

The Protection of Human Rights Act, 1993.

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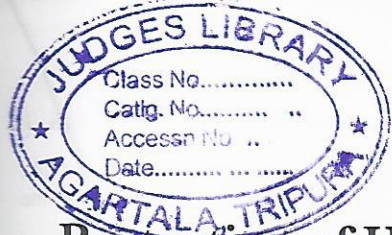
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The Protection of Human Rights Act, 1993¹

[Act 10 of 1994]

[8th January, 1994]

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

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

Statement of Objects and Reasons of Amendment Act 49 of 2000.—Section 11 of the Protection of Human Rights Act, 1993 provides that the salaries and allowances payable to, and the other terms and conditions of service of the officers and other staff appointed by the Commission shall be prescribed by rules. Accordingly, the Central Government notified the National Human Rights Commission (Conditions of Service of Officers and Staff) Rules, 2000. While examining the question of revising the salary and allowances payable to the officers and other staff of the said Commission with effect from 1st January, 1996 on the basis of the recommendations of the Fifth Central Pay Commission by suitably amending the relevant rules, it has been observed that there is no enabling provision in the said Act to give retrospective effect to these recommendations. In order to overcome this difficulty, it is proposed to amend the Protection of Human Rights Act, 1993 to provide for an enabling provision to make rules with retrospective effect not earlier than the date of commencement of the said Act.

2. The Bill seeks to achieve the above object.

Statement of Objects and Reasons of Amendment Act 43 of 2006.—The National Human Rights Commission was set up in October, 1993 under the Protection of Human Rights Act, 1993 for promotion and better protection of human rights. The National Human Rights Commission (NHRC) set up an advisory Committee under the Chairmanship of Justice A.H. Ahmedi, former Chief Justice of India to assess the need for amendments to the Act. Based on the recommendations of the Justice Ahmedi Committee, the NHRC has suggested various amendments to the said Act. The various amendments proposed by the NHRC and certain other issues relating to the scope and ambit of the Act have been examined and it has been decided to amend the Act.

2. The Bill, inter alia, seeks to—

- (a) clarify that the Chairpersons of NHRC and State Human Rights Commission (SHRCs) are distinct from the Members of the respective Commission;
- (b) make judges of the Supreme Court with at least three years service as such to be eligible to be appointed as the Chairperson of the NHRC;
- (c) make judges of the High Courts with at least five years of service as such to be eligible to be appointed as Chairperson of the SHRCs' and a District Judge with at least seven years of experience in that capacity to be a Member of the SHRC;
- (d) enable the NHRC to transfer complaints received by it to the concerned SHRC;
- (e) enable the NHRC to visit any jail or detention centre without prior intimation to the State Government;

1. Received the assent of the President on January 8, 1994 and published in the Gazette of India, Extra., Part II, Section 1, dated 10th January, 1994, pp. 1-16, Sl. No. 10.

- (f) enable the Chairperson and Members of the NHRC to address their resignations in writing to the President and the Chairperson and Members of the SHRCs to the Governor of the State concerned;
- (g) clarify that the absence of any member in the Selection Committee for selection of the Chairperson and Members of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees;
- (h) enable the NHRC and the SHRCs to make interim recommendations during an inquiry;
- (i) empower the NHRC and its Chairperson to delegate certain powers and functions of the Commission to the Secretary-General of the NHRC;
- (j) provide that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be Members of the NHRC;
- (k) enable the Central Government to notify future international covenants and conventions to which the Act would be applicable.

3. The Bill seeks to achieve the above objects.

CASE LAW ► Object.—Remedial measures extend to negligence exhibited by public servant in preventing such violations, *K. Saravanan Karuppasamy v. State of T.N.*, (2014) 10 SCC 406.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India.

²[* * *]

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

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

- (a) “armed forces” means the naval, military and air forces and includes any other armed forces of the union;
- (b) “Chairperson” means the Chairperson of the Commission or of the State Commission, as the case may be;
- ³[(ba) “Chief Commissioner” means the Chief Commissioner for Persons with Disabilities referred to in sub-section (1) of Section 74 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);]
- (c) “Commission” means the National Human Rights Commission constituted under Section 3;
- (d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

2. Proviso omitted by Act 34 of 2019, Ss. 95 & 96 and Sch. V (w.e.f. 31-10-2019). Prior to omission it read as:

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

3. Ins. by Act 19 of 2019, S. 2(i) (w.e.f. 2-8-2019).



CASE LAW ► Human Rights.—Definition of “Human Rights” is large enough to include fundamental rights to life, liberty, equality and dignity of individual, *Beenu Rawat v. Union of India*, (2013) 16 SCC 430 : (2014) 6 SCC (Cri) 298.

