

STATE ANTI-DISCRIMINATION AND EQUALITY BILL, 2021

A Bill

to promote equality, prohibit all forms of wrongful discrimination in the public and private sector and to constitute a State Commission to enforce the anti-discrimination duty and positive duties, and to provide for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India promises justice, liberty, fraternity and equality,

RECOGNISING that discrimination denies these constitutional promises to those subject to it,

NOTING numerous reports of cases of persistent and widespread discrimination in all spheres of social, economic, cultural and political life, especially against *dalits*, women, sexual minorities, disabled persons, tribals, racial, religious and linguistic minorities and other vulnerable sections of society,

RECOGNISING the need to protect everyone subject to all forms of wrongful discrimination under a single comprehensive legislation in the State of ABC,

NOW, THEREFORE, it is expedient to enact a comprehensive anti-discrimination law covering the public and the private sector,

BE it enacted in the XYZ Year of the Republic of India as follows—

CHAPTER I

PRELIMINARY

1. Short title, Scope etc

(1) This Act may be called the ABC Anti-Discrimination and Equality Act, 202X.

(2) It extends to the whole of the state of ABC.

(3) All provisions, except those contained in Chapter V, shall come into force at once.

(4) Chapter V of this Act shall come into force on the ninetieth day of its enactment, or on the date appointed by the Government by notification in the Official Gazette, whichever is earlier.

2. Definitions & Interpretation

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

(i) ‘A’ and ‘B’ have the meanings prescribed in section 12;

(ii) ‘aggrieved person’ means any person who alleges that she has been subjected to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimisation;

(iii) ‘adverse effect’ includes, the withholding of a benefit given to others as well as minimal, symbolic or nominal adverse effects;

(iv) ‘Commission’ means the ABC Equality Commission constituted under section 22;

- (v) ‘consumer’ means any person who buys, hires, seeks to buy, or seeks to hire any goods from a trader, or avails of or seeks to avail of any services of a service provider, and includes non-commercial service-users such as patients and (primary, secondary, vocational or university) students;
- (vi) ‘disadvantaged group’ has the meaning prescribed in section 16;
- (vii) ‘eligible political parties’ means political parties mentioned in paragraph 5 and paragraph 6 of the Fourth Schedule to this Act;
- (viii) ‘employee’ includes, but is not limited to, a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied, whether skilled, semi-skilled or unskilled, whether working in an administrative or managerial capacity or not, whether working full-time or part-time, and includes a co-worker, a contract worker, probationer, trainee, apprentice or one called by any other such name;
- (ix) ‘employer’ includes, but is not limited to, a contractor and a sub-contractor, and any person who is responsible, whether ultimately or at an intermediate level, for the management, supervision or control of a workplace, or discharging contractual obligations with respect to her employees;
- (x) ‘gender expression’ includes, but is not limited to, the manner in which a person expresses or presents their gender, such as through physical appearance, behaviour, mannerisms, clothing, make-up, speech, body language, and chosen names and pronouns;
- (xi) ‘Government’ means the Government of the State of ABC;
- (xii) ‘landlord’ includes, but is not limited to, any person who is a landholder, seller, lessor, proprietor, housing society, hotel, motel, innkeeper, owner, estate or letting agency, board and lodgings provider, or any other person providing residential, commercial, agricultural, or industrial property, for sale, lease or rent for temporary or permanent occupation or use;
- (xiii) ‘Legislative Assembly’ means the Legislative Assembly of the State of ABC;
- (xiv) “Members of the Legislative Assembly” means members of the Legislative Assembly of the State of ABC.
- (xv) ‘person’ includes, but is not limited to, an individual, company, business, authority, institution, organisation, venture, undertaking, enterprise, institution, establishment, *panchayat*, personal law board, elders’ council, *jamaat*, political party, club, society, trade union, trustee, non-governmental organisation, department, office, branch or unit, whether governmental or private, whether incorporated or registered or not, whether formal or informal, and whether for a profit motive or not;
- (xvi) ‘private person performing a public function’ includes, but is not limited to, public contractors, special purpose vehicles formed in relation to public-private partnerships, and businesses in receipt of any special subsidy, grant or benefit from the Government that is not ordinarily available to other businesses;
- (xvii) ‘protected characteristic’ has the meaning prescribed in section 3;
- (xviii) ‘protected group’ has the meaning prescribed in section 4;
- (xix) ‘public authority’ means any authority, person, board, department, body or institution that is located or operates within the jurisdictional limits of the State of ABC and is:
- (a) established or constituted by or under any law made by the Legislative Assembly; or
 - (b) owned, controlled or substantially financed, directly or indirectly, by funds provided by the Government.

