

Draft dated 8th January 2021

The
Equality (Prohibition of
Discrimination) Bill
2021





CENTRE FOR
LAW & POLICY
RESEARCH

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The Equality (Prohibition of Discrimination) Bill 2021

An Act to promote equality and to prevent and prohibit all forms of discrimination against persons on the grounds of caste, race, ethnicity, descent, colour, 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 disadvantage, food preference or any combination of these characteristics 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 behaviour, 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;

The Constitution has provisions for equality and non-discrimination in Part III of the constitution. These guarantees however are not enough as they are limited in the categories of people they address and do not impose equality obligations on private actors.

The Hon'ble Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, 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 (Prohibition of Discrimination) Act 2021
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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

- (1) "Adverse effect" includes the withholding of a benefit given to others, including minimal, symbolic or nominal adverse effects or detriments;
- (2) "Age" includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, whether lower or advanced age;
- (3) "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;
- (4) "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;
- (5) "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;

- (6) "Caste" includes all castes and includes the Scheduled Castes recognized under Article 341 of the Constitution;
- (7) "Child" means any person below the age of eighteen years;
- (8) "Colour" means the colour, shade, complexion, pigmentation or tone of the skin of an individual;
- (9) "Complainant" means any person who alleges any contravention of this Act and who institutes proceedings in terms of the Act;
- (10) "Contract worker" means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he/she is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but excludes anyone who is a full-time employee;
- (11) "Descent" includes group of persons who share a common ancestry, consanguinity, kinship or lineage;
- (12) "Disability" means persons living with physical and psycho-social disabilities as well as mental illness as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 and the Mental Health Care Act 2016;
- (13) "Discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage, or denies reasonable accommodation, or promotes negative stereotypes, or withholds benefits, opportunities and advantages from any person on one or more protected characteristics;
- (14) "Educational institution" means places/centres where educational instructions are imparted and would include schools, kindergartens, playschools, tuition centres, colleges, universities and institutions of higher learning, whether recognized or not recognized by the appropriate Government and including private, aided and public institutions;
- (15) "Employee" means any person (including an apprentice) employed on earnings in any workplace 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;
- (16) "Establishment" includes a Government establishment and private establishment;
- (17) "Employer" means –

- a. 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;
 - b. In any workplace not covered under sub-clause (a), 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;
 - c. In relation to a workplace covered under sub-clauses (a) and (b), the person discharging contractual obligations with respect to his or her employees;
 - d. 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;
- (18)“Ethnicity” means ethnic minority groups with a common kinship network, distinct national or cultural tradition in a given geographical area;
- (19)“Gender identity” means an individual’s assertion of their gender, which may or may not correspond with their 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, mannerisms, speech, behavioural patterns, names and personal references.
- (20)"Government establishment" means a corporation established by or under a Central Act or State Act, an authority or a body owned or controlled or aided by the Government, a local authority or a Government company as defined in the Companies Act, 2013 and includes a Department of the Government;
- (21)“Gender affirming treatment” means any process (or part of a process) for the purpose of reaffirming the person's gender and includes hormone therapy, surgery, psychotherapy and any other form of treatment
- (22)“Harassment” means any unwanted physical, verbal or non-verbal conduct which demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to:
- a. sex, gender identity or sexual orientation; or
 - b. 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.

- (23)“Health” means the state of complete physical, mental, and social well-being and not merely the absence of disease and infirmity;
- (24)“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;
- (25)“Home-based worker” means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;
- (26)“Housing” means residential accommodation;
- (27)“Independent contractor” refers to a person providing a service or goods on a contractual basis to another, and when –
- a. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, and,
 - b. The person performs work that is outside the usual course of the hiring entity’s business, and,
 - c. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- (28)“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;
- (29) “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;
- (30) “Linguistic identity” includes any person or group with a distinct language, dialect, or script in a relevant geographical area;
- (31) “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;
- (32)“Lynching” means where two or more persons wilfully 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;
- (33)“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.
- (34)“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;

