

**THE JAMMU AND KASHMIR ACCOUNTABILITY
COMMISSION ACT, 2002.**

Act No. XXXVIII of 2002.

[Received the assent of the Governor on 13th December, 2002 and published in the Government Gazette dated 16th December, 2002].

An Act to provide for the establishment of the Institution of Accountability Commission to inquire into grievances and allegations against public functionaries and for matters connected therewith.

Be it enacted by the State Legislature in the Fifty-third Year of the Republic of India as follows : —

1. *Short title, extent and commencement.* — (1) This Act may be called the Jammu and Kashmir Accountability Commission Act, 2002.

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

[(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.]

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

(1) “Accountability Commission” means the institution established under section 3;

(2) “action” means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act and all other expressions connoting action shall be construed accordingly ;

(3) “allegations” in relation to a public functionary includes any affirmation that such public functionary in his capacity as such —

(a) is guilty of corruption, favouritism, nepotism or lack of integrity ;

- (b) was actuated in the discharge of his functions by personal interest or improper or corrupt motive ;
 - (c) has abused or misused his position to obtain any gain or favour to himself or to any other person to cause loss or undue harm or hardship to any other person ;
 - (d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the public functionaries of the class to which he belongs ; or
 - (e) any person on his behalf is in possession or has at any time during the period of his office been in possession, for which the public functionary cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
- (4) "Chairperson" means the Chairperson of the Accountability Commission appointed under clause (a) of sub-section (2) of section 3 ;
- (5) "Chief Minister" means the Chief Minister of the State ;
- (6) "Competent Authority" in relation to a public functionary means—
- (i) in the case of the Chief Minister, or a Minister or an Advisor to Government/ Chief Minister and or a Member of either House of the State Legislature ; — the Governor of the State ;
 - (ii) in the case of a Vice-Chancellor of a University ; — the Chancellor of the University ;
 - (iii) in the case of any other public functionary. — such authority as may be prescribed.

- (7) "corruption" includes anything made punishable as such under Chapter IX of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989, or under the Jammu and Kashmir Prevention of Corruption Act, Samvat 2006 or any other law in force ;
- (8) "Governor" means the Governor of the State ;
- (9) "grievance" includes a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration ; provided it shall not include any claim of an employee of a public authority with respect to his service matters ;
- (10) "mal-administration" includes action taken or purporting to have been taken in exercise of constitutional/administrative functions in any case, where—
- (a) such action is illegal, unreasonable, unjust, oppressive or unreasonably discriminatory ;
 - (b) there has been negligence or undue delay in taking such action.

Explanation :—For the purpose of this sub-clause,—

- (i) 'negligence' means failure to exercise that reasonable and proper care and caution which having regard to all circumstances out of which the allegation and grievance has arisen, it was the imperative duty of such person to have adopted ;
 - (ii) 'undue delay' means failure to take an action within such period as a prudent and reasonable man would consider it sufficient having regard to all the circumstances of the case ;
- (11) "Member" means a member of the Accountability Commission appointed under clause (b) of sub-section (2) of section 3 ;
- (12) "Minister" means a member (other than the Chief Minister) of the Council of Ministers and includes a Deputy Chief Minister,

a Minister, a Minister of State and a Deputy Minister or Advisor to Government/Chief Minister ;

- (13) "Notification" means a notification published in the Government Gazette and the expression "notified" shall be construed accordingly ;
- (14) "Officer" means a person appointed to a civil or public service or post in connection with the affairs of the State ;
- (15) "prescribed" means prescribed by rules made under this Act ;
- (16) "public functionary" means a person who is or was at any time—
- (i) the Chief Minister or a Minister ;
 - (ii) a Member of the State Legislature ;
 - (iii) an Officer referred to in Clause 14 ;
 - (iv) a Chairman, Vice-Chairman, a Member of a local authority or a Chairman of its Standing or Subject Committee ;
 - (v) a Vice-Chancellor or Registrar of a University established or deemed to have been established by law made by the State Legislature ;
 - (vi) a Chairman, Vice-Chairman, Managing Director or a Member of the Board of Directors (by whatever name called) in respect of,—
 - (a) any statutory body or corporation (not being a local authority) established by or under a State or Central Act and owned or controlled by the State Government ;
 - (b) any society registered under the Jammu and Kashmir Societies Registration Act, Samvat 1989 which is subject to the control of the State Government ;
 - (c) any co-operative society registered or deemed to be registered under the relevant law for the time being in

force which is subject to the control of the State Government and which is notified in this behalf in the Gazette ;

- (d) any Government company within the meaning of section 617 of the Companies Act, 1956 in which not less than 51 per cent of its paid-up share capital is held by the State Government or any company which is a subsidiary of such a company in which not less than 51 per cent of its paid-up share capital is held by the State Government ;
- (e) such other body or corporation owned or controlled by the State Government as the State Government may having regard to its financial interest therein, by notification from time to time specify ; or
- (vii) a person in the service or pay of a local authority, university, statutory body or corporation, society, Government company or other institution as is referred to in sub-clauses (iv) to (vi) ;

Explanation :—For the purpose of this clause, ‘local authority’ shall include an authority constituted under any Act for running the affairs of the cities or towns and includes designated authority for any area ;

(17) “State” means the State of Jammu and Kashmir.

3. *Establishment of Accountability Commission*.—(1) As from the commencement of this Act, there shall be established, for the purpose of conducting investigations and inquiries in respect of complaints under this Act, an institution to be called the “Accountability Commission”.

(2) The Accountability Commission shall consist of,—

- [(a) a Chairperson who has been a Judge of the Supreme Court or a Judge of a High Court] ; and

1. Clause (a) substituted by Act No. XV of 2004, S. 2.

(b) such other Members, if any, as may be prescribed :

Provided that a person shall not be qualified for being appointed as a Member unless he has been ¹[a Judge of the High Court.]

(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe before the Governor or any person nominated in this behalf by him, an oath or affirmation in the form set out in the Schedule.

(4) A vacancy occurring in the institution of Accountability Commission shall be filled in as soon as possible.

4. *Appointment of Chairperson and Members.* —²[The Chairperson and Members, if any, shall be appointed by the Governor by warrant under his hand and seal :

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

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|---|--------------|
| (a) the Chief Minister | ... Chairman |
| (b) the Speaker of the Legislative Assembly | ... Member |
| (c) the Chief Justice of the High Court of Jammu and Kashmir | ... Member |
| (d) the Law Minister of the State and | ... Member |
| (e) the Leader of Opposition in the Legislative Assembly | ... Member : |

Provided further that in case, there is no Leader of Opposition in the Legislative Assembly, the Leader of the single largest group or party in opposition to the Government shall be deemed to be a Member of the Committee.]

5. *Chairperson and Members to be ineligible to hold other office.*—The Chairperson or a Member shall not be a member of

1. Substituted *ibid.*

2. Section 4 substituted *ibid.*, S. 3.

Parliament or a member of the Legislature of any State or Union Territory and shall not hold any office of trust or profit (other than his office as such Chairperson or Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

- (a) he is a member of Parliament or of the Legislature of any State or Union Territory, resign from such membership ; or
- (b) he holds any office of trust or profit, resign from such office ; or
- (c) he is connected with any political party, sever his connection with it ; or
- (d) he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business ; or
- (e) he is practising any profession, cease to practise such profession.

6. *Term of office and other conditions of service of Chairperson and Members.*—(1) The Chairperson and every other Member shall hold office as such 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 :

Provided that he may,—

- (a) by writing under his hand addressed to the Governor, resign his office ; or
 - (b) be removed from his office in the manner provided in section 7.
- (2) On ceasing to hold office, the Chairperson and every other Member shall be ineligible for—
- (i) reappointment in the Accountability Commission ;
 - (ii) any other assignment or appointment which is required by law to be made by the Governor by warrant under his hand and seal ; and

(iii) further employment in any other office of profit under the Government of India or the Government of a State.