- (e) “Human Rights Court” means the Human Rights Court specified under Section 30;
- ⁴[(f) “International Covenants” means the International Covenants on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;]
- ⁵[(g) “Member” means a Member of the Commission or of the State Commission, as the case may be;]
- ⁶[(ga) “National Commission for Backward Classes” means the National Commission for Backward Classes constituted under Section 3 of the National Commission for Backward Classes Act, 1993 (27 of 1993);]
- (h) “National Commission for Minorities” means the National Commission for Minorities constituted under Section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);
- ⁷[(ha) “National Commission for Protection of Child Rights” means the National Commission for Protection of Child Rights constituted under Section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006);]
- ⁸[(i) “National Commission for the Scheduled Castes” means the National Commission for the Scheduled Castes referred to in Article 338 of the Constitution;
- (i-a) “National Commission for the Scheduled Tribes” means the National Commission for the Scheduled Tribes referred to in Article 338-A of the Constitution;]
- (j) “National Commission For Women” means the National Commission for Women Constituted under Section 3 of the National Commission for Women Act, 1990 (20 of 1990);

4. *Subs.* by Act 43 of 2006, S. 2 (w.e.f. 23-11-2006). Prior to substitution it read as:

‘(f) “International Covenants” means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;’

5. *Subs.* by Act 43 of 2006, S. 2 (w.e.f. 23-11-2006). Prior to substitution it read as:

‘(g) “Member” means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;’

6. *Ins.* by Act 19 of 2019, S. 2(ii) (w.e.f. 2-8-2019).

7. *Ins.* by Act 19 of 2019, S. 2(iii) (w.e.f. 2-8-2019).

8. *Subs.* for clause (i) by Act 43 of 2006, S. 2 (w.e.f. 23-11-2006). Prior to substitution clause (i) read as:

‘(i) “National Commission for the Scheduled Castes and Scheduled Tribes” means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in Article 338 of the Constitution;’

- (k) "notification" means a notification published in the Official Gazettee;
- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "public servant" shall have the meaning assigned to it in Section 21 of the Indian Penal Code (45 of 1860);
- (n) "State Commission" means a State Human Rights Commission constituted under Section 21.

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

STATE AMENDMENTS

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh, omit sub-section (2). [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ► Gender-based discrimination.—Women have right to elimination of gender-based discrimination particularly in respect of property so as to attain economic empowerment. This forms part of universal human rights. They have right to equality of status and opportunity which also forms part of the basic structure of the Constitution, *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil*, (1996) 8 SCC 525 : AIR 1996 SC 1697.

► Right to hold property.—To hold property is a constitutional right in terms of Article 300-A of the Constitution. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefor must be complied with. The conditions precedent therefor must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right vis-a-vis the constitutional and human right of the owner thereof, *Lachhman Dass v. Jagat Ram*, (2007) 10 SCC 448.

► Violation of human rights.—Forcing petitioner to do same work as electrician even after his sustaining disability is to be treated as violation of human rights, *P. Ravichandran v. T.N. Civil Supplies Corpn. Ltd.*, (2008) 1 CTC 743.

► Human rights.—Human rights constitutes of rights of humans relating to their life, liberty, equality and dignity as against the rights with regard to their properties, *Maharashtra Housing & Area Development Authority v. Maharashtra State Human Rights Commission*, (2010) 3 Mah LJ 44.

"Human rights" is a broad concept and cannot be straitjacketed within narrow confines. Any attempt to do so would truncate its all-embracing scope and reach, and denude it of its vigour and vitality. Human rights are not like edicts inscribed on a rock. They are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom. They admit of a certain degree of fluidity. Categories of Human rights, being of infinite variety, are never really closed.

It is imperative that while interpreting the powers and jurisdiction of NHRC, the Court construes Section 2(d) of the 1993 Act along with its long title and also the Statement of Objects and Reasons of the said Act. Section 2(d) has been envisioned in the residuary clause in Section 12(j). The residuary clause in Section 12(j) has been widely worded to take care of situations not covered by clauses (a) to (i) of Section 12 of the 1993 Act.

The jurisdiction of NHRC stands enlarged by Section 12(j) of the 1993 Act, to take necessary action for the protection of human rights. NHRC has been constituted to inquire into cases of violation of and for protection and promotion of human rights. Such action would include inquiring into cases where a party has been denied the protection of any law to which he is entitled, whether by a private party, a public institution, the Government or even the courts of law. The Supreme Court has corrected breach of human rights arising from an erroneous perception of facts and law in the judgments of the High Courts and Tribunals.

Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislations of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to the rule of law put into force mechanisms for their enforcement and protection. *Ram Deo Chauhan v. Bani Kanta Das*, (2010) 14 SCC 209 : (2011) 3 SCC (Cri) 727.

CHAPTER II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission.—(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this act.

(2) The Commission shall consist of—

- (a) a Chairperson who has been a ⁹[Chief Justice of India or a Judge] of the Supreme Court;
- (b) one Member who is, or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) ¹⁰[three Members, out of which at least one shall be a woman,] to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of ¹¹[the National Commission for Backward Classes, the National Commission for Minorities, the National Commission for Protection of Child Rights], ¹²[the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes], ¹³[the National Commission for Women and the Chief Commissioner for Persons with Disabilities] shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12.

(4) There shall be a Secretary-General who shall be the Chief-Executive Officer of the Commission and ¹⁴[shall, subject to control of the Chairperson,

9. Subs. for "Chief Justice" by Act 19 of 2019, S. 3(a)(i) (w.e.f. 2-8-2019).

10. Subs. for "two Members" by Act 19 of 2019, S. 3(a)(ii) (w.e.f. 2-8-2019).

11. Subs. for "the National Commission for Minorities," by Act 19 of 2019, S. 3(b)(i) (w.e.f. 2-8-2019).

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

13. Subs. for "and the National Commission for Women" by Act 19 of 2019, S. 3(b)(ii) (w.e.f. 2-8-2019).

14. Subs. for "shall exercise such powers and discharge such functions of the Commission (except judicial functions and the power to make regulations under Section 40-B) as may be delegated to him by the Commission or the Chairperson, as the case may be" by Act 19 of 2019, S. 3(c) (w.e.f. 2-8-2019).

exercise all administrative and financial powers (except judicial functions and the power to make regulations under Section 40-B)].

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

CASE LAW ► Declarations in international fora.—Declarations in international fora or UN General Assembly Resolutions, cannot be exalted to status of covenants/treaties in international law. Therefore, any such declarations or resolutions, to which India is a party, do not cast any binding legal obligations on the Indian State, *People's Union for Civil Liberties v. Union of India*, (2005) 5 SCC 363.

► Appointment of former member of police force.—Appointment of former member of police force under Section 3(2)(d) is permissible. Section 3(2)(d) does not exclude any class of persons so long as they have knowledge of, or practical experience in, matters relating to human rights, which is a requirement to be satisfied by the Selection Committee. Clear language of section cannot be distorted by any inference based on any public perception or prejudice, nor can court by looking at the "Paris Principles" or UN Resolution, interpret an exclusionary clause in Section 3(2)(d) to keep police officers from becoming members of NHRC, in spite of the Act not providing for the same, either in its provisions, preamble or Statement of Objects and Reasons. *People's Union for Civil Liberties v. Union of India*, (2005) 5 SCC 363.

► National Human Rights Commission (NHRC).—The National Human Rights Commission (NHRC) is a high-powered statutory body to act as an instrument for the protection and promotion of human rights. The credibility of such an institution depends upon a high degree of public confidence. While construing the provisions of the Statute, the nature and object of the statute cannot be overlooked. It cannot be overlooked that notwithstanding the exemplary role of the police and security forces, there have been many instances of excesses by the members of the forces leading to public unrest and deteriorating public faith. The issue is not whether all are fully true or not, but is what exists in the public mind and whether there is some justification therefor. An individual police officer may be very good but his participation in decision-making as a member of the Commission is likely to give rise to a reasonable apprehension in the minds of citizens that he may subconsciously influence the functioning of the commission. Such reasonable perceptions of the affected parties are relevant considerations to ensure the continued public confidence in the credibility and impartiality of an institution like NHRC. After all, it cannot be denied that predisposition or subtle prejudice or unconscious prejudice or what is called "sanskar" are inarticulate major premises in decision-making process. Assuming two constructions of Section 3(2)(d) are reasonably possible, the construction which promotes public confidence, advances the cause of human rights and seeks to fulfil the purpose of international instruments has to be preferred than the one which nullifies it. Ambiguity, if any, in the statutory provision is required to be removed by the judicial process to advance the cause of protection of human rights, *People's Union for Civil Liberties v. Union of India*, (2005) 2 SCC 436.

4. Appointment of Chairperson and other Members.—(1) The Chairperson and ¹⁵[the Members] shall be appointed by the President by warrant under his hand and seal:

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

15. Subs. for "other Members" by Act 43 of 2006, S. 4 (w.e.f. 23-11-2006).

- | | |
|---|----------------|
| (a) the Prime Minister | — Chairperson; |
| (b) Speaker of the House of the People | — Member; |
| (c) Minister in-charge of the Ministry of Home Affairs in the Government of India | — Member; |
| (d) Leader of the Opposition in the House of the People | — Member; |
| (e) Leader of the Opposition in the Council of States | — Member; |
| (f) Deputy Chairman of the Council of States | — Member: |

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

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any ¹⁶[vacancy of any member in the Committee referred to in the first proviso to sub-section (1)].

CASE LAW ► Interpretation/Construction.—The expression “from amongst persons having knowledge of, or practical experience in matters relating to human rights” as used in Section 3(2)(d) is wide enough to allow the Selection Committee constituted under Section 4 to select any suitable person, who in the opinion of the Selection Committee, possesses knowledge and practical experience in matters of human rights. The expression and the language used in Section 3(2)(d) neither expressly nor by implication, exclude suitable police officers with high record of experience and integrity. The Selection Committee is a pluralistic body comprising elected representatives of the people and political parties in power and in opposition. The perception of the Selection Committee regarding fitness of a particular person chosen for membership, by considering him to be possessing required knowledge and practical experience in the matters relating to human rights, cannot be faulted by the Court by substituting its own opinion for the opinion of the Selection Committee. Such a course of action is not legally permissible to the Court. The Court cannot sit over the selection of the Selection Committee unless there is found to be any infraction of law under which the selection was made. *People's Union for Civil Liberties v. Union of India*, (2005) 2 SCC 436.

► **Opinion of members.**—Merely because on facts, one of the six members of Selection Committee did not attend in person, being physically indisposed, it would not vitiate the opinion of the other five members, *People's Union for Civil Liberties v. Union of India*, (2005) 5 SCC 363.

► **Consultation with Chairperson.**—Consultation with Chairperson of NHRC for appointment of members of NHRC is not an absolute requirement under the Act. The provision for appointment of Chairperson and other members of NHRC contemplates a self-contained procedure and no other mandatory provision can be imported into the Act where none actually exists, *People's Union for Civil Liberties v. Union of India*, (2005) 5 SCC 363.

Requirement of Section 4 is not of “consultation” but of recommendation by the Committee, after taking into consideration all relevant factors, eschewing irrelevant ones. Undoubtedly, for meaningful and

16. Subs. for “vacancy in the Committee” by Act 43 of 2006, S. 4 (w.e.f. 23-11-2006).

purposeful recommendation, there ought to be complete disclosure of relevant factors, considering that appointment is being recommended for a highly expert body in relation to protection of human rights, *People's Union for Civil Liberties v. Union of India*, (2005) 2 SCC 436.

► **Vacancies of Chairperson and Members of State Commissions.**—Obligation of State Government to fill up vacancies in State Commission, is mandatory. It is not a power simpliciter but a duty coupled with power. Non-filling of said vacancies is as good as defeating purpose of 1993 Act because even if said Commissions are constituted, they become non-functional. Therefore, all existing vacancies directed to be filled up expeditiously within three months. Vacancies that might arise in future should also be filled up within three months from the date the vacancy arises, *D.K. Basu v. State of W.B.*, (2015) 8 SCC 744: (2015) 3 SCC (Cri) 824.

¹⁷[**5. 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 his office.

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

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

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.]

17. Subs. by Act 43 of 2006, S. 5 (w.e.f. 23-11-2006). Prior to substitution it read as:

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

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

- (a) is adjudged and insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.”

¹⁸[**6. Term of office of Chairperson and Members.**—(1) A person appointed as Chairperson shall hold office for a term of ¹⁹[three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier ²⁰[and shall be eligible for re-appointment].

(2) A person appointed as a Member shall hold office for a term of ²¹[three years] from the date on which he enters upon his office and shall be eligible for re-appointment ²²[* * *]:

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

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

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

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

²³[**8. Terms and conditions of service of Chairperson and Members.**—The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed:

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

18. Subs. by Act 43 of 2006, S. 6 (w.e.f. 23-11-2006). Prior to substitution it read as:

“6. *Term of office of 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 he attains the age of seventy years, whichever is earlier.