- (35) “Person” includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or a body of individuals, whether incorporated 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;
- (36) “Political opinion and belief” means any political or philosophical belief that is compatible with the objectives of this Act;
- (37) “Pregnancy” includes reproductive choices, intended pregnancy, potential pregnancy, termination of pregnancy and any condition related to pregnancy;
- (38) “Private establishment” means a company, firm, cooperative or other society, associations, trust, agency, institution, organization, union, factory or such other establishment as the appropriate Government may, by notification, specify;
- (39) “Public authority” includes:
- (i) Any authority or body or institution of self-government established or constituted –
 - (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State-Legislature;
 - (d) by notification issued or order made by the appropriate Government;
 - (ii) Any
 - (a) body owned, controlled or substantially financed;
 - (b) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
 - (iii) registered as a political party under the Representation of People Act, 1951.
- (40) “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;

- (41) “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,
 - (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 movie theatre, 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.
- (42) “Protected characteristics” are –
- (i) caste, race, ethnicity, descent, colour, 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 disadvantage, food preference or any combination of these characteristics;
 - (ii) Any other characteristic where discrimination based on such characteristic or identity causes or perpetuates systemic disadvantage, or undermines human dignity or adversely affects the equal enjoyment of a person’s rights and freedoms that is notified by the Equality Commission as a protected characteristic.
- (43) “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;
- (44) “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;
- (45) “Refugee” means a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as

a result of such events, is unable or, owing to such fear, is unwilling to return to it; or who is an asylum seeker;

- (46) “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;
- (47) “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;
- (48) “Self-employed worker” means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized sector;
- (49) “Sex” refers to a set of anatomical attributes primarily associated with physical 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.

ww.“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 more than one gender and includes homosexuality, heterosexuality, bisexuality or any other sexual orientation;

“Socio-economic disadvantage” 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;

- (50) “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;
- (51) “Unorganized sector” means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever including domestic work and where the enterprise employs workers, the number of such workers is less than ten;
- (52) “Unorganized worker” means a home-based worker or a self-employed worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule I to this Act;
- (53) “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;

(54) "Workplace" includes –

- (i) Any department, organization, 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 organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (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 directly or indirectly against any person based on any of the protected characteristics.

(1) Direct Discrimination

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. It also includes detrimental acts or omissions on the basis of protected characteristics where there is no comparable similar situation.

Illustrations:–

- a) *An employer refuses to interview a candidate because she belongs to a Scheduled Caste. This is direct discrimination based on caste.*

- b) *An employer dismisses a female employee because of her pregnancy. This is direct discrimination based on pregnancy despite there being no male comparator to show relatively less favorable treatment.*

(2) Indirect discrimination

Indirect discrimination shall be deemed to occur where an apparently neutral conduct, 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, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Illustration:— A private school with neutral admission criteria does not provide accessibility features such as ramps, braille scripts, special educators or hearing aids to ensure that children with disabilities have access, or an opportunity to study in the school. Such an act would constitute prima facie indirect discrimination against learners with disabilities.

(3) Multiple and Intersectional Discrimination

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

Illustrations:-

- a) *A Muslim gay man who has been refused a house for rent by his landlord because of his religion and also subject to the housing society rules which do not allow for occupation by same sex couples faces multiple discrimination based on sexual orientation and religion.*
- b) *A lesbian woman might claim that she has been subject to harassment at the workplace both because she is a woman and because she is gay. This is intersectional discrimination because both grounds of discrimination on gender identity and sexual orientation are inseparable and difficult to distinguish.*

(4) Discrimination by Association

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

Illustration:- A woman who has a child with a severe disability is not hired after disclosing this in an interview, on the assumption that she will take frequent leave and will not be serious about her work. This is discrimination by association on the basis of disability.

(5) Systemic or Structural Discrimination

Systemic or structural discrimination is reflected in hidden or overt patterns of institutional behaviour, institutional norms and/or rules, cultural traditions and social norms and/or rules that discriminate against members with any protected characteristics.

Illustrations: -

- a) *An insurance company providing medical cover to employees in a company refuses to extend the medical cover to lesbian and gay employees as they are presumed to be positive carriers of HIV AIDS and other sexually transmitted diseases (STDs), without proof of the same. This is structural discrimination based on sexual orientation.*
- b) *A large multinational company pays women employees lower than men for the same work and has different designations for women workers, and women employees are never promoted beyond a certain level in the company which consists of thousands of employees nationally. This is structural discrimination based on gender identity.*

1. 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-
 - a. The motive of the person engaging in conduct that constitutes direct, indirect, multiple or intersectional discrimination, or discrimination by association;
 - 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.

2. Prohibition of Hate Speech

Subject to the proviso in this section, no person may publish, display, propagate, disseminate, advocate or communicate words either spoken or written, signs, images or any speech or expression, including audio-visual or digital representation, with the intention to cause fear or alarm against any person or persons based on any protected characteristic, incites hatred against any person or a group with a protected characteristic; or promotes the idea of oppressing or causing disadvantage against such a group or person with a protected characteristic or is intended to offend, verbally abuse, insult or humiliate a person or group with a protected characteristic.

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.

3. Prohibition of Harassment

No person shall subject any person to harassment on any of the protected characteristics.

4. 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.

Illustrations:-

1. *A belongs to the Dalit community and B is from an upper caste, and they are from the same village and have eloped and got married. The Khap panchayat of the village resolves and orders for the everyone in the village not to interact with the family of A and to completely exclude them from all village access to public facilities. This is segregation on the basis of caste.*
2. *The management of a school encourages students to exclude in their interaction a fellow classmate who is HIV positive by perpetuating wrong notions of catching the disease such as by eating food together. This is boycott on the basis of health status.*

5. Prohibition and the Offence of Lynching

- a. No person or group shall engage in any conduct that constitutes lynching under this Act.
- b. Whoever commits an act of lynching : -
 - a. where 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, and a fine up to Rupees one lakh;
 - b. where the act results in causing grievous hurt to the victim, persons found guilty of lynching shall be punished with imprisonment for a term up to ten years, and a fine up to Rupees three lakhs;
 - c. where the act results in the death of the victim, persons found guilty shall be punished with rigorous imprisonment for life and a fine up to Rupees five lakhs
- c. 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.
- d. All complaints of offences of lynching will be filed with the jurisdictional police station in accordance with the Code of Criminal Procedure 1973.

6. Victimization

Neither the State nor any person shall engage in any conduct that constitutes victimization against any person based on any of the protected characteristics.

CHAPTER III

Prohibition of Discrimination in Certain Areas

7. Employment

- (1) It shall be unlawful 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, promotion, 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.

- (2) Discrimination against contract workers: It shall be unlawful for a principal employer to discriminate against a contract worker on the ground of any one or more of the protected characteristics:
 - a. in the terms or conditions on which the principal employer allows the contract worker to work;
 - b. by not allowing the contract worker to work or continue to work;
 - c. by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
 - d. by subjecting the contract worker to any other detriment.

- (3) 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;

- (4) 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 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 based on any of the protected characteristics.

- (5) 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;

- (6) Reasonable Accommodation:

Every employer must make reasonable adjustments for person with one or more protected characteristics that he or she requires in order to participate effectively and on equal terms with others in the workplace.

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

- a. The need to respect dignity of the person concerned, including the need to respect their autonomy, comfort and confidentiality;
- b. The need to respond to a person’s individualized needs;
- c. The need to allow for integration and full participation of the person concerned in the activities of the workplace;
- d. The nature and extent of the effect on the employer, staff, other employees or any other person making the adjustment.

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

- a. It shall not be an unlawful employment practice for an employer to hire an individual or for an organization controlling apprenticeship or other training 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 religious 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 the said minority religious or linguistic association, or society.
- 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 any discrimination 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 and is reasonably related to job performance.

(8) Anti-Discrimination Policies

- a. All establishments having more than 20 employees shall ensure that they have an “Anti-discrimination Policy” in accordance of the provisions of this Act, 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.
- c. The Anti-discrimination Committee will be composed of the following members, to

be nominated by the employer namely:

- (i) The Anti-Discrimination Committee shall consist of persons with different protected characteristics and provided that at least one half the total members of the Committee shall be women.
 - (ii) The Committee shall be headed by a Presiding Officer who shall be a woman employed at a senior level in the establishment.
 - (iii) Not less than two members from amongst the employees preferably committed to the cause of discrimination or who have had experience in social work or have legal knowledge;
 - (iv) One External member i.e. member from amongst non-governmental organizations or associations who is experienced in dealing with matters of discrimination related to one or more groups with protected characteristics, or has substantial experience in working on issues of human rights.
- d. The Anti-Discrimination Committee may receive complaints in writing from the complainant, or somebody on behalf of the complainant;
 - e. The Anti-Discrimination Committee shall maintain records of all complaints filed, investigation reports and recommendations made in each case, and shall submit an annual report on the complaints handled, sensitization programmes conducted and reviews of workplace policies conducted to the Equality Commission;
 - f. Upon receiving a complaint, the Anti-Discrimination Committee shall convene to inquire into the complaint, hear both parties, summon required evidence and make a recommendation of required action to the employer or the management at the workplace;
 - g. 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;
 - h. The Anti-Discrimination Committee at establishments shall review all organizational policies and guidelines, codes of conduct and recommend revisions to all workplace related policies and diversification measures in consonance with this Bill within one year of the enactment of this Bill.

(9) Prohibition of Discrimination at the site of work – Neither the State nor any person shall engage in any conduct prohibited under this Act against any employee, independent contractor, unorganised worker, contract worker or any other person engaged in any occupation, profession, trade or business based on any of the protected characteristics.

8. **Goods, services and facilities** – It shall be unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of any one or more of the protected characteristics:
- a. by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
 - b. in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
 - c. in the manner in which the first-mentioned person provides the other person with those

goods or services or makes those facilities available to the other person.

9. Education

- (1) It shall be unlawful for an educational institution to discriminate against any student on any of the protected characteristics including:
 - 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. In the provision of scholarships, prizes or awards;
 - e. By denying or limiting access to any benefit provided by the authority; or
 - f. By expelling the student; or
 - g. By disclosing the identity of students with one or more protected characteristics; or
 - h. By subjecting the student to any other detriment.

- (2) Reasonable Accommodation

Every educational institution must make reasonable adjustments for persons with one or more protected characteristics that he or she requires in order to participate effectively and on equal terms with others or derive any substantial benefit from an educational program of an educational institution.

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

 - a. The need to respect dignity of the person concerned, including the need to respect their autonomy, comfort and confidentiality;
 - b. The nature of the adjustment required to accommodate the person's disability and individualized needs;
 - c. The effect on the person's ability to achieve learning outcomes and participate in courses or programs and in the activities of the educational institution;
 - d. The nature and extent of the effect on the educational institution, 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, linguistic identity, 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, linguistic identity, 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 institution 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 with the gender that they identify with;
- f. Ensure that no form of gender control shall be imposed on persons with protected characteristics on grounds of gender identity or sexual orientation;
- 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;
- h. All educational institutions shall draft and publish an “Anti-Discrimination Policy” in accordance with the provisions of the Act that is applicable to all students and staff members who are part of such institution;
- i. All educational institutions shall establish an “Anti-Discrimination Committee” to address complaints of discrimination as per the provisions of Section 10(8);
- 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;
- 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.

10. Prohibition against discrimination in public buildings and public places

- (1) **Universal access:** All persons shall be entitled to the full and equal access to and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation or public buildings, 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).

11. Healthcare

- (1) No person shall be denied access to emergency healthcare at any public or private healthcare institution based on one or more protected characteristics;
- (2) No person shall be denied medical treatment, hospitalization, diagnostic tests, medical procedures, consultations or any other allied services related to healthcare due to any protected characteristics;
- (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 person with disability who is pregnant shall be forced to undergo any procedure meant to terminate the pregnancy, unless the pregnancy poses a severe threat to the person's life.
- (6) 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.
- (7) A group health plan and a health insurance issuer offering group or individual health insurance coverage may not establish rules restricting eligibility of any individual to enrol under the terms of the plan or coverage based on any of the protected characteristics, including health status-related factors and disability, in relation to the individual or a dependent of the individual;
- (8) 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.
- (9) 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 Gender affirmative procedures or therapy.

- (10) 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.
- (11) All public and private healthcare establishments that employ more than 20 people shall ensure that they establish and publish an “Anti-Discrimination Policy” and constitute an “Anti-Discrimination Committee” as per Section 10(8).

