

**Bill No. 289 of 2016**

ANTI-DISCRIMINATION AND EQUALITY BILL, 2016

By

DR. SHASHI THAROOR, M.P.

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CLAUSES

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**Bill No. 289 of 2016**

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A

BILL

*to ensure equality to every citizen of the country by providing protection against all forms of social discrimination.*

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5      **1.** (1) This Act may be called the Anti-Discrimination and Equality Act, 2016.  
(2) It extends to the whole of India.

Short title and extent.

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it relates to any of the matters enumerated in List I or List III of the Seventh Schedule to the Constitution and as applicable to that State.

Definitions.

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

(i) the letters "A" and "B" shall have the same meaning as assigned to them under section 14;

(ii) "adverse effect" includes the withholding of a benefit given to others including minimal, symbolic or nominal adverse effects or detriments;

(iii) "affirmative action" means adoption of a conduct, law, policy, criterion, practice or structure which is designed to extend benefits, privileges or preferences to one or more disadvantaged groups, as proportionate means to end discrimination;

(iv) "aggravated discrimination" means engaging in or attempting to engage in boycott, segregation or discriminatory violence;

(v) "aggrieved person" means any person who alleges that he has been subjected to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimization;

(vi) "Central Equality Commission" means the Central Equality Commission constituted under section 17;

(vii) "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 includes non-commercial service-users such as patients and (primary, secondary, vocational or university) students;

(viii) "employee" includes, but is not limited to, a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied, whether skilled, semi-skilled or unskilled, whether working in an administrative or managerial capacity or not, whether working full-time or part-time and including a co-worker, a contract worker, probationer, trainee, apprentice or one called by any other such name;

(ix) "employer" includes, but is not limited to, a contractor and a sub-contractor, and any person who is responsible, whether ultimately or at an intermediate level, for the management, supervision or control of a workplace or discharging contractual obligations with respect to his employees;

(x) "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;

(xi) "member of civil society" means any citizen of India who is not a judge of the Supreme Court, High Court or the subordinate courts, a Member of Parliament or State Legislative Assembly, an officer of the Central Government or a State Government, a member of a political party or of any organization, union or institution formally or informally allied with a political party or holds any office of profit except by way of employment in a public University;

(xii) "person" includes, but is not limited to, an individual, company, business, authority, institution, organization, venture, undertaking, enterprises, institution, establishment, *panchayat*, personal law board, senior citizen's council, *jamaat*, political party, club, society, trustee, non-Governmental organization, department, office, branch or unit, whether Government or private, whether incorporated or registered or not, whether formal or informal, and whether for a profit motive or not;

(xiii) "private person performing a public function" includes, but is not limited to public contractors, special purpose vehicles formed in relation to public-private partnerships and businesses in receipt of any special subsidy, grant or benefit from any Government that is not ordinarily available to other businesses;

5 (xiv) "public authority" means any authority, person, board, department, body or institution that is:

(a) established or constituted by or under the Constitution, or by any law made by Parliament, or by any law made by the legislature of a State, or

10 (b) owned, controlled or substantially financed, directly or indirectly, by funds provided by the Central Government or a State Government, or

43 of 1951. (c) registered as a political party under the Representation of People Act, 1951;

15 (xv) "religion and belief" includes, but is not limited to, recognized or unrecognized sects within a religion, the religion of an individual's parent, an individual's religion before or after a conversion or reconversion, atheism and agnosticism and any other political or philosophical belief that is compatible with the objectives of this Act;

20 (xvi) "service provider" means any person who is a provider of any service, including hospitality, entertainment, education (including primary, secondary, vocational and university education), healthcare, advertising, insurance, banking, consultancy, commercial, voluntary, charitable, professional, vocational, legal, transport, cultural, religious, industrial and financial services;

(xvii) "State Equality Commission " means a State Equality Commission constituted under section 25;

25 (xviii) "tenant" includes, but is not limited to any person who is a sub-tenant, lessee, paying guest, occupier or resident in relation to a property owned by another;

30 (xix) "trader" includes, but is not limited to, any person who is a seller, distributor, retailer, letter, supplier, provider, manufacturer, packer, shopkeeper, retailer or wholesaler of any goods; and

(xx) "workplace" includes, but is not limited to,

35 (a) 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 Central Government or a State Government or a local authority or a Government company or a corporation or a co-operative society; or

40 (b) 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; or

(c) hospitals or nursing homes; or

45 (d) any sports institute, stadium, sports complex or competition or games venue, whether residential or not and used for training, sports or other activities relating thereto;

(e) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

## CHAPTER II

## PROTECTED CHARACTERISTICS, PROHIBITED ACTS AND POSITIVE DUTIES

- Protected characteristic.
- 3.** A "protected characteristic" in relation to a citizen of India means—
- (i) caste, race, ethnicity, descent, sex, gender identity, pregnancy, sexual orientation, religion and belief, tribe, disability, linguistic identity, HIV status, nationality, marital status, food preference, skin tone, place of residence, place of birth or age; or 5
- (ii) any other personal characteristic which,—
- (a) is either outside a person's effective control, or constitutes a fundamental choice, or both; and
- (b) defines at least one group that suffers or is in danger of suffering 10  
widespread and substantial disadvantage, when compared with other groups defined by the same characteristic; or
- (iii) a combination of any of the above.
- Protected group.
- 4.** (1) for the purposes of this Act, a "protected group" means—
- (i) a group of persons defined by a protected characteristic including group of 15  
person who are, or are likely to become pregnant or group of persons living with disability or a sub-group thereof:
- Provided that, a protected group shall be deemed to include persons who are (correctly or incorrectly) perceived to be members of that group and persons who are associated with the members of that group and may or may not possess any formal 20  
recognition, social cohesion or a distinct cultural identity.
- Illustrations.—* 1. *Men constitute a protected group defined by the protected characteristic sex. So do women.*
2. *Muslim women are a protected group defined by a combination of two protected characteristics: sex and religion.* 25
- Disadvantaged group.
- 5.** For the purposes of this Act, "disadvantaged group" means, with respect to—
- (i) caste: the scheduled castes recognized under article 341 of the Constitution, or any other group that has been or continues to be a subject of the practice of untouchability;
- (ii) race, ethnicity or descent: any racial and ethnic minorities in the relevant 30  
geographical area, including persons who originate from North-Eastern States of India, persons of Tibetan origin and persons of African origin;
- (iii) sex: women and inter-sex persons;
- (iv) gender identity: transgendered persons, *hijras* and gender-non-conforming 35  
persons;
- (v) pregnancy: those who are or are likely to become pregnant;
- (vi) sexual orientation: gays, lesbians, bisexuals, *kothis* and other sexual minorities;
- (vii) religion and belief: religious minorities in the relevant geographical area, 40  
atheists and agnostics;
- (viii) tribe: the Scheduled Tribes recognized in article 342 of the Constitution;
- (ix) disability: persons living with any disability;
- (x) linguistic identity: linguistic minorities in the relevant geographical area;