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

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

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

19. Subs. for “five years” by Act 19 of 2019, S. 4(i)(a) (w.e.f. 2-8-2019).

20. Ins. by Act 19 of 2019, S. 4(i)(b) (w.e.f. 2-8-2019).

21. Subs. for “five years” by Act 19 of 2019, S. 4(ii)(a) (w.e.f. 2-8-2019).

22. The words “for another term of five years” omitted by Act 19 of 2019, S. 4(ii)(b) (w.e.f. 2-8-2019).

23. Subs. by Act 43 of 2006, S. 7 (w.e.f. 23-11-2006). Prior to substitution it read as:

“8. *Terms and conditions of service of Members.*—The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed:

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

9. Vacancies, etc. not to invalidate the proceedings of the Commission.—No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission.—(1) The Commission shall meet at such time and place as the Chairperson may think fit.

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

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

11. Officers and other staff of the Commission.—(1) The Central Government shall make available to the Commission—

- (a) an Officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and
- (b) such police and investigative staff under an officer not below the rank of a Director-General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

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

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

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission.—The Commission shall perform all or any of the following functions, namely:—

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf ²⁵[or on a direction or order of any court], into complaint of—
 - (i) violation of human rights or abetment thereof; or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- ²⁶[(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the

24. Subs. by Act 43 of 2006, S. 8 (w.e.f. 23-11-2006). Prior to substitution it read as:
“(2) The Commission shall regulate its procedure.”

25. Ins. by Act 43 of 2006, S. 9 (w.e.f. 23-11-2006).

26. Subs. by Act 43 of 2006, S. 9 (w.e.f. 23-11-2006). Prior to substitution it read as:

State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]

- (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.

CASE LAW ► Nature and scope.—Section 12 of Protection of Human Rights Act charges the Commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms. Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights, *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125.

► Powers and jurisdiction of National Human Rights Commission.—Powers and jurisdiction of National Human Rights Commission are not circumscribed by provisions of the act when acting under directions/orders of Supreme Court issued under Article 32 of the Constitution. *Paramjit Kaur v. State of Punjab*, (1999) 2 SCC 131 : 1999 SCC (Cri) 109.

Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. Though it has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it, but it should act within the parameters prescribed by the Act and the confines of jurisdiction vested in it, *N.C. Dhoundial v. Union of India*, (2004) 2 SCC 579 : 2004 SCC (Cri) 587.

“(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;”

► **Police atrocities.**—Accountability of wrongdoer and responsibility of State in case person in police custody is deprived of his life except in accordance with procedure established by law. Police atrocities are always violative of constitutional mandate. Tolerance of police atrocities would amount to acceptance of systematic subversion and erosion of rule of law. If there is material on record to reveal police atrocities, court must take stern action against erring police officials, *Prithipal Singh v. State of Punjab*, (2012) 1 SCC 10.

► **Functions and powers of State Human Rights Commission.**—Commission is not a competent forum to adjudicate disputes of title and possession of property or eviction therefrom, *G. Manikamma v. Roudri Coop. Housing Society Ltd.*, (2014) 15 SCC 197.

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

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

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

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

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

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196, of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

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

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

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

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

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

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

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

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

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

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

27. Ins. by Act 43 of 2006, S. 10 (w.e.f. 23-11-2006).

Provided that the statement—

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject-matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard.—If, at any stage of the inquiry, the Commission—

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

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

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

CHAPTER IV PROCEDURE

17. Inquiry into complaints.—The Commission while inquiring into the complaints of violations of human rights may—

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

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
 - (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

²⁸**18. Steps during and after inquiry.**—The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:—

28. Subs. by Act 43 of 2006, S. 11 (w.e.f. 23-11-2006). Prior to substitution it read as:

“18. *Steps after inquiry.*—The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

- (1) where the inquiry discloses, the commission of violation of human rights, or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

- (a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority—
- (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
 - (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;
 - (iii) to take such further action as it may think fit;
- (b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;
- (e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.]

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

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- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
 - (3) recommended to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
 - (4) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;
 - (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments or the report, including the action taken or proposed to be taken thereon, to the Commission;
 - (6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”

- (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
- (b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

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

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

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

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

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

CHAPTER V

STATE HUMAN RIGHTS COMMISSIONS

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

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

- (a) a Chairperson who has been a ³⁰[Chief Justice or a Judge] of a High Court;

29. Subs. by Act 43 of 2006, S. 12 (w.e.f. 23-11-2006). Prior to substitution it read as:

“(2) The State Commission shall consist of—

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court;
- (c) one Member who is, or has been, a District Judge in that State;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matter relating to human rights.”

30. Subs. for “Chief Justice” by Act 19 of 2019, S. 5(i) (w.e.f. 2-8-2019).

- (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;
- (c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.]

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and ³¹[shall, subject to control of the Chairperson, exercise all administrative and financial powers of the State Commission].

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

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

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

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if that for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been *substituted*.

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

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

³³[(7) Subject to the provisions of Section 12, the Central Government may, by order, confer upon the State Commission the functions relating to human rights being discharged by the Union territories, other than the Union territory of Delhi.

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

STATE AMENDMENTS

Union Territory of Jammu and Kashmir.—In its application to the Union Territory of Jammu and Kashmir, in Section 21,—

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

32. Ins. by Act 43 of 2006, S. 12 (w.e.f. 23-11-2006).

33. Ins. by Act 19 of 2019, S. 5(iii) (w.e.f. 2-8-2019).

- (i) in sub-section (5), *omit* the second Proviso;
- (ii) in sub-section (7), for “other than Union territory of Delhi” *substitute* “other than Union territory of Delhi, Union territory of Jammu and Kashmir and Union territory of Ladakh”; and
- (iii) in sub-section (8), for “Union territory of Delhi” *substitute* “Union territory of Delhi, Union territory of Jammu and Kashmir and Union territory of Ladakh”. [Vide S.O. 1123(E), dated 18-3-2020 (w.e.f. 18-3-2020)].

Union Territory of Ladakh.—In its application to the Union Territory of Ladakh — Same as that of UT of Jammu and Kashmir. [Vide S.O. 3774(E), dated 23-10-2020].

CASE LAW ► Retrospective effect.—Though legislature is so competent, but intention of legislature to apply amended provisions with retrospective effect must be evident from Amendment Act itself, expressly or by necessary implication. Said power of legislature is qualified in that such unilateral alteration should be in conformity with legal and constitutional provisions. Rights accrued under the Act/Ordinance which stood repealed would continue to exist unless they have specifically or by necessary implication been taken away by repealing Act, *J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140.

► **Experience as ADJ.**—Seven years’ experience as ADJ, cannot be reckoned as that of DJ, *J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140.

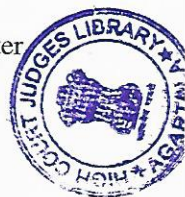
► **Constitution of State Human Rights Commission.**—Constitution of State Human Rights Commission under Section 21(1), held, is mandatory and does not depend upon discretion of State Government, despite use of word “may” in Section 21(1). A contextual and purposeful interpretation shows that Section 21(1) entrusts a power coupled with duty to constitute a State Human Rights Commission and said power is not a power simpliciter. Though Section 3(1) uses the word “shall” for constitution of National Human Rights Commission and Section 21(1) uses the word “may” for constitution of State Human Rights Commissions, an examination of functions of both Commissions shows that they are similar. Therefore, State Governments have no discretion but are duty-bound to constitute State Human Rights Commissions in their respective States. Absence of State Human Rights Commission would negate/frustrate legislative intent of protection of human rights. National and State Human Rights Commissions are both efficacious and transparent mechanism for protection of human rights. Protection of human rights worldwide is a long-drawn crusade/struggle. India is a signatory to International Covenant on Civil and Political Rights, 1966. Said Covenant is binding on India (ratifying State), and to give effect to said Covenant, an Ordinance was promulgated, which was later transformed into 1993 Act. Plea of financial constraint in setting up of State Human Rights Commissions by defaulting States is not tenable in view of Section 21(6) alternative, which was not even resorted by defaulting States. Access to justice is denied by non-setting up of State Human Rights Commissions in some States. Though theoretically NHRC can be approached, it is not practical. Injury and death due to custodial violence cannot be disputed in disturbed States like Mizoram, Meghalaya, Tripura and Nagaland and other defaulting States like Delhi and Arunachal Pradesh. Further said disturbed States are facing problems like insurgency, foreign immigration, tribal warfare and ethnic violence apart from custodial violence and death. Therefore, defaulting States directed to set up State Human Rights Commissions in their respective States within six months with or without resorting to Section 21(6) alternative, *D.K. Basu v. State of W.B.*, (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824.

► **Post of Chairperson.**—Office of Chairperson of SHRC cannot be allowed to remain vacant for long time, *K. Saravanan Karuppasamy v. State of T.N.*, (2014) 10 SCC 406.

22. Appointment of Chairperson and ³⁴[Members] of State Commission.—(1) The Chairperson and ³⁵[Members] shall be appointed by the Governor by warrant under his hand and seal:

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

- | | |
|--|---------------|
| (a) the Chief Minister | —Chairperson; |
| (b) Speaker of the Legislative Assembly | —Member; |
| (c) Minister in-charge of the Department of Home in that State | —Member; |
| (d) Leader of the Opposition in the Legislative Assembly | —Member: |



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

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

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of ³⁶[any vacancy of any Member in the Committee referred to in sub-section (1)].

23. ³⁷[Resignation and Removal of Chairperson or a Member of the State Commission].—³⁸[(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.

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

34. Subs. for "other Members" by Act 43 of 2006, S. 13 (w.e.f. 23-11-2006).

35. Subs. for "other Members" by Act 43 of 2006, S. 13 (w.e.f. 23-11-2006).

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

37. Subs. for "Removal of a Member of the State Commission" by Act 43 of 2006, S. 14 (w.e.f. 23-11-2006).

38. Subs. for sub-section (1) by Act 43 of 2006, S. 14 (w.e.f. 23-11-2006). Prior to substitution sub-section (1) read as:

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

(2) Notwithstanding anything in ³⁹[sub-section (1-A)], the President may by order remove from office the Chairperson or any ⁴⁰[Member] if the Chairperson or such ⁴¹[Member], as the case may be,—

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

CASE LAW ► Justifiable grounds.—Removal on “justifiable grounds” means grounds of incurring any disqualification while holding post. An act is justified by law if it is warranted, validated and made blameless by law, *J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140.

⁴²**24. Term of office of Chairperson and Members of the State Commission.**—(1) A person appointed as Chairperson shall hold office for a term of ⁴³[three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier ⁴⁴[and shall be eligible for re-appointment].

(2) A person appointed as a Member shall hold office for a term of ⁴⁵[three years] from the date on which he enters upon his office shall be eligible for re-appointment ⁴⁶[* * *]:

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

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

25. Member to act as Chairperson or to discharge his functions in certain circumstances.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor

39. Subs. for “sub-section (1)” by Act 43 of 2006, S. 14 (w.e.f. 23-11-2006).

40. Subs. for “other Member” by Act 43 of 2006, S. 14 (w.e.f. 23-11-2006).

41. Subs. for “other Member” by Act 43 of 2006, S. 14 (w.e.f. 23-11-2006).

42. Subs. by Act 43 of 2006, S. 15 (w.e.f. 23-11-2006). Prior to substitution it read as:

“24. *Term of office of Members of the State Commission.*—(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 he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment for another term of five years:

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

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

43. Subs. for “five years” by Act 19 of 2019, S. 6(i)(a) (w.e.f. 2-8-2019).

44. Ins. by Act 19 of 2019, S. 6(ii)(b) (w.e.f. 2-8-2019).

45. Subs. for “five years” by Act 19 of 2019, S. 6(ii)(a) (w.e.f. 2-8-2019).

46. The words “for another term of five years” omitted by Act 19 of 2019, S. 6(ii)(b) (w.e.f. 2-8-2019).

may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

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

⁴⁷[**26. Terms and conditions of service of Chairperson and Members of State Commissions.**—The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

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

CASE LAW ▶ Superannuation.—An employee appointed for a fixed period under statute is entitled to continue till expiry of tenure and in such cases there can be no occasion to pass order of superannuation since tenure comes to an end automatically by efflux of time. Section 26 of 1993 Act specifically provided that neither salary and allowances nor other terms and conditions of service of member shall be varied to his disadvantage after his appointment, *J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140.

27. Officers and other staff of the State Commission.—(1) The State Government shall make available to the Commission—

- (a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
- (b) such police and investigative staff under an officer not below the rank of an Inspector-General of police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

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

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

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

47. Subs. by Act 43 of 2006, S. 16 (w.e.f. 23-11-2006). Prior to substitution it read as:

“26. *Terms and conditions of service of Members of the State Commission.*—The salaries and allowances payable to, and other terms and conditions of service of, Members shall be such as may be prescribed by the State Government:

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

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

29. Application of certain provisions relating to National Human Rights Commission to State Commissions.—The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—

- (a) reference to “Commission” shall be construed as references to “State Commission”;
- (b) in Section 10, in sub-section (3), for the word “Secretary-General”, the word “Secretary” shall be *substituted*;
- (c) in Section 12, clause (f) shall be *omitted*;
- (d) in Section 17, in clause (i), the words “Central Government or any” shall be *omitted*.