12. Housing and Land

- (1) No person shall be denied or face discontinuation of, or discrimination with regard to the right to reside, purchase, rent, or otherwise occupy any property due to her protected characteristics;
- (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.
- (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, apartment complex, society or any other form of 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.
- (5) The Anti-Discrimination Committee shall consist of persons with different protected characteristics and provided that at least one half the total members of the Committee shall be women.
- (6) The Committee shall be headed by a Presiding Officer who shall be a woman and shall have one external member who is experienced in dealing with matters of discrimination related to one or more groups with protected characteristics, or has substantial experience in working on issues of human rights or non-governmental organizations;
- (7) The Anti-Discrimination Committee may receive complaints in writing from the complainant, or somebody on behalf of the complainant;
- (8) Upon receiving a complaint, the Anti-Discrimination Committee shall convene to inquire into the complaint, hear both parties, summon required evidence and make a recommendation of required action to the Resident Welfare Association;
- (9) 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

13. Duty of the State to promote equality¹

- (1) The State has a duty and responsibility to promote and achieve equality.

¹ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 - South Africa

- (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 direct and indirect discrimination, hate speech or harassment;
 - h. Conduct information and awareness campaigns to popularize this Act;
 - i. Review existing law and policy to ensure that discriminatory provisions are replaced with provisions that promote equality in consonance with this Bill.

14. Public sector equality duty

All public authorities and all persons carrying on a public function must, in the exercise of its functions, have the duty to take steps to —

- a. Eliminate discrimination, harassment, segregation and boycott, victimization and any other conduct that is prohibited by or under this Act;
 - b. Remove or minimize disadvantages suffered by persons with the protected characteristics and take steps to meet the needs of persons with protected characteristics;
 - c. 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.
15. Compliance with the duties in this Chapter 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.

16. Diversity Index

- a. Diversity Index is a statistic that measures the diversity of an institution by measuring the number of members with any of the protected characteristics that are part of it. The Diversity Index will be calculated in accordance with the guidelines given by the Equality Commission.
- b. Every public authority, educational institution and employer with more than twenty employees shall calculate, publish and report a Diversity Index every two years to the Equality Commission, in a form prescribed by the Equality Commission in a way that does not violate the privacy of the individuals.
- c. The first Diversity Index under sub-section (1) shall be prepared within two years of the enactment of this Act.
- d. Every public authority shall undertake due measures to progressively realize diversification in all aspects of their work and at all levels of their workforce.

- e. 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.

17. 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 and reduction of socio-economic inequalities.

18. Responsibility of persons operating in the public domain

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. Conducting equality audits and submitting regular reports to the relevant monitoring authorities or institutions as provided under the Rules.

19. Social commitment by all persons to promote equality

- (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.

20. 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

21. 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.

22. Rules and Court proceedings

- (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.

23. Institution of proceedings

- (1) Any person alleging direct discrimination, indirect discrimination, intersectional discrimination, multiple discrimination, discrimination by association, systemic or structural discrimination, harassment, segregation, boycott, hate speech or non-compliance with the performance of the public sector equality duty 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.

24. Powers and functions of the Equality Court

- (1) The Equality Court may, at any stage of the proceedings, call upon the Equality Commission to aid 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.

25. 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 discriminatory practices or directing that specific steps be taken to stop the practice of direct discrimination, indirect discrimination, intersectional discrimination, multiple discrimination, discrimination by association, systemic or structural discrimination, harassment, segregation, boycott, hate speech 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, multiple discrimination, discrimination by association, systemic or structural discrimination, harassment, segregation, boycott, hate speech;
 - g. 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;
 - h. An appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
 - i. An order directing reasonable accommodation of a group or class of persons by the respondent;
 - j. Providing affirmative action in the nature of the court-ordered implementation of measures
 - k. Interim relief, including injunctive relief restraining the defendant from violating the provisions of this Act;
 - l. An appropriate order of costs against any party to the proceedings;
 - m. 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.

26. Appeals

- (1) Subject to sub-sections (3) 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 (b) of sub-section (1) of Section 27.

CHAPTER VI.
The Equality Commission

27. Constitution of an Equality Commission

- (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, National Council for Transgender Persons and Chief Commissioner for Persons with Disabilities;
 - d. An expert in the field of human rights, especially the right to equality;
 - e. Five representatives of civil society to be appointed from amongst persons having knowledge of, or and at least five years of experience working in the area of promoting the rights of persons and groups with protected characteristics.

28. 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 largest Opposition Party in the Lok Sabha;
 - e. Leader of the largest Opposition Party in the Rajya Sabha;
 - f. Two representatives of Civil Society (including Activists) who are persons having knowledge of, or and at least five years of experience working in the area of promoting the rights of persons and groups with protected characteristics.

29. 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—
 - 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;

30. 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;

31. Powers and Functions of the Equality Commission

The Equality Commission shall:

- (1) Advise the Government of India about the operation of this Act;
- (2) Audit laws, policies and practices with a view to eliminating discrimination;
- (3) 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;
- (4) 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;
- (5) Direct the appropriate State authorities or institutions to assist complainants in instituting proceedings in court if assistance is needed, especially complainants who are disadvantaged;
- (6) 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;
- (7) Conduct visits for the study of any cases of discrimination and make recommendations thereon to the Government;
- (8) 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;
- (9) Study treaties and other international instruments on equality rights and make recommendations for their effective implementation;
- (10) Undertake and promote research in the field of intersectional discrimination based on protected characteristics;

- (11) 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;
- (12) Identify, *suo motu* or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act, and make recommendations for their amendment to the Appropriate Government;
- (13) Review the factors that inhibit the enjoyment of rights of persons on protected characteristics under this Act and recommend appropriate remedial measures;
- (14) Review and notify any additional protected characteristics to be covered under this Act where discrimination based on such characteristic or identity causes or perpetuates systemic disadvantage, or undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms.
- (15) 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;
- (16) To carry out educational and outreach activities including dissemination of information in different languages;
- (17) To cooperate with other departments and agencies in performance of educational or promotional activities and outreach activities;
- (18) Monitor utilisation of funds disbursed by the Central Government for the benefit of persons with protected characteristics;
- (19) Such other functions as it may consider necessary for the promotion of equality.

32. 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-

- (1) summoning and enforcing the attendance of witnesses;
- (2) requiring the discovery and production of any documents;
- (3) requisitioning any public record or copy thereof from any court or office;
- (4) receiving evidence on affidavits; and
- (5) issuing commissions for the examination of witnesses or documents

33. Equality Education, Technical Assistance, Training Revolving Fund and implementation

- a. 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 and shall be administered by the Equality Commission.
- b. The Fund shall be available to and will be managed by the Equality Commission for such purposes.
- c. The Equality 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.
- d. All State Governments shall with the assistance of the Equality Commission, frame and implement a plan to effectively implement the provisions of the Act and notify the same in the Official Gazette. It should specify the role and responsibility of various departments and their officers at different levels, the role and responsibility of local bodies and non-

government organisations.

34. 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;
- (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;
- (5) The functioning of the Equality Commission, including minutes of meetings conducted shall fall under the purview of the Right to Information Act, 2005. The Equality Commission shall ensure that a public information officer is appointed to respond to queries under the Right to Information Act, 2005.

CHAPTER VII

Miscellaneous

35. The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the Equality Commission as may be necessary for carrying out the purposes of this Act.
36. The provisions of this Act shall be in addition to, and not derogation of, any other law for the time being in force.
37. 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.

38. Power to make Rules

- a. The Appropriate Government may, by notification, make guidelines consistent with this Act and Rules thereunder, generally to carry out the provisions of this Act.
- b. 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.
- c. 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.
- d. 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.

- e. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

SCHEDULE I
[See Section 2(aaa)]

| Sr. No. | Name of the Act |
|---------|--|
| 1 | The Workmen's Compensation Act, 1923 (Act 8 of 1923) |
| 2 | The Industrial Disputes Act, 1947 (Act 14 of 1947) |
| 3 | The Employees' State Insurance Act, 1948 (Act 34 of 1948) |
| 4 | The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952) |
| 5 | The Maternity Benefit Act, 1961 (Act 53 of 1961) |
| 6 | The Payment of Gratuity Act, 1972 (Act 39 of 1972) |



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