(3) The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of the High Court ; and

(ii) a Member shall be the same as those of a sitting Judge of the High Court :

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension ; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the amount of that portion of the pension :

Provided further that the salary, allowances and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

7. *Removal of Chairperson or Members.*—(1) The Chairperson or a Member of the Accountability Commission shall not be removed from his office except by an order made by the Governor passed after an address by the Legislative Assembly supported by a majority of total membership of the House and by a majority of not less than 2/3rd of the Members present and voting, has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) Before passing a Resolution to address the Governor under subsection (1), the Speaker of the Legislative Assembly shall constitute a

(2) The Accountability Commission may require any act or conduct of any person other than a public functionary in so far as it

concerns the investigation or inquiry. [Commission shall assist the Chief Justice of the State High Court before in the hearing excepting the State High Court the Accountability in, or arising from, or connected with any allegation against the person

Provided further that for making inquiry into any matter involved any matter involved in, or arising from, or connected with, any such allegation against the Chief Justice in so far as it is in the interest of the security of the State and for maintenance of public order

Provided that the Accountability Commission shall not inquire into approval of a public functionary as defined in clause (46) of section 2 of the government of the Act, the Accountability Commission may investigate any matter which is taken by or with the intent or effect

9. Jurisdiction of Accountability Commission—(1) Subject to the date on which the Commission remains in date. Government by resolution shall discharge the functions of the Commission owing to absence or leave or otherwise a Member authorized by

(2) When the Commission is unable to discharge his functions Commission to fill such vacancy. Member to act as the Commission until the appointment of a new resignation or otherwise the Governor may, by resolution, authorize a vacancy in the office of the Commission by reason of his death in certain circumstances—(1) in the event of the occurrence of any

Member to act as Commission or to discharge his functions the Speaker of the Legislative Assembly. and adequate equipment of being heard before submitting the report to Commission of the charges leveled against him and afford him a proper the Commission shall within the Commission or the Member of the Court or Judge of any High Court and the Law Minister of the State and committee consisting of a person who has been a Judge of the Supreme

considers it necessary so to do for the purpose of its inquiry into any such allegations : /

Provided that the Accountability Commission shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

(3) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Jammu and Kashmir Commission of Inquiry Act, 1962.

10. *Matters not subject to jurisdiction of Accountability Commission.*—(1) The Accountability Commission shall not inquire into any matter concerning any person if the Chairperson or any Member has any bias in respect of such matter or person and if any dispute arises in this behalf, the Governor shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief Justice of the High Court of Jammu and Kashmir and decide the dispute in conformity with such opinion.

(2) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Accountability Commission to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded, as having been improperly exercised.

11. *Provisions relating to complaints.*—(1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Accountability Commission, in the case of an allegation, by any person, and in the case of a grievance, by a person aggrieved :

Provided that where the person aggrieved is dead or, is for any reason unable to act for himself, the complaint may be made or continued by his legal representative or by any other person who is authorised by him in writing in this behalf.

[(2) Every complaint shall be made in such form and in such manner and shall be accompanied by such affidavit as may be prescribed].

1. Substituted by Act No. XV of 2004, S. 6.

12. *Preliminary scrutiny of complaints by Accountability Commission.*—(1) If the Accountability Commission is satisfied, after considering a complaint and after making such verification as it deems appropriate that the complaint is manifestly false and vexatious, the Accountability Commission shall dismiss the complaint after recording its reasons therefor and communicate the same to the complainant and to the competent authority.

(2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Accountability Commission deems appropriate in the circumstances of the case and in particular, the Accountability Commission may, if it deems it necessary so to do, call for the comments of the public functionary concerned.

13. *Procedure in respect of inquiries.*—¹[(1) The concerned public functionary shall present his defence within a period of two months and the Competent Authority shall furnish its comments within the period of one month from the date of the receipt of the copy of the complaint from the Accountability Commission. In case no comments or reply is received within the time specified, it shall be presumed that neither the public functionary nor the competent authority contradict the allegations made in the complaint.]

(2) Every inquiry shall be conducted by the Chairperson and the Members, if any, sitting jointly and the place in which such inquiry is conducted shall be deemed to be an open court to which the public generally may have access so far as the same can conveniently contain them :

Provided that in exceptional circumstances and for reasons to be recorded in writing, such inquiry may be conducted in camera.

(3) The Accountability Commission shall hold every such inquiry as expeditiously as possible and in any case complete the inquiry within a period of six months from the date of receipt of the complaint :

Provided that the Accountability Commission may, for reasons to be recorded in writing, complete the inquiry within a further period of six months.

1. Sub-section (1) of section 13 substituted *ibid.* S. 7.

(4) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Accountability Commission considers appropriate in the circumstances of the case.

14. *Evidence.*—(1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 12), the Accountability Commission—

- (a) may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document ; and
- (b) shall have all the powers of civil court under the Code of Civil Procedure, Samvat 1977, while trying a suit in respect of the following matters, namely :—
 - (i) summoning and enforcing the attendance of any person and examining him on oath ;
 - (ii) requiring the discovery and production of any document ;
 - (iii) receiving evidence on affidavits ;
 - (iv) requisitioning any public record or copy thereof from any court or office ;
 - (v) issuing commissions for the examination of witnesses or documents ; and
 - (vi) such other matters as may be prescribed.

(2) Every proceeding before the Accountability Commission shall be deemed to be a judicial proceeding within the meaning of section 193 of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 12) under this Act.

(4) The Government or any public servant shall not be entitled, in relation to any such inquiry or verification under section 12, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings.

(5) Notwithstanding anything contained in the foregoing sub-sections, no person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document,—

(a) as might prejudice the security of State ; or

(b) as might involve the disclosure of proceedings of the Cabinet of the State Government or any committee of the Cabinet :

Provided that the privilege to this effect is claimed by the concerned person or functionary in accordance with the law.

Explanation.—For the purposes of this section, “public servant” shall have the same meaning as is in section 21 of the Ranbir Penal Code.

15. Search and seizure.—(1) If the Accountability Commission has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any inquiry under this Act, are secreted in any place, it may authorise any officer subordinate to it, or any officer of an investigating agency referred to in sub-section (1) of section 26, to search for and to seize such documents.

(2) If the Accountability Commission is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in its custody, it may so retain the said document till the completion of such inquiry :

Provided that where any document is required to be returned, the Accountability Commission shall return the same after retaining copies of such document duly authenticated thereof.

(3) The provisions of the Code of Criminal Procedure, Samvat 1989, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs therein, the words "Accountability Commission or any officer authorised by it" were substituted.

¹[(4) Where Accountability Commission is satisfied, by affidavit or otherwise, that the public functionary against whom a complaint is pending, with intent to frustrate the ultimate finding or destroy the evidence—

(a) is about to dispose of whole or any part of his property ; or

(b) is about to remove the whole or any part of his property from the State or the Country which is subject matter of complaint,

the Commission shall exercise the same power as are conferred upon the Civil Court under Order 38, Rule 5 of the Code of Civil Procedure, 1977.]

16. *Interim recommendations.*—If during the course of preliminary inquiry or investigation under this Act, the Accountability Commission is prima facie satisfied that allegation or grievance against any action or decision is likely to be substantiated either wholly or partly, he may, by a report in writing recommend to the public functionary concerned to stay the implementation or enforcement of the decision or action complained against or to take such mandatory or preventive action on such terms and conditions, as it may specify in its report.

17. *Power of inspection.*—The Accountability Commission or any officer authorised by it shall have the power to inspect any office of the Government, local authority, corporation, Government company, society, university as is referred to in sub-clauses (iv) to (vi) of clause (16) of section 2, in connection with preliminary inquiry or investigation of any complaint involving a grievance or an allegation under this Act.

18. *Secrecy of preliminary inquiry or investigation.*—Every preliminary inquiry or investigation under this Act shall be conducted in private and in particular, the identity of the complainant and the public

1. Inserted by Act No. XV of 2004, S. 8.

functionary affected by the preliminary inquiry or investigation shall not be made public during such enquiry or investigation.

19. *Secrecy of information.*—(1) Any information obtained by the Accountability Commission or its staff or any other officer, person or agency in the course of or for the purpose of any preliminary inquiry or any investigation under this Act, and any evidence recorded or collected in relation to such information shall be treated as confidential and notwithstanding anything contained in the Evidence Act, Samvat 1977, no court shall be entitled to compel the Accountability Commission or any such officer, person or agency or any public functionary to give evidence relating to such information or to produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of such information or evidence,—

- (a) for the purpose of any report to be made under this Act ; or for the purposes of any action or proceeding to be taken on such report ; or
- (b) for the purpose of any proceedings, for an offence under the State Official Secrets Act, Samvat 1977, or for an offence of giving or fabricating false evidence under section 193 of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989, or for the purpose of trial of any offence under section 20 or section 23 ;
- (c) for such other purpose as may be prescribed.

20 *Power to punish for contempt.*—(1) The Accountability Commission shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has, and, for this purpose, the provisions of the Jammu and Kashmir Contempt of Courts Act, 1997, shall have effect subject to the modification that the references therein to High Court shall be construed as including a reference to the Accountability Commission.

(2) The Accountability Commission shall be deemed to be Court within the meaning of Jammu and Kashmir Contempt of Courts Act, 1997.

21. *Reports of Accountability Commission.*—(1) After the conclusion of inquiry under section 13, the Accountability Commission shall determine whether all or any of the grievances or allegations made in the complaint have or has been proved to its satisfaction and by report in writing shall communicate its findings to the complainant, the public functionary and the competent authority ¹[and such report shall be published in Govt. Gazette besides other manners and modes as may be deemed fit by the Accountability Commission.]

(2) The Accountability Commission shall in its report recommend to the competent authority concerned that such injustice or hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Accountability Commission, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

(4) The competent authority in the case of a public functionary other than the Chief Minister, a Minister, Advisor to Government/Chief Minister or a Member of the State Legislature, shall examine the report forwarded to it under sub-section (1) and without any further inquiry, take action on the basis of the recommendation and within ninety days from the date of receipt of the report, intimate or cause to be intimated to the Accountability Commission the action taken or proposed to be taken on the basis of the report.

(5) The Accountability Commission shall send its report in respect of a complaint against the Chief Minister, a Minister, Advisor to Government/Chief Minister or the Member of State Legislature with his recommendations to the Governor who shall take such action as he may deem fit or expedient on the report.

(6) If the Accountability Commission is satisfied with the action taken or proposed to be taken on his recommendations referred to in sub-section (3) or sub-section (4), it shall close the case under information

1. Added by Act No. XV of 2004, S. 9.

to the complainant if any, the public functionary and the competent authority concerned; but where it is not so satisfied and considers that the case so deserves, it may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant, if any.

(7) Notwithstanding anything to the contrary contained in any other law for the time being in force—

- (a) if any sanction is required under any law for taking cognizance of any case or for initiating any proceedings against any public functionary on the basis of the report of the Accountability Commission, the sanctioning authority shall take a decision within a period of three months from the date a copy of the report is received from the competent authority for such sanction and in the event of its failure to take a decision within the said period, it would be deemed that the sanction has been accorded and same shall be sufficient for taking cognizance of the case or initiation of such proceedings :

Provided that the period shall stand extended to the extent required by the sanctioning authority for seeking further information from the Accountability Commission ;

- (b) where a Court of competent jurisdiction finds that any public functionary has acquired any property, moveable or immoveable, or other assets illegally or through illegal means, such property or assets shall stand confiscated to the State free from all encumbrances and without any compensation to be utilised for a public purpose.

22. Intentional insult or interruption to Accountability Commission.—(1) Whoever intentionally offers any insult, or causes any interruption, to the Accountability Commission while the Accountability Commission or any of its Members is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) The provisions of section 198-B of the Code of Criminal Procedure, Samvat 1989, shall apply in relation to an offence referred to in sub-section (1) as they apply in relation to an offence referred to in section 198 of the said Code, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Accountability Commission.

23. Power of Accountability Commission to try certain offences.—

(1) When any such offence as is described in sub-section (1) of section 22 is committed in the view or presence of the Accountability Commission, the Accountability Commission may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, try such offender summarily, so far as may be, in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, Samvat 1989, and sentence him to simple imprisonment for a term which may extend to six months, or with fine or with both.

(2) In every case tried under this section, the Accountability Commission shall record the facts constituting the offence with the statement, if any, made by the offender as well as the finding and the sentence.

(3) Any person convicted on a trial held under this section may appeal to the High Court which shall be heard and decided by a Division Bench of the High Court.

(4) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989.

24. Penalty for mala fide complaint.—(1) Every person who makes any complaint which he knows or has reason to believe that the same is false, frivolous or vexatious upon finding to that effect recorded by the Accountability Commission shall be punishable as provided in sub-section (2).