Provided that an act of a public authority shall only include such act, omission, conduct, policy, criterion, practice or structure that falls within or relates to a matter within the legislative competence of the Legislative Assembly;

(xx) 'purchaser' includes, but is not limited to, any person who is a transferee of a property, whether or not she has paid any consideration;

(xxi) 'religious identity' includes, but is not limited to:

(a) religious background of a person or that of either of her parents; or

(b) religious group or religious groups that a person belongs to, whether or not such group is organized and whether or not such group is recognized or as part of a religion; or

(c) religious beliefs and practices that a person adheres to or rejects, including agnosticism and atheism;

(xxii) 'service provider' means any person who is a provider of any service, whether in lieu of consideration or without any consideration, including hospitality, entertainment, education (including primary, secondary, vocational and university education), healthcare, advertising, insurance, banking, consultancy, commercial, voluntary, charitable, professional, vocational, legal, transport, cultural, religious, industrial and financial services;

(xxiii) 'she' and cognate pronouns include references to persons of all genders, unless implied otherwise by the context;

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

(xxv) 'trader' includes, but is not limited to, any person who is a seller, distributor, retailer, supplier, provider, manufacturer, packer, shopkeeper, retailer or wholesaler of any goods;

(xxvi) 'workplace' includes, but is not limited to,

(a) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Government or the local authority or a government company or a corporation or a co-operative society;

(b) any formal or informal private sector organisation or a private venture, undertaking, company, association, enterprise, institution, establishment, society, trust, family business, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(c) hospitals or nursing homes;

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

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

(2) Illustrations provided in this Act may be used as interpretive aids for its substantive provisions, but shall not be used to reduce the scope of protection against discrimination offered by any substantive provision.

(3) The provisions of this Act shall be interpreted purposively, in order to achieve an equal, liberal, inclusive and just society.

3. Protected Characteristics

A “protected characteristic” means —

(i) caste, race, ethnicity, descent, sex, gender identity, gender expression, pregnancy, sexual orientation, religious identity, tribe, disability, linguistic identity, HIV-status, nationality, marital status, dietary preference, skin tone, physical appearance, place of residence, refugee status, migrant status, place of birth, age, or

(ii) any other personal characteristic which:

- (a) is either outside a person’s effective control, or constitutes a fundamental choice, or both, and
- (b) defines at least one group that suffers or is in danger of suffering widespread and substantial disadvantage, when compared with other groups defined by the same characteristic, or

(iii) a combination or intersection of any of the above.

4. Protected Groups

(1) Subject to other provisions in this section, a “protected group” means a group defined by a protected characteristic.

Illustrations

- 1. Men constitute a protected group defined by the protected characteristic sex. So do women.
- 2. Muslim women are a protected group defined by a combination of two protected characteristics: sex and religious identity.

(2) A protected group may or may not possess any formal recognition, social cohesion or a distinct cultural identity.

Illustration

Dalits constitute a protected group even if they may lack formal recognition as a group.

(3) Subject to sub-section (5) of this section, in relation to the protected characteristic of pregnancy, the only relevant protected group is persons who are, or are likely to become, pregnant, or a sub-group thereof.

(4) Subject to sub-section (5) of this section, in relation to the protected characteristic of disability, the only relevant protected group is persons living with a disability, or a sub-group thereof.

(5) A protected group shall be deemed to include persons who are (correctly or incorrectly) perceived to be members of that group and persons who are associated with the members of that group.

Illustrations

- 1. A person harassed because he is thought to be gay is protected from sexual orientation discrimination even if he is not in fact gay.
- 2. A person without any disability who has caring responsibilities for her disabled son is protected from disability discrimination.

(6) A protected group includes any sub-group within it.

Illustration

Dalits include *dalits* living in a particular geographical area, or those working in a particular establishment, or *dalits* who have a university degree, or *dalit* converts to any religion, or any other sub-group within *dalits*.

5. Direct Discrimination

(1) A conduct, law, policy, criterion, practice or structure is directly discriminatory if it satisfies sub-section (2) of this section, and prima facie directly discriminatory if it satisfies any of the sub-sections (3), (4), (5) or (6) of this section.

(2) It is motivated by prejudice against or is intended to harm, injure, or adversely affect a protected group.

Illustrations

1. An employer refuses to interview a candidate because she belongs to a scheduled caste. This is direct discrimination in relation to caste.
2. A doctor administers ‘conversion therapy’ to ‘cure’ a lesbian of her same-sex attraction. This is direct discrimination in relation to sexual orientation.
3. A restaurant chain has *dalit* men as well as non-*dalit* women working in their kitchens, but they refuse to hire *dalit* women for any kitchen related work. This is direct direction based on the intersectional ground of caste-sex.

(3) It is based on stereotypical assumptions about members of a protected group, even if such assumptions may be statistically accurate.

Illustrations

1. An employer fires a female employee after her marriage because he makes a stereotypical assumption that married women do not make efficient workers. This is prima facie direct discrimination in relation to sex as well as marital status.
2. A college bans female students from wearing jeans based on stereotypical assumptions about how women should dress. This is prima facie direct discrimination in relation to sex.
3. A hospital hires only female nurses based on the stereotypical assumption that women are more caring than men. This is prima facie direct discrimination in relation to sex.

(4) It includes a reference to a protected characteristic, whether on its own or in combination with any other criteria.

Illustration

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

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

Illustration

A university has a policy of conducting random security checks of student hostel rooms. In practice, this policy is only invoked to check rooms of Kashmiri students. This is prima facie direct discrimination in relation to ethnicity, descent and linguistic identity. If this targeted application of the policy is intentional, it will be direct discrimination under sub-section (2) of this section.

(6) Although applied generally,

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

Illustration

A university provides accommodation only to members of staff who have at least one child with their married partner. While this rule excludes many opposite-sex couples, it also excludes all same-sex couple. This is prima facie direct discrimination in relation to sexual orientation. This is also prima facie direct discrimination in relation to marital status.

(7) Subject to the other provisions of this section, prima facie direct discrimination constitutes direct discrimination unless the respondent shows that the conduct, law, policy, criterion, practice or structure

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

(ii) was adopted in good faith.

Illustrations

1. A drama company is putting up a production of the *Ramayana*. It advertises for male actors to apply for the role of Rama and female actors for that of Sita. This is a proportionate means of achieving a legitimate objective.
2. A restaurant owner refuses to hire a Muslim waiter because its patrons prefer to be served by non-Muslims. Catering to the prejudices of others is not a legitimate objective.

(8) Financial gain or the preservation of a culture, ethos or tradition, except when and to the extent that such preservation is in pursuit of the rights guaranteed under Articles 25, 26, 29 and 30 of the Constitution, shall not be regarded as a legitimate objective for the purposes of this section.

Provided that nothing in this sub-section shall prevent an employer from hiring a candidate most competent at performing the job.

(9) A conduct, law, policy, criterion, practice or structure shall not be proportionate if its objective can be substantially achieved through non-discriminatory or less discriminatory means.

Illustration

An employer prohibits its female employees from working the night shift. Ensuring the safety of its employees is a legitimate objective, but the means adopted is disproportionate because the objective can be achieved by making necessary security arrangements instead.

(10) A finding of prima facie direct discrimination under sub-section (3) of this section cannot be disputed merely by showing that the relevant stereotypical assumption is supported by statistics.

6. Indirect Discrimination

(1) A generally applicable conduct, law, policy, criterion, practice or structure is prima facie indirectly discriminatory if it does not amount to direct discrimination, and

- (i) either puts or would put members of a protected group at a detriment when compared with members of any other group defined by the same protected characteristic, or
- (ii) has or would have a disproportionate adverse effect on members of a protected group when compared with members of any other group defined by the same protected characteristic.

Illustrations

1. An employer pays part-time workers at a lower hourly rate than full-time workers, for doing the same work. A majority of part-time workers in his establishment are women but a majority of full-time workers are men. This is prima facie indirect discrimination in relation to sex.
2. A housing society only lets apartments to persons with a Master's degree. In the relevant city, persons belonging to the scheduled castes are substantially less likely to have Master's degrees compared with others. This is prima facie indirect discrimination in relation to caste.
3. A milk delivery company has a policy of not supplying milk to butchers. Most butchers in that locality are Muslims. This is prima facie indirect discrimination in relation to religious identity.

(2) Prima facie indirect discrimination constitutes indirect discrimination unless the respondent shows that the conduct, law, policy, criterion, practice or structure

- (i) is a proportionate means of achieving a legitimate objective, and
- (ii) was adopted in good faith.

Illustrations

1. In Illustration 1 to sub-section (1) of this section, the objective of encouraging and rewarding full-time workers in order to retain them is legitimate. However, the means of differential pay for the same value of work is not proportionate. This is indirect discrimination in relation to sex.
2. In Illustration 2 to sub-section (1) of this section, if the rule was adopted by the housing society with the intention to exclude persons belonging to one or more scheduled castes, it would lack good faith. In any case, the requirement of a Master's degree for tenants is unlikely to serve any legitimate objective of the housing society. This is indirect discrimination in relation to caste.

(3) A conduct, law, policy, criterion, practice or structure shall not be proportionate if its objective can be substantially achieved through non-discriminatory or less discriminatory means.

7. Harassment

(1) Harassment is any course of communication or conduct related to a protected characteristic directed at a person belonging to a disadvantaged group that has the purpose or effect of creating an intimidating, hostile or bullying environment for such person.

Illustrations

1. A schoolboy who is reluctant to play sports is frequently called a 'sissy' by his teacher. This is harassment in relation to gender expression.
2. A co-worker sprinkles 'holy water' on two machines previously operated by colleagues belonging to scheduled castes to 'purify' it. This is harassment in relation to caste.

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

8. Boycott

Boycott means any overt or implicit abetment, support, encouragement, facilitation, or practice of any social avoidance, ostracism, excommunication, expulsion or exclusion that is targeted against or likely to adversely affect members of a disadvantaged group.

Illustration

A *khap panchayat* orders villagers to stop all interaction with a *dalit* family, one of whose members married an upper caste woman. This is boycott in relation to caste.

9. Segregation

(1) Segregation means any overt or implicit abetment, support, encouragement, facilitation of, