

THE JAMMU AND KASHMIR PROTECTION OF HUMAN RIGHTS ACT, 1997.

(ACT NO. XV OF 1997)

Received the assent of the Governor on 30th May, 1997 and published in the Government Gazette dated: 2nd June, 1997.

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

Be it enacted by the Jammu and Kashmir state Legislature in the Forty-eighth Year of the Republic of India as follows:-

CHAPTER I

Preliminary

1. Short title and extent. - (1) This Act may be called the Jammu and Kashmir Protection of Human Rights Act, 1997.

(2) It extends to the whole of the State of Jammu and Kashmir.

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

(a) "Chairperson" means the Chairperson of the Commission;

(b) "Commission" means the State Human Rights Commission constituted under section 3;

(c) "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;

(d) "Human Rights Court" means the Human Rights Court specified under section 21;

(e) "Member" means a Member of the Commission and includes the Chairperson;

(f) "Notification" means a notification published in the Government Gazette;

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

(h) "public servant" shall have the meaning assigned to it in section 21 of the Ranbir Penal Code.

CHAPTER II

THE STATE HUMAN RIGHTS COMMISSION

3. Constitution of a State Human Rights Commission.-(1) The Government shall constitute a body to be known as the State 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 shall be a Judge of the High Court;

(b) one Member who is, or has been,¹[x x x] a District Judge;

1. The words "or is eligible to be" omitted by Act No. XXIII of 1997, s.2.

(2)

(c) ¹[three Members] to be appointed from amongst 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 Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

²[(4) The headquarters of the Commission shall be at Srinagar.

(5) The Commission shall have sub-offices at Jammu, Doda and Rajouri:

Provided that the Government may establish sub-offices at other places in the State.

(6) A member of the Commission shall hold sittings of the Commission at each sub-office].

4. Appointment of Chairperson and other Members.-(1) The Chairperson and other 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 recommendations of a Committee consisting of-

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|-----|--|-------------|
| (a) | the Chief Minister | Chairperson |
| (b) | Speaker of the Legislative Assembly | Member |
| (c) | Chairman of the Legislative Council | Member |
| (d) | Minister incharge of the Ministry of Home in the State | Member |
| (e) | Leader of the Opposition in the Legislative Assembly | Member |
| (f) | Leader of the Opposition in the Legislative Council. | Member |

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

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

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 Governor on the ground of proved misbehavior or incapacity after the High Court, on reference being made to it by the Governor has, on inquiry held in accordance with the procedure prescribed in that behalf by the High Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

1. Substituted for the words "one Member" by Act No. XXII of 1997.
2. Substituted by Act No. XXVII of 2002, s.2.

(2) Notwithstanding anything in sub-section (1), the Governor may order remove from office the Chairperson or any other Member if the Chairperson or such other 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 stand so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the Governor involves moral turpitude; or
- ¹[(f) is, without leave of absence from the Commission, absent for thirty days].

²[(3) The Chairperson or a Member may, by writing under his hand addressed to the Governor, resign from the Office of Chairperson or, as the case may be, of the Member at any time].

6. Term of office of Members.-(1) A person appointed as Chairperson shall hold office for a term of three 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 three years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of ³[three 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 the 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 Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

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

1. Clause (f) added by Act No. VII of 1998, s.2.

2. Sub-section (3) added *ibid*.

3. Substituted for the words "five years" by Act No. XXIII of 1997, s.3.

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¹**8. Terms and conditions of the Chairperson and Members.**-(1) The Chairperson shall be entitled to the same salary and allowances as are admissible to a Judge of the High Court and other terms and conditions of service shall be such as may be prescribed.

(2) A Member shall be entitled to the salary and allowances as are admissible to a time scale District Judge and other terms and conditions of service shall be such as may be prescribed.

(3) The terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), if the Chairperson or a Member at the time of his appointment was in receipt of, or being eligible so to do or had elected to draw, a pension in respect of any previous service under the Government of the Union or Government of the State, his salary in respect of services as a Chairperson, or as Member, as the case may be, shall be reduced:-

(i) by the amount of that pension;

(ii) if he had, before assuming office, in lieu of a portion of pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and

(iii) by any other form of retirement benefits being drawn or availed of or to be drawn or availed of by him].