(2) When any offence under sub-section (1) is committed, the Accountability Commission may take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure specified for summary trials under the Code of Criminal Procedure, Samvat 1989, and if such offender is found guilty of committing the offence, sentence him to imprisonment for a term which shall not be less than one year but which may extend to three years and also to fine which may extend to fifty thousand rupees and may also award where fine is imposed, out of the amount of the fine, to the public functionary against whom such false complaint has been made, such amount of compensation as the Accountability Commission thinks fit :

Provided that this shall not debar the public functionary to pursue any other remedy or relief under any law against the complaint.

25. *Staff of Accountability Commission.*—(1) The Accountability Commission shall, for the purpose of assisting it in the discharge of its functions (including verification and inquiries in respect of complaints) under this Act, be provided by the Government, a Secretary and such other officers and employees as the Governor may determine, from time to time, in consultation with the Accountability Commission.

(2) The terms and conditions of service of the officers and employees referred to in sub-section (1) shall be such as the Governor may determine, from time to time.

(3) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) shall be subject to the exclusive administrative control and direction of the Accountability Commission.

26. *Utilisation of services of other persons.*—(1) The Accountability Commission may for the purpose of conducting a

preliminary inquiry or an investigation under this Act, utilize the services of,—

- (a) any officer or investigation agency of the State Government ; or
- (b) any other person or agency :

Provided that the investigation agency required for the purpose shall be headed by an officer not below the rank of a Deputy Inspector General of Police :

• Provided further that the investigation agency shall have the powers of search and seizure and the provisions of the Code of Criminal Procedure, Samavt 1989, relating to searches and seizure shall apply accordingly.

(2) Any officer, agency or person whose services are utilized under sub-section (1) may subject to the direction and control of the Accountability Commission as the case may be,—

- (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 officer, agency or person whose services are utilized under sub-section (1) shall enquire into the matter and submit a report to Accountability Commission within such period as may be specified by Accountability Commission in this behalf.

(4) Any officer, agency or person whose services are utilized under sub-section (1) shall act under the directions of the Accountability Commission and they may be paid such remuneration and expenses as may be allowed by the Accountability Commission.

(5) The officer, agency or person whose services are utilised under sub-section (1) shall, in discharge of his or its functions under the Act, be subject to the exclusive control of the Accountability Commission.

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

(a) considers it necessary to inquire into the conduct of any person ; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

the Accountability Commission shall give to that 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.

28. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against the Accountability Commission or against any officer, employee, agency or person referred to in section 26, in respect of anything which is in good faith done or intended to be done under this Act.

(2) Save as otherwise provided in this Act, no proceedings or decision of the Accountability Commission shall be called in question in any Court.

29. *Power to delegate.*—The Accountability Commission may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, delegate to any person referred to in sub-section (1) of section 26, any power which does not involve its discretion or its judicial or quasi-judicial functions under the Act.

30. *Power of the Government to make rules.*—(1) The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions such rules may provide for—

(a) the competent authority to be prescribed under sub-clause (iii) of clause (6) of section 2 ;

- (b) the matters in respect of which the Accountability Commission shall have powers of a civil court under clause (b) of sub-section (1) of section 14 ;
- (c) the other purposes in relation to disclosure of any information or evidence to be prescribed under clause (c) of sub-section (2) of section 19 ; or
- (d) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the State Government, necessary for the proper implementation of this Act.

(3) Every rule made under this section shall immediately after it is made, be laid, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree in the annulment of the rule, the rule shall, from the date on which such modification or annulment is notified, 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.

31. *Power of Accountability Commission to make Regulations.*—

(1) The Accountability Commission may, by notification, make such regulations as it may deem necessary for carrying out the purposes of this Act.

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

- (a) holding of sittings of the Accountability Commission ;
- (b) holding of sittings of the Accountability Commission at other than the place of ordinary sittings ;

- (c) procedure which may be followed by the Accountability Commission for conducting proceedings including inquiry and investigation ;
 - (d) forms in which complaints may be made and the affidavits which may accompany such complaint and the fees if any which may be charged in respect thereof ;
 - (e) such forms and notices as may be necessary in the opinion of the Chairman of the Accountability Commission for carrying out the inquiry and investigation.
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THE SCHEDULE

[See section 3 (3)]

I, A.B _____ having been appointed Chairperson (or a Member) of the Accountability Commission, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India and the Constitution of Jammu and Kashmir as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

(Sd.) G. H. TANTRAY,

Special Secretary to Government,
Law Department.