Parliament and to the Prime Minister detailing all the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.
- (4) It may at any time submit special reports on any matter, which, in her/his opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report;

## **CHAPTER VII**

### **Miscellaneous**

- 38.** The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act.
- 39.** The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.
- 40.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time in force or in any instrument having effect by virtue of any law other than this Act.

### **41. Power to make Rules**

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<sup>32</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa

- (1) The Appropriate Government may, by notification, make guidelines consistent with this Act and Rules thereunder, generally to carry out the provisions of this Act.
- (2) 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 session 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; however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (3) Every rule made by the State Government under sub-section (1), 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.
- (4) 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.
- (5) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.



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