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.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary 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 Government shall make available to the Commission-

²[(a) an officer of the rank of Special Secretary, holding Additional Secretary or its Secretary or its equivalent post in the Jammu and Kashmir Legal (Gazetted) Service for a period of six years who shall be the Secretary of the Commission].

(b) such police and investigative staff under an officer not below the rank of the ³[x x x] Inspector General of Police and such other

1. Substituted by Act XXVII of 2002, s.3.

2. Clause (a) substituted by Act No. VII of 1998, s.3.

3. The words "Deputy" omitted by Act No. XXIII of 1997, s.4.

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officers and staff as may be necessary for the efficient performance of the functions of the Commission.

¹[(2) The Government may, on the basis of selection made by a Committee, appoint such other administrative, technical and scientific staff for the Commission, as it may consider necessary. The Committee shall consist of such officers as the Government may appoint ex-officio in this behalf.]

(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.

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

(2) The Government shall cause the annual and special reports of the Commission to be laid before each house of State Legislature 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 III

Functions and powers of Commission

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

- (a) inquire, suo moto or on a petition presented to it by the victim or any person on this behalf, 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 or violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the Government, any jail or any other institution under the control of the 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 thereof;
- (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 recommended measures for their effective implementation;

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- (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) undertake and promote research in the field of human rights;
- (g) 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;
- (h) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (i) such other functions as it may consider necessary for the promotion of human rights.

14. Powers relating to inquiries.-(1) The Commission shall, while inquiring into complaint under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, Samvat 1977 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 Ranbir Penal Code.

(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 102 of the Code of Criminal Procedure, Samvat 1989, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Ranbir Pena Code is committed in the view or presence of the Commission, the Commission may, after recording the fact constituting the offence and the statement of the accused as provided for in

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the Code of Criminal Procedure, Samvat 1989, forward the case to the 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 482 of the Code of Criminal Procedure, Samvat 1989.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 for the purposes of section 196 of the Ranbir Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, Samvat 1989.

15. 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 Government.

(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;

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

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are 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.

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

Provided that the statement-

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

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

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

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(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 the person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

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

CHAPTER IV

Procedure

18. Inquiry into complaints.-The Commission while inquiring into the complaint of violations of human rights may-

(i) call for the information or report from the Government or any other authority or organization 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 the 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 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.

19. 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 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;
- (2) approach the High Court for such directions, orders or writs as the court may deem necessary;
- (3) recommend to the 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 Government or authority and the

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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;

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

CHAPTER V

Human Rights Courts

20. Human Rights Courts.-For the purpose of providing speedy trial of offences arising out of violation of Human Rights, the 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.

21. Special Public Prosecutor.-For every Human Rights Court, the 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 VI

Finance, Accounts and Audit

22. Grants by the Government.-(1) The Government shall, after due appropriation made by Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the 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).

23. Accounts and audit of the Commission.-(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 Government in consultation with the Accountant General of the State.

(2) The accounts of the Commission shall be audited by the Accountant 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 Accountant General of the State.

(3) The Accountant General of the State or 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

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connection with such audit as the Accountant General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

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

CHAPTER VII

Miscellaneous

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

(2) The Commission shall not inquire any complaint relating to a matter not falling within its jurisdiction but may forward the same to a forum having jurisdiction to entertain the same.

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

26. Prosecution of action taken in good faith.-No suit or legal proceedings shall lie against the Government, Commission or any Member thereof or any person acting under the direction either of the Government or the 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 Government or the Commission of any report, paper or proceedings.

27. Members and Officers to be public servants.-Every Member of the Commission, and every officer appointed or authorized by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Ranbir Penal Code.

28. Power of the Government to make rules.-(1) The Government may, by notification, make rules to carry out the provisions of the 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:-

(11)

¹[(a) the other terms and conditions of service of the Members under section 8;

(b) x x x];

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 23.

(3) Every rule made by the Government under this section shall be laid, as soon as may be after it is made before each House of the State Legislature.

29. Power to remove difficulties.-(1) If any difficulty arises giving effect to the provisions of this Act, the Government may, by order published in the Government 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 the State Legislature.