CHAPTER VI

HUMAN RIGHTS COURTS

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

Provided that nothing in this section shall apply if—

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted,

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

CASE LAW ► District Human Rights Courts.—Suggestions — State Governments directed to examine feasibility of setting up of District Human Rights Courts and to take appropriate action in said regard, *D.K. Basu v. State of W.B.*, (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824.

► **Direction for filling vacancies.**—As Rajasthan State Human Rights Commission functioning without Chairperson as well as Secretary; Human Rights Courts not set up; tremendous staff shortage in the Commission; no steps taken to fill vacancies; and draft recruitment rules sent to State Government not finalised as yet, Directions issued in the matter, *Dalit Manavadhikar Kendra Samiti v. State of Rajasthan*, (2015) 17 SCC 214.

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

CHAPTER VII
FINANCE, ACCOUNTS AND AUDIT

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

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

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

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

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

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

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

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

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

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any

expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

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

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

CHAPTER VIII

MISCELLANEOUS

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

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

CASE LAW ► Enquiry by National Human rights Commission.—Enquiry taken up by National Human rights Commission (NHRC) after long lapse of such period is not justified. Bar contained in Section 36(2) is a jurisdictional bar. There is no provision in the Act to extend the said period of limitation, *N.C. Dhoundial v. Union of India*, (2004) 2 SCC 579 : 2004 SCC (Cri) 587.

► **Cognizance.**—Commission shall not take into cognizance any complaint after expiry of one year from date on which violation is alleged to have been committed, *M. Mahendran v. K.A. Anthony*, (2011) 1 CTC 320 (Mad)(DB).

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

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

Central Government, State Government Commission or the State Commission of any report, paper or proceedings.

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

40. Power of Central Government to make rules.—(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the salaries and allowances and other terms and conditions of service of the ⁴⁸[Chairperson and Members] under Section 8;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 11;
- (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of Section 13;
- (d) the form in which in the annual statement of accounts is to be prepared by the Commission under sub-section (1) of Section 34; and
- (e) Any other matter which has to be, or may be, prescribed.

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

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

⁵⁰[**40-B. Power of Commission to make regulations.**—(1) Subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

48. Subs. for "Members" by Act 43 of 2006, S. 17 (w.e.f. 23-11-2006).

49. Ins. by Act 49 of 2000, S. 2 (w.e.f. 11-12-2000).

50. Ins. by Act 43 of 2006, S. 18 (w.e.f. 23-11-2006).

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the procedure to be followed by the Commission under sub-section (2) of Section 10;
- (b) the returns and statistics to be furnished by the State Commissions;
- (c) any other matter which has to be, or may be, specified by regulations.

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

41. Power of State Government to make rules.—(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the salaries and allowances and other terms and conditions of service of⁵¹[the Chairperson and Members] under Section 26;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 27;
- (c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of Section 35.

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

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

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

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

43. Repeal and savings.—(1) The Protection of Human Rights Ordinance, (Ord. 30 of 1993) is hereby repealed.

51. Subs. for "the Members" by Act 43 of 2006, S. 19 (w.e.f. 23-11-2006).

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

NOTIFICATIONS

*Ministry of Home Affairs, Noti. No. S.O. 2397(E), dated September 18, 2009,
published in the Gazette of India, Extra., Part II, Section 3(ii),
dated 18th September, 2009, p. 1, No. 1494*

In exercise of the powers conferred by clause (f) of sub-section (1) of Section 2 of the Protection of Human Rights Act, 1993 (10 of 1994) the Central Government hereby specifies the following Conventions, adopted by the General Assembly of the United Nations, in their application to the protection of human rights in India, namely:—

- (1) The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); and
- (2) The Convention on the Rights of the Child (CRC).

*Ministry of Home Affairs, Noti. No. S.O. 2339(E), dated September 21, 2010,
published in the Gazette of India, Extra., Part II, Section 3(ii),
dated 24th September, 2010, p. 1, No. 1988*

In exercise of the powers conferred by clause (f) of sub-section (1) of Section 2 of the Protection of Human Rights Act, 1993 (10 of 1994), the Central Government hereby specifies the following Convention, adopted by the General Assembly of the United Nations, as an International Covenant in its application to the protection of human rights in India, namely—

“The Convention on the Elimination of all forms of Racial Discrimination (CERD)”.