(xi) HIV-status: persons living with HIV/AIDS;

(xii) nationality; foreign nationals and naturalized citizens;

(xiii) marital status: unmarried persons, cohabiting couples, same-sex couples, separated persons, divorced persons, widows;

5 (xiv) food preference: persons who are not vegetarians;

(xv) skin tone: persons with a darker skin tone;

(xvi) place of birth or residence: persons born in or ordinarily resident in a rural area;

(xvii) age: persons over the age of sixty-five, persons under the age of eighteen;

10 (xviii) an analogous protected characteristic under section 3, any group suffering widespread and substantial social, economic, political, cultural, or educational disadvantage and notified by the Central Equality Commission as a disadvantaged group under section 23:

15 Provided that no notification shall be issued without a recommendation of an Inquiry Committee set up by the Central Equality Commission under sub-section (3) of section 23.

(xix) a sub-set of or a combination of any of the above.

**6. (1)** Every conduct, rule, regulation, policy, criterion, practice or structure shall be *prima facie* directly discriminatory if: Direct discrimination.

20 (i) motivated by prejudice against or is intended to harm, injure, cause a detriment to or adversely affect a protected group; or

(ii) based on stereotypical assumptions about members of a protected group; or

(iii) a reference to a protected characteristic, whether on its own or in combination with any other criteria; or

25 (iv) applied to a member or members of a protected group but not to a member or members of any other group defined by the same protected characteristic.

(v) applied generally,

(a) it adversely affects or would adversely affect all members of a protected group to whom it is or would be applied, and

30 (b) does not or would not adversely affect all members of any other group defined by the same protected characteristic to whom it is or could be applied.

*Illustrations.— 1. An employer refuses to interview a candidate because he belongs to a scheduled caste. This is direct discrimination in relation to caste.*

35 *2. An employer fires a female employee after her marriage because he makes a stereotypical assumption that married women do not make efficient workers. This is prima facie direct discrimination in relation to sex.*

40 *3. A hospital hires only female nurses based on the stereotypical assumption that women are more caring than men. This is prima facie direct discrimination in relation to sex.*

45 *4. A housing society advertisement offers apartments on rent to married couples. This is prima facie direct discrimination in relation to marital status.*

5. A university has a policy of conducting random security checks of student hostel rooms. In practice, this policy is only invoked to check rooms of Kashmiri students. This is *prima facie* direct discrimination in relation to ethnicity, descent and linguistic identity. 5

(2) Subject to the other provisions of this section, *prima facie* direct discrimination constitutes direct discrimination unless the respondent shows that the conduct, rule, regulation, policy, criterion, practice or structure,—

(i) is a proportionate means of achieving a legitimate objective; and

(ii) was adopted in a good faith. 10

*Illustrations.—* 1. A drama company is putting up a production of the *Ramayana*. It advertises for male actors to apply for the role of Rama and female actors for that of Sita. This is a proportionate means of achieving a legitimate objective.

2. A restaurant owner refuses to hire a Muslim waiter because its patrons prefer to be served by non-Muslims. Catering to the prejudices of others is not a legitimate objective. 15

Provided that financial gain or the preservation of a culture, ethos or tradition, except when and to the extent that such preservation is in pursuit of the rights guaranteed under articles 29 and 30 of the Constitution, shall not be regarded as a direct discrimination of the purposes of this section: 20

Provided further that no conduct, rule, regulation, policy, criterion, practice or structure shall be direct discrimination if its objective can be substantially achieved through non-discriminatory or less discriminatory means:

Provided also that a finding of direct discrimination under clause (ii) of sub-section (1) shall not be disputed merely by showing that the relevant stereotypical assumption is supported by statistics. 25

Indirect discrimination. 7. (1) Every conduct, rule, regulation, policy, criterion, practice or structure is *prima facie* indirectly discriminatory if it does not amount to direct discrimination; and

(i) either puts or is likely to put members of a protected group at a special detriment when compared with members of any other group defined by the same protected characteristic; or 30

(ii) has or is likely to have a disproportionate adverse effect on members of a protected group when compared with members of any other group defined by the same protected characteristic. 35

*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. 40

2. A housing society only lets apartments to persons with a Masters degree. In the relevant geographical area, persons belonging to the Scheduled Castes are substantially less likely to have Masters degrees compared with others. This is *prima facie* indirect discrimination in relation to caste. 45

3. A milk delivery company has a policy of not supplying milk to butchers. Most butchers in that locality are Muslims. This is *prima facie* indirect discrimination in relation to religion.



(2) For the purposes of sub-section (1), *prima facie* indirect discrimination shall constitute indirect discrimination unless the respondent shows that the conduct, rule, regulation, policy, criterion, practice or structure—

(i) is a proportionate means of achieving a legitimate objective, and

5 (ii) was adopted in good faith:

Provided that no conduct, rule, regulation, policy, criterion, practice or structure shall be indirect discrimination if its objective is likely to be substantially achieved through non-discriminatory or less discriminatory means.

10 **8.** (1) Every communication or conduct related to a protected characteristic directed at a person belonging to a protected group that has the purpose of creating an intimidating, hostile or bullying environment for such person shall be deemed to be harassment in respect of that person. Harassment.

*Illustrations.— 1. A schoolboy, who refuses to play sports, is called a 'sissy' by his teacher. This is harassment in relation to gender identity.*

15 *2. A co-worker sprinkles 'holy water' on a machine previously operated by a colleague belonging to a scheduled caste to 'purify' it. This is harassment in relation to caste.*

(2) For the purposes of this section, every communication or conduct creating an intimidating, hostile or bullying environment for a person belonging to a protected group shall be determined from the point of view of a reasonable person belonging to that protected group and in the light of relevant historical or social context.

20 **9.** Every 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 members of a protected group shall be deemed to be boycott for the purposes of this Act. Boycott.

*Illustration.— 1. A khap panchayat orders villagers to stop all interaction with the families of a couple who belong to different religions. This is boycott in relation to religion-cum-marital status.*

30 **10.** (1) Every 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, becoming friends with, visiting, working with, or contracting with another because of a protected characteristic shall be deemed to be segregation for the purposes of this Act. Segregation.

35 *Illustrations.— 1. An employer operates separate canteens for upper-caste Hindus and all others.*

*2. A Hindu boy is threatened with violence unless he breaks off his romantic relationship with a Muslim girl.*

40 *3. An adult consenting couple, walking hand in hand in a park, is set upon by a mob which, on discovering that they are not married, forces the woman to tie a rakhi on the man's wrist.*

*4. A young woman has her movements restricted and monitored by her family because she is seen at a cinema hall in the company of a young man belonging to the same gotra as herself.*

45 of 1860. (2) Whoever files a false complaint under section 366 of the Indian Penal Code, 1860 or any other law in force in order to frustrate or with the likely effect of frustrating a person's free choice with respect to any friendship, relationship, cohabitation or marriage shall be deemed to have committed the offence of segregation under this Act.

(3) For the purposes of sub-section (2), a reliable statement made by the person falsely alleged to have been kidnapped or otherwise affected shall be sufficient, although not necessary, to prove that the complaint was false, even if he later retracts from that statement.

Discriminatory violence. **11.** (1) Any abetment, support, encouragement, facilitation or use of violence or coercion that is targeted against members of a protected group shall be deemed to be a discriminatory violence for the purpose of this Act. 5

*Illustrations.—*

1. A woman belonging to a scheduled caste is stripped and paraded around a village. This is an act of discriminatory violence in relation to caste and sex. 10

(2) For the purpose of this Act, a public servant who has the duty or ability to protect the public from violence or coercion fails to make or causes or attempts to cause others to fail to make sufficient efforts to protect members of a protected group from such violence or coercion shall be deemed to have committed discriminatory violence. 15

Victimisation. **12.** (1) Any subjection of a person or his association to a detriment or adverse effect who has done or intends to do, or is believed to have done, or is believed to be likely to do, or is believed to have the intention of doing any of the following shall be deemed to be victimisation for the purposes of this Act:

(i) bringing a complaint under this Act, or 20

(ii) seeking a protection order under this Act, or

(iii) giving evidence in a proceeding or inquiry under this Act, or

(iv) making an allegation concerning the contravention of this Act, or

(v) seeking information in relation to this Act, or

(vi) doing any act in connection with the purposes or provisions of this Act, or 25

(vii) providing financial, logistical or other support to anyone who has done or intends to do act of victimisation.

Diversification. **13.** (1) Adoption of a conduct, law, policy, criterion, practice or structure that is designed to increase or encourage the participation of a disadvantaged group that, in relation to its population in the relevant geographical area, is substantially excluded from its activities by appropriate Government, local authorities and private persons performing public functions, through reasonable means shall be deemed to be diversification for the purpose of this Act. 30

(2) For the purpose of sub-section (1), whether a disadvantaged group suffers substantial exclusion shall be determined by calculating the Diversity Index in accordance with the formula developed by the Central Equality Commission under section 23. 35

*Explanation.—* For the purpose of this section "reasonable means of diversification" include, but are not limited to, adoption of or provision for scholarships, targeted advertising, special pre-recruitment or post-recruitment training, tie-breaker rules and reasonable incentives for third parties to benefit the substantially excluded disadvantaged group or any other measure approved by the Central Equality Commission. 40

14. (1) In this Act, A and B shall be construed broadly, and in accordance with the table below: Anti-Discrimination duty.

A	B
Employer	Employees
5 Landlord	Purchaser, Tenant
Trader	Consumer
Service provider	Consumer
Public Authority	Any affected person
10 Private Persons performing public functions	Any persons affected by their public function

(2) A, or a representative of A, shall not directly or indirectly discriminate or use discriminatory violence against, or harass, boycott, segregate or victimise:

- (i) B, or
- (ii) any person who seeks to, or would seeks to, become B, or
- 15 (iii) any person who was B.

(3) In accordance with the guidelines issued by the Central Equality Commission under sub-section (2) of section 23, A, or a representative of A, shall take all reasonable steps to ensure that B is protected from discrimination, harassment, boycott, segregation, discriminatory violence and victimisation by others over whom A has any direct or indirect supervisory, managerial, contractual or other power or control.

(4) The duty under sub-section (2) shall include the duty to institute a readily accessible, independent and well-publicized formal complaints mechanism and the duty to duly investigate and act on any complaints, in accordance with the guidelines issued by the Central Equality Commission under sub-section (2) of section 23.

25 (5) Notwithstanding anything contained under this Act, the following shall not constitute a breach of the anti-discrimination duty:

- (i) diversification or any other form of affirmative action, including collecting information for, calculating or publishing the diversity index, whether mandatorily under sections 15 and 16;
- 30 (ii) providing diversity training under section 15;
- (iii) giving due regard to the need to eliminate discrimination and to promote equality and diversity as defined under section 16; and
- (iv) doing, making, communicating, adopting or instituting in good faith anything mentioned in the Schedule to this Act:

35 Provided that A's group membership, including his membership of the same protected group as B, shall be irrelevant to determine whether A has breached his duty under this Act.

(6) Nothing in this Act shall affects the continued operation of any provision of quotas, reservations or other affirmative action required under any other law.

40 15. (1) Every public authority, landlord or housing society managing over fifty residential units, secondary or tertiary educational institutions, private person performing public functions and employers with more than one hundred employees shall calculate, publish and report their Diversity Index to State Equality Commission, in a form prescribed by the Central Equality Commission. Diversification duty.

(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 realise diversification in the aspects of their work and work force related to the discharge of their public function. 5

(5) While performing diversification duty, sexual, caste, tribal and religious diversification, shall be given priority in policing and public procurement under this Act:

Provided that the diversification measures in any given year may focus on any one or more substantially excluded disadvantaged group. 10

(6) The diversification duty shall be applicable to citizens of India who ordinarily reside in the relevant geographical area.

(7) All public authorities shall, in consultation with the Central or a State Equality Commission, as the case may be, conduct regular training sessions for their personnel to sensitize them the importance of equality, anti-discrimination and diversity and to educate them for carrying out the purposes of this Act. 15

43 of 1954. (8) The training courses for members of the police force, armed forces deployed in civilian areas, Magistrates in charge of issuing Protection Orders under this Act, and officers in charge of implementing the Special Marriage Act, 1954 shall be conducted within two years of the enactment of this Act, and be conducted on an annual basis thereafter. 20

(9) The training courses for other public servants who deal directly with members of the public shall within three years of the enactment of this Act.

(10) The Central or a State Equality Commission may order any public authority to require its personnel to undergo diversity training courses. 25

Due Regard duty. 16. All public authorities while making a rule, regulation, policy or strategic decision shall give due regard to Climitate all forms of discrimination to promote equality and diversity.

CHAPTER III

COMMISSIONS

Central Equality Commission. 17. (1) The Central Government shall, by notification in the Official Gazette, within sixty days of the date of commencement of this Act, constitute a Commission to be known as the Central Equality Commission to exercise the power conferred on, and to perform the functions and duties assigned to it under this Act. 30

(2) The Central Equality Commission shall consist of—

(a) a Chief Equality Commissioner, who has been a judge of the Supreme Court or the Chief Justice of a High Court, or a senior advocate for at least seven years in Supreme Court; 35

(b) two Equality Commissioners, who shall be a person of eminence, integrity and expertise in the area of anti-discrimination and equality in realizing the to be appointed by Central Government in such manner as may be prescribed, including— 40

(i) one member belonging to the academic community, having a doctoral degree in the social sciences and an academic position at a university:

Provided that the academic member shall be granted leave without prejudice by their employing universities for the duration of their term of appointment or until the date of their retirement from their academic appointment, whichever is earlier; and 45

**(ii) one member of the civil society who has worked for organizations committed in advancing the purpose of this Act:**

Provided that at least one of the Equality Commissioners shall be a woman.

5 (c) The Chairperson of the National Commission for Scheduled Castes, member, *ex-officio*;

(d) the Chairperson of the National Commission for Scheduled Tribes, member, *ex-officio*;

(e) the Chairperson of the National Commission for Backward Classes, member, *ex-officio*;

10 (f) the Chairperson of the National Commission for Women, member, *ex-officio*;

(g) the Chairperson of the National Commission for Minorities, member, *ex-officio*;

(h) the Chairperson of the National Commission for the Protection of Child Rights, member, *ex-officio*;

15 (i) the Chief Commissioner for Persons with Disabilities, members, *ex-officio*;

(j) the National Commissioner for Linguistic Minorities, member, *ex-officio*; and

(k) the Chairperson of the National Human Rights Commission, member, *ex-officio*.

(3) The decision of the Chief Equality Commissioner and the two Equality Commissioners by consensus shall be deemed to be the decision of the Central Equality Commission.

20 **18. (1)** The Chief Equality Commissioner and Equality Commissioners shall be appointed by the President by warrant under his hand and seal.

Appointment of the Chief Equality Commissioner and Equality Commissioners.

(2) The Chief Equality Commissioner and the Equality Commissioners shall be appointed on the recommendation of a Selection Committee consisting of the following:

25 (i) minister in-charge of Ministry of Law and Justice Government of India;

(ii) Leader of Opposition in the House of the People;

(iii) Chief Justice of India, and

**(iv) two members of civil society to be nominated by the other three members of the Committee.**

30 (3) The general superintendence, direction and management of the affairs of the Central Equality Commission shall vest in the Chief Equality Commissioner, who, assisted by the Equality Commissioners, may exercise all such powers, perform all such functions and duties and do all such acts and things which may be exercised, performed or done by the Commission autonomously, without being subjected to any control, supervision or directions by any other authority, including any department of the Government of India or a State Government.

35 (4) The Chief Equality Commissioner or an Equality Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, or be an officer of the Central Government or a State Government, or hold any office of profit except by way of employment in a public university, or be a member of any political party or of any organisation, union or institution formally or informally allied with a political party.

40 (5) The Selection Committee shall, but not later than six months prior to any vacancy due to arise, issue an advertisement for inviting applications from persons, for appointment as Chief Equality Commissioner and Equality Commissioners:

45 Provided that the advertisement shall contain the criteria on the basis of which the Selection Committee shall select the Chief Equality Commissioner and the Equality Commissioners.

Term of office  
of the Central  
Equality  
Commissioner.

**19. (1)** The term of office of the Chief Equality Commissioner and the Equality Commissioners shall be five years from the date on which he enters upon his office or when he attains the age of seventy years or whichever is earlier and shall not be eligible for re-appointment:

Provided that in order to facilitate a staggered renewal of personnel, one of the first set of Equality Commissioners shall be appointed for a term of four years and the other for a term of six years. 5

**(2) The salaries and allowances payable to and other terms and conditions of service of the Chief Equality Commissioner and the Equality Commissioners shall be such as may be prescribed and shall not be varied to their disadvantage after their appointment, and** 10

**(i) for the Chief Equality Commissioner shall be the same as that of the Chief Election Commissioner, and**

**(ii) for an Equality Commissioner shall be the same as that of an Election Commissioner.**

**(3)** An Equality Commissioner shall be eligible for appointment as the Chief Equality Commissioner or a State Chief Equality Commissioner during or after the end of his term, as long as he satisfies requirements specified under this Act. 15

Resignation  
and removal  
of Chief  
Equality  
Commissioners  
and Equality  
Commissioners.

**20. (1)** The Chief Equality Commissioner or an Equality Commissioner may, at any time, by notice given in writing under his hand addressed to the President, resign from his office.

**(2)** The President may, by order, remove from office the Chief Equality Commissioner or an Equality Commissioner, who— 20

**(i)** has been adjudged an insolvent; or

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

**(iii)** has become physically or mentally incapable of performing his duty; 25

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

**(v)** has been convicted of an offence which, in the opinion of the President, involves moral turpitude.

**(3)** Subject to the provisions of sub-section (2), the Chief Equality Commissioner or an Equality Commissioner shall be removed from his office by order of the President only on the ground of proven misbehaviour or incapacity after the Supreme Court on reference being made to it by the President, has, on inquiry, reported that the Chief Equality Commissioner or an Equality Commissioner, as the case may be, be removed. 30

Officers and  
staff of the  
Central  
Equality  
Commission.

**21. (1) The Central Government shall, in consultation with the Chief Equality Commissioner, provide the Chief Equality Commission and the Equality Commissioner with such, officers and employees as may be necessary for the efficient functioning under this Act:** 35

**Provided that any reduction in, officers and employees of the Central Equality Commission shall require a resolution to that effect passed by a majority of the total number of members present and voting in both Houses of Parliament:** 40

**Provided further that at least five officers having expertise shall be made available at all times to the Central Equality Commission, including at least one officer in the rank of a Secretary to the Government of India, who shall act as the Secretary to the Central Equality Commission.**

**(2) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (1) shall be such as may be prescribed.** 45

**(3) In addition to the employees and officers appointed under sub-section (1), the Central Equality Commission may employ, through an open and publicly advertised selection process, ten university graduates preferably in the social sciences and law, for interships for a period of two years.**

5 **(4) The Central Government shall make provision for reasonable official, living and maintenance costs interns employed by the Central Equality Commission under sub-section (3).**

10 **22. The Central Government shall, after due appropriation made by Parliament by law in this behalf provide requisite funds to the Chief Equality Commission for carrying out the purposes of this Act.**

Central Government to provide requisite funds.

**23. (1) Without prejudice to any other function assigned to under this Act, the Central Equality Commission shall—**

Functions of the Central Equality Commission.

(i) eliminate discrimination, harassment, boycott, segregation, discriminatory violence and victimization;

15 (ii) encourage the formulation and adoption of good practice in relation to equality, anti-discrimination and diversity, especially for disadvantaged groups;

(iii) promote awareness and understanding of the rights and duties under this Act;

(iv) assist aggrieved persons in seeking legal remedies provided under this Act;

20 (v) monitor the enforcement of this Act; and

(vi) review, from time to time, the functioning of this Act and make recommendations for its improvement.

**(2) The Central Equality Commission, in consultation with the State Equality Commissions, shall—**

25 (i) issue guidelines for protection from discrimination, harassment, boycott, segregation, victimization, discriminatory violence of B from A or A's representative by sub-section (3) and (4) of section 14, and revise the guidelines, from time to time;

(ii) develop a formula for calculating the diversity index for the purposes of sub-section (2) of section 13;

30 (iii) issue guidelines specifying particular acts amounting to or not amounting to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimization, in specific sectors or in relation to particular protected characteristics;

35 (iv) submit an annual Central Equality Report on the effective implementation of this Act, including the functioning of the Central Equality Commission and the State Equality Commissions to the Central Government and shall publish it on its website on the date of submission of the report:

Provided that the Central Government, upon receipt of the Central Equality Report, shall be laid before each House of Parliament:

40 (v) issue guidelines for the provision of diversity training; and

(vi) study treaties and other international instruments concerning the promotion of equality and diversity and the prohibition of discrimination and make recommendations for their effective implementation.

**(3) The Central Equality Commission shall—**

45 (i) constitute an independent Inquiry Committee consisting of five-member to determine, after investigation, whether a group with certain protected characteristics,

**faces widespread and substantial social, economic, political, cultural, or educational disadvantage:**

Provided that the Inquiry Committee shall include at least one member of the Central Equality Commission:

Provided further that in order to constitute a valid recommendation at least four members of the Inquiry Committee shall by consensus agree with the recommendation. 5

(ii) issue notification under clause (xviii) of sub-section (1) of section 5 after the report of the independent Inquiry Committee has been tabled before each House of Parliament:

Provided that the Central Government shall cause the report to be tabled within thirty days of receiving it, or if a House is in recess, within two weeks of the start of its next session before each House of Parliament. 10

(4) The Central Equality Commission shall exercise its powers and duties in a transparent and consultative manner, with a view to advance the purposes of this Act.

Powers of the Central Equality Commission. 24. (1) The Central Equality Commission shall, while inquiring into any matter, seeking any information, facilitating the resolution of any dispute or issuing any order under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908. 15

(2) Without prejudice to any other power or duty specified in this Act, the Central Equality Commission may: 20

(i) approach any court for the enforcement of this Act;

(ii) require any public servant to undergo diversity training;

(iii) take any other reasonable action towards the implementation of this Act;

(iv) conduct equality impact assessments of the activities or composition of any public authority or any private person performing a public function; 25

(v) direct a State Equality Commission to investigate any alleged breach of provisions of this Act.

(3) Without prejudice to its powers under this Act, the Central Equality Commission may seek any information, including information necessary to calculate the Diversity Index and conduct any investigation in relation to the diversification duty or the due regard duty. 30

(4) If the Central Equality Commission investigation reveals a breach of the provisions of this Act, it shall make suitable recommendations to remedy such breach after giving the person or authority in breach a reasonable opportunity of being heard.

(5) The person or authority in breach shall adopt the recommendations made under sub-section (4) or propose an alternative set of remedial measures within two months of date of making such recommendations: 35

Provided that after the expiry of two months from the date of recommendations were received by the person or authority in breach, the Central Equality Commission may reissue the recommendations, including any modifications which it may deem fit, as an order.

State Equality Commission. 25. (1) Every State Government shall, by notification in the Official Gazette, constitute a Commission to be known as the State Equality Commission to exercise the powers conferred on, and to perform the functions and duties assigned to it under this Act. 40

(2) The State Equality Commission shall consist of—

(a) a State Chief Equality Commission, who has been a judge of a High Court, or is or has been a Central Equality Commissioner or a State Equality Commissioner for a period of at least three years; and 45



**(b) four other State Equality Commissioners, who shall be a person of eminence integrity and expertise in the area of anti-discrimination and equality including—**

**(i) at least two legal members, who shall be advocates for least five years in a High Court or the Supreme Court;**

5 **(ii) at least one academic member, have a doctoral degree in the social sciences and an academic position at a university:**

**Provided that the academic member shall be granted leave without prejudice by his or her employing university for the duration of their term of appointment or until the date of their retirement from their academic appointment, whichever is earlier; and**

10 **(iii) at least one member of civil society who has worked for organizations committed in advancing the purposes of this Act:**

Provided that at least one-half of the member of the State Equality Commissioners shall belong to one or more disadvantaged groups:

15 Provided further that at least two State Equality Commissioners shall be women.

(3) The State Equality Commission shall include the Chairperson of the State Human Rights Commission, if any, or his representative as an *ex officio* member.

20 **26. (1)** The State Chief Equality Commissioner and State Equality Commissioners shall be appointed by the Governor by warrant under his hand and seal.

Appointment of the State Chief Equality Commissioner and Equality Commissioners.

(2) The State Chief Equality Commissioner and the State Equality Commissioners shall be appointed on the recommendation of a Selection Committee consisting of:

(i) a member of the Council of Ministers of that State, as nominated by the State Government.

25 (ii) Leader of Opposition in the State Legislative Assembly.

(iii) Chief Justice of the High Court having jurisdiction in the State.

(iv) two members of civil society to be nominated by the other three members of the Committee.

30 (3) The general superintendence, direction and management of the affairs of the State Equality Commission shall vest in the State Chief Equality Commissioner, who, assisted by the State Equality Commissioners, may exercise all such powers, perform all such functions and duties and do all such acts and things which may be exercised, performed or done by the Commission autonomously, without being subjected to any control supervision or directions by any other authority, including any department of the Government of India or a State Government.

40 (4) The State Chief Equality Commissioner or a State Equality Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, or be an officer of the Central or a State Government, or hold any office of profit except by way of employment in a public university, or be a member of any political party or of any organization, union or institution formally or informally allied with a political party.

(5) The Selection Committee shall, but not later than six months prior to any vacancy due to arise, issue an advertisement for inviting applications from persons for appointment as the State Chief Equality Commissioner and State Equality Commissioners:

45 Provided that the advertisement shall contain the criteria on the basis of which the Selection Committee shall select the State Chief Equality Commissioner and the State Equality Commissioners.

Term of office  
of the State  
Equality  
Commission.

**27. (1)** The term of office of the State Chief Equality Commissioner and the State Equality Commissioners shall be five years from the date on which he enters upon his office or when he attains the age of seventy years or, whichever is earlier, and shall not be eligible for re-appointment:

Provided that in order to facilitate a staggered renewal of personnel two of the first set of State Equality Commissioners shall be appointed for a term of four years and the other two for a term of six years. 5

**(2) The salaries and allowances payable to and other terms and conditions of service of the State Chief Equality Commissioner and the State Equality Commissioners shall be such as may be prescribed and shall not be varied to their disadvantage after their appointment, and:** 10

**(i) for the State Chief Equality Commissioner shall be the same as that of the State Chief Election Commissioner; and**

**(ii) for the State Equality Commissioner shall be the same as that of a State Election Commissioner.** 15

**(3)** A State Equality Commissioner shall eligible for appointment as the State Chief Equality Commissioner or a Central Equality Commissioner or a Chief Equality Commissioner during or after the end of his term, as long as he satisfies all other requirements specified under this Act.

Resignation  
and removal  
of State Chief  
Equality  
Commissioners  
and State  
Equality  
Commissioners.

**28. (1)** The State Chief Equality Commissioner or a State Equality Commissioner may, at any time, by notice given in writing under his hand addressed to the Governor, resign from his office. 20

**(2)** The Governor of the State may, by order, remove from office the Chairperson or any member if the Chairperson or such member, as the case may be, if the member—

**(i)** has been adjudged an insolvent; or 25

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

**(iii)** has become physically or mentally incapable of performing his duty; or

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

**(v)** has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude. 30

**(3)** Subject to the provisions of sub-section (2), the State Chief Equality Commissioner or a State Equality Commissioner shall be removed from his office by order of the Governor of the State on the ground of proven misbehaviour or incapacity after the High Court, on reference being made to it by the Governor, has, on inquiry, reported that the State Chief Equality Commissioner or the State Equality Commissioner, as the case may be, be removed. 35

Officers and  
other staff of  
the State  
Equality  
Commission.

**29. (1) The State Government shall, in consultation with the State Chief Equality Commissioner, provide that State Chief Equality Commissioner and the State Equality Commissioners with such, officers and employees as may be necessary for the efficient functioning under this Act:** 40

**Provided that any reduction, officers and employees of the State Equality Commission shall require a Resolution to that effect passed by a majority of the total number of members present and voting in the Legislative Council and Legislative Assembly, if any:**

**Provided further that at least five officers with sufficient experience, shall be made available at all times to the State Equality Commission, including at least one officer in the rank of a Secretary to the State Government, who shall act as the Secretary to the State Equality Commission.** 45

(2) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (1) shall be such as may be prescribed.

5 (3) In addition to the employees and officers appointed under sub-section (1), the State Equality Commission may employ, through an open and publicly advertised selection process, ten university graduates, preferably in the social sciences and law, for internships lasting up to a period of two years.

(4) The State Government shall make provision for reasonable official, living and maintenance costs interns employed by the State Equality Commission.

10 30. The State Government shall, after due appropriate made by State Legislative in this behalf, provide requisite funds to the State Chief Equality Commission for carrying out the purpose of the Act.

State Government to provide funds.

31. (1) The State Equality Commission shall—

Functions of the State Equality Commission.

15 (i) inquire, *suo motu* or on a petition presented to it by an aggrieved person or any person on his behalf, or on direction or order of any court, or the Central Equality Commission, into any complaints of breach of anti-discrimination duty amounting to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimisation;

20 (ii) conduct equality impact assessments of the activities or composition of any public authority or any private person performing a public function;

(iii) submit an annual State Equality Report on the effective implementation of this Act, including the functioning of the State Equality Commission, to the State Government and the Central Equality Commission, and shall publish it on its website on the date of submission of the report:

25 Provided that the State Government, upon receipt of the Equality Report, shall cause it to be laid before the Legislative Assembly and the Legislative Council, if any.

30 (2) The State Equality Commission shall have original jurisdiction with regard to alleged breach of anti discrimination duty, diversification duty or due regards duty under this Act if occasioned by any form of speech, expression or communication only if the respondent ordinarily resides within its territorial jurisdiction.

(3) The State Equality Commission shall abide by the norms of procedural fairness and principles of natural justice while discharging its judicial functions.

35 (4) The State Equality Commission shall, while discharging its judicial functions, give due regard to guidelines issued by the Central Equality Commission under sub-section (2) of section 23 of this Act:

Provided that the reasons for disregarding such guidelines shall be recorded in writing.

(5) The State Equality Commission shall exercise its powers and duties in a transparent and consultative manner, with a view to advance the purposes of this Act.

40 32. (1) The State Equality Commission shall, while inquiring into any matter, seeking any information, facilitating the resolution of any dispute or issuing any order under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure 1908, and in particular,

Powers of the State Equality Commission.

5 of 1908.

45 (i) summoning and enforcing the attendance of witnesses and examining them under oath.

(ii) discovery and production of any document.

(iii) receiving evidence on affidavits.

(iv) requisitioning any public record or copy thereof from any court or office.

(v) issuing commissions for the examination of witnesses or documents,

(vi) any other matter which may be prescribed.

(2) Without prejudice to its other powers under this Act, the State Equality Commission may seek any information, and conduct any investigation in relation to the diversification duty or the due regard duty. 5

(3) If the State Equality Commission on investigation reveals a breach of the provisions of this Act, it shall make suitable recommendations to remedy such breach after giving the person or authority in breach a reasonable opportunity of being heard.

(4) The person or authority in breach shall adopt or propose an alternative set of remedial measures the recommendations made under sub-section (1) within two months: 10

Provided that the expiry of two months from the date of recommendations were received by the person or authority in breach, the State Equality Commission may reissue recommendations, including any modification it may deem fit, as an order.

#### CHAPTER IV 15

##### REMEDIES

Remedies  
against  
discrimination.

**33.** (1) Subject to other provisions of this section, the State Equality Commission may issue any appropriate order, declaration, injunction, relief or award to remedy the breach of the anti-discrimination duty, diversification duty or due regard duty, including requiring A, or any other person who is a party to the proceedings before it, to— 20

(i) amend or abandon the discriminatory conduct, policy, criterion, practice or structure.

(ii) pay damages, mesne profits, back wages or salary, and any other costs, along with any interest, after adjustment for inflation, to the aggrieved persons and, exceptionally, to any other person, 25

(iii) apologize and guarantee non-repetition of the offences in writing to the aggrieved persons,

(iv) adopt suitable diversification measures,

(v) undergo, or require a person under his or her supervision or control to undergo, diversity training, 30

(vi) investigate and act upon harassment or victimization by another,

(vii) put processes, mechanisms or structures in place to avoid future breaches,

(viii) guarantee, in writing, the non-repetition of the breach,

(ix) give due regard to the need to eliminate all forms of discrimination and to promote equality and diversity, 35

(x) do or refrain from doing anything else which are prohibited under this Act:

Provided that for acts of aggravated discrimination, exemplary damages shall be awarded.

(2) Any remedy specified under sub-section (1) shall, except A, be ordered against anyone, who commits aggravated discrimination. 40

(3) The quantum of damages ordered against each respondent who intentionally commits direct or indirect discrimination, harassment and or victimization under this section shall not ordinarily be less than twice the monthly salary of a Member of Parliament at the time of making the order or rupees one lakh, whichever is higher, to each aggrieved person.

(4) The quantum of exemplary damages ordered against each respondent who commits aggravated discrimination under this section shall not ordinarily be less than the annual salary of the President of India at the time the order is made or rupees fifteen lakhs, whichever is higher.

5           **34.** (1) Without prejudice to the powers and duties of the State Equality Commission under this Act, an aggrieved person alleging aggravated discrimination, or any other person acting on behalf of such person, may seek a protection order from the court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which: Protection order for aggravated discrimination.

10                   (i) the alleged discriminator temporarily or permanently resides or operates or carries out business or is employed or is headquartered, or

                         (ii) the cause of action has arisen.

                         (2) The Magistrate shall issue a protection order after being satisfied that the application made by the aggrieved person or by any other person acting on behalf of the aggrieved  
15 person *prima facie* provides a reasonable basis to suspect that an act of aggravated discrimination has been committed, is threatened to be committed, is likely to be committed, is being committed, or is likely to continue being committed against such person.

                         (3) A failure to identify particular persons responsible for the alleged discriminatory act or particular aggrieved persons shall not be a ground for refusing to issue a protection  
20 order.

                         (4) A protection order may be addressed to any identified or unidentified persons and their formal or informal members, affiliates, volunteers and representatives, as well as to persons who may have supported, justified, provoked, encouraged or facilitated the alleged discriminatory act even if they have not committed or threatened to commit it themselves.

25           (5) The fact that the case may be pursued, is being pursued, or has been pursued, in civil proceedings before the State Equality Commission or the High Court shall not be a ground for refusing to issue a protection order.

                         (6) A protection order under this section may be granted *ex parte*:

30           Provided that the Magistrate may, for reasons to be recorded in writing, modify or revoke the order on the application of the addressee of such order if he allays the suspicion that was the basis of the order and shows that the continuing operation of the order, or a part thereof, shall cause him substantial injustice.

                         (7) A protection order may—

35                   (a) order particular persons (and their formal or informal members, affiliates, volunteers and representatives) to refrain from:

                                 (i) committing or encouraging others to commit any acts prohibited under this Act.

                                 (ii) communicating in any form with the person aggrieved or any persons providing support to the person aggrieved.

40                   (iii) entering the place of residence, education or workplace of or any other place frequented by the person aggrieved or any persons providing support to the person aggrieved.

                                 (iv) committing any other act specified in the protection order:

45                   (b) order persons generally, or persons resident or operating a particular geographical area, to refrain from:

                                 (i) committing or encouraging others to commit any acts prohibited under this Act against members of the protected group to which the aggrieved person belongs or against anyone else.

(ii) committing any other act specified in the protection order:

(c) order the State, or any agency of the State, to protect, generally or through specific directions such as quashing any complaints or providing safe accommodation, the safety and security of any person's body, property and rights, including the rights against discrimination guaranteed under this Act: 5

Provided that the Magistrate shall, after making suitable modifications as may be necessary in order to protect the anonymity of any person, require any order issued under clause (b) of this sub-section, or a part thereof, to be published immediately in at least two widely read local newspapers of two different languages, and the date of such publication shall be deemed to be the date of service of such order. 10

(8) A protection order shall, remain in force until the Magistrate is satisfied, on the application of either party, that there is a change in circumstances requiring modification or revocation of such order, when for reasons to be recorded in writing, any appropriate modification or revocation may be made.

(9) Save as otherwise provided in this section, all proceedings under this section and shall be governed by the Code of Criminal Procedure, 1973. 15

(10) An appeal shall lie to the Court of Session within thirty days from the date on which the protection order is served on the aggrieved person or the addressee of the protection order, whichever is later.

(11) A protection order issued under this section shall be enforceable at any place, even if that place is outside the jurisdiction of the Magistrate who issued it. 20

Punishment  
for breach of a  
protection  
order.

**35.** (1) Whoever breach a protection order issued under section 34 shall be punished with imprisonment of either description for a term which may extend upto one year, or with fine which may extend upto the annual salary of the President of India, or with both.

(2) The offence under sub-section (1) shall be tried, as far as practicable, by the Magistrate who had passed the protection order. 25

(3) The offence under sub-section (1) shall be cognizable and non-bailable.

Jurisdiction of  
the High  
Court.

**36.** (1) The High Court shall have original jurisdiction with regard to any incompatibility between this Act and any other law in force.

(2) Any person aggrieved by any order of the Central or the State Equality Commission may file on appeal against order the High Court within whose jurisdiction the said Commission is located within forty-five days from the date on which the order was served upon to him. 30

## CHAPTER V

### MISCELLANEOUS

Making a  
complaint.

**37.** (1) A complaint under this Act may be made by: 35

(i) an aggrieved person, or

(ii) if the aggrieved person is deceased, his nearest relative, including any unmarried or cohabiting spouse or partner or any person with whom the deceased intended to marry or enter into a romantic or sexual relationship, or

(iii) an organisation representing the aggrieved person on this consent, or 40

(iv) where there are more than one aggrieved person having same interest, any of them acting on behalf of or for the benefit of all of them:

Provided that no such complaint shall be made unless permitted by the Central Equality Commission or the State Equality Commission, as the case may be, which shall not give its permission unless it has taken reasonable measures to notify, either directly or through a notification in two local newspapers, all aggrieved persons or as many of them as is possible to do so. 45

(2) Anyone who makes a false complaint against a member of a disadvantaged group under this Act shall be liable to pay exemplary damages to the person against whom the false complaint was made.

22 of 2005. 5 **38.** (1) B has a right to seek the following information, subject to information within the ambit of section 8 of the Right to Information Act, 2005, from A: Right to information.

(i) any information necessary to calculate the Diversity Index in relation to any aspect of the composition, operation or functioning of A, or

(ii) any information necessary to substantiate a potential or actual claim under this Act.

10 (2) The provisions of the Right to Information Act 2005, shall apply *mutatis mutandis* to the right to information guaranteed under this section.

(3) A's refusal or failure to provide the information sought within thirty days of the request with respect to any other person, shall be a ground for B to complain to the State Equality Commission.

15 (4) State Equality Commission if is satisfied that B has the right to the said information, it shall order A to provide it.

**39.** (1) In any proceeding before the State Equality Commission under this Act, the plaintiff has the burden of establishing a *prima facie* breach of any duty under this Act: Burden of proof.

20 Provided that if any information is or is likely to be in the possession of the respondent or sought from the respondent under section 38, the respondent's failure to produce such information within thirty days from the date the request was made shall require the Commission to draw an adverse inference against the respondent, unless, for reasons to be recorded in writing, the Commission decides that doing so will cause substantial injustice.

25 **40.** (1) If a *prima facie* case of the breach of any duty imposed by this Act is made out in the submissions of the plaintiff, the State Equality Commission may order appropriate interim relief in favour of the plaintiff: Interim relief.

Provided that such interim relief should not be of a nature that is likely to cause serious prejudice to the respondent.

30 (2) Interim relief may be granted *ex parte* if warranted by the circumstances of the case.

(3) Interim relief may include a protection order of the nature specified in sub-section (7) of section 33.

35 **41.** (1) The State Equality Commission may, on the request of the aggrieved person, give directions to protect the anonymity of any person and may conduct any proceedings under this Act *in camera*: In-camera proceedings.

Provided that, on the request of the aggrieved person two persons may be permitted to assist him during the proceedings.

40 **42.** If the same action simultaneously constitutes or may constitute a civil offence under this Act and a criminal offence under any law, its criminal investigation or prosecution or the outcome of such investigation or prosecution shall not prejudice the independent civil proceedings under this Act. Separate criminal offence.

**43.** (1) The reliefs available under this Act may also be sought in any legal proceeding before any court affecting the parties to such proceedings, in addition to any other relief that may be sought in such proceedings. Jurisdiction.

45 (2) Any order made under this Act shall be enforceable at any place, even if that place is outside the jurisdiction of the Commission that made such order.

**44.** Nothing in this Act shall affect any right, interest or privilege that an aggrieved person has under any other law for the time being in force. Saving.

Application to  
Union  
Territories.

**45.** (1) Subject to sub-section (2), the Central Government shall, *mutatis mutandis*, apply the provisions of this Act to the Union Territories.

(2) All powers and functions entrusted to a State Government or a Governor under this Act shall, in relation to any Union Territory with a Council of Ministers responsible to an elected Legislative Assembly, be exercised by the Lieutenant Governor acting on the advice of the Council of Ministers of the Union Territory.

5

Power to  
make rules.

**46.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

10

(3) Every rule made by the Central Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

15

(4) Every rule made by the State Government 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.

20



## THE SCHEDULE

### Exceptions

[See clause (iv) of sub-section (5) section 14]

1. Any form of speech or expression protected by Article 19 of the Constitution.
2. Provision for a same-sex service provider for personally intimate services, such as nursing or personal hygiene.
3. Restriction of access to public welfare or public offices to citizens.
4. Requirement of a same-sex tenant for a shared dwelling where the landlord and the tenant share a kitchen, bathroom, living room, or bedroom.
5. Restriction of food menus to certain cuisines, to the exclusion of other food preferences.
6. Political boycott of any Government, organization or company, or a representative of such Government, organization or company that is not designed to target a disadvantaged group.
7. Restriction of membership of an association, not being an association providing any housing, education, employment or services, whose primary objective is to facilitate social interaction between members of a protected group, to persons belonging to that protected group.
8. Discrimination in relation to religion by a place of religious worship, with respect to activities that are essentially religious.
9. Measures designed to protect or benefit children.
10. Provision for a retirement age for employees who are sixty years of age or older.
11. An act, not otherwise illegal, amounting to segregation under sub-section (1) of section 10 by a parent in relation to his or her child who under the age of sixteen:  
Provided that this exemption does not extend to any act that amounts to segregation under sub-section (2) of section 10.
12. Use of a protected characteristic in electoral candidate selection by political parties:  
Provided that this exemption shall cease to operate after ten years of the enactment of this Act.

## STATEMENT OF OBJECTS AND REASONS

The Constitution of India promises justice, liberty, equality and fraternity to all our citizens. However, discrimination denies these cherished constitutional promises.

Cases of discrimination continue to be witnessed in all spheres of social, economic and political life. They are frequently directed against dalits, muslims, women, persons of different sexual orientations '*hijras*' persons with disabilities, persons from North-Eastern States unmarried couples and non-vegetarians, among others.

There is a need to protect everyone who are subject to all forms of unfair discrimination under a single comprehensive legislation which should be neutral and free from bias. Although it is normally minorities that are at the receiving end of discrimination, the law, in order to be sound, should encompass all citizens. It must protect both minorities as well as majorities, which is the intention of this Bill.

Existing constitutional protections against discrimination under articles 14, 15, 16 and 17 are not sufficient and need to be strengthened with additional statutory protections in order to realize their intended purpose. The constitutional directives under articles 38, 39 and 46, as well as the Fundamental Duty of all citizens under clauses (c) and (e) of article 51A are also intended towards ensuring equality among all.

Group membership is celebrated in a vibrant and pluralistic society such as ours, but the law must ensure that no citizen is discriminated against or put to a disadvantage on account of membership of certain groups. There is also a need to encourage diversity and affirmative action so long as such discrimination exists, including within the State's rosters of employment and in its various instruments. Instead of merely mandating punishment for offences we must simultaneously engender greater understanding and empathy within the system among the individuals who constitute that system.

It is also noted that India is at present an exception among liberal democracies for not enacting a comprehensive law against discrimination, covering both the public and the private sectors. It must be recognized that membership of a group should never adversely affect a citizen's life, and that there is a need to protect all groups and citizens from discrimination in the interests of national unity and diversity.

Hence this Bill.

NEW DELHI;  
*October 25, 2016.*

SHASHI THAROOR

## FINANCIAL MEMORANDUM

Clause 17 of the Bill provides that Central Government shall constitute a Central Equality Commission to perform the functions and duties assigned to it under this Act. It also provides for appointment of Equality Commissioners to the Central Equality Commission. Clause 18 provides for appointment of a Selection Committee by the Central Equality Commission. Clause 19 provides for salaries and allowances payable to Chief Equality Commissioners and Equality Commissioners of the Central Equality Commission. Clause 21 provides for appointment of officers and employees by the Central Government to the Central Equality Commission. Clause 22 provides for Central Government to provide requisite funds to the Central Equality Commission. Clause 25 provides for constitution of State Equality Commission by the State Governments. Clause 27 provides for salaries and allowances payable to State Chief Equality Commissioners and Equality Commissioners of the State Equality Commission. Clause 29 provides for appointment of officers and employees by the State Government to the State Equality Commission. Clause 30 provides for State Government to provide requisite funds to the State Equality Commission. The expenditure relating to States shall be borne out of the Consolidated Funds of State Governments concerned. However, the expenditure relating to Union territories shall be borne out of the Consolidated Fund of India. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore per annum would involve from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 46 of the Bill empowers the Central Government and the State Governments to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

LOK SABHA

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**BILL**

to ensure equality to every citizen of the country by providing  
protection against all forms of social discrimination.

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*(Dr. Shashi Tharoor, M.P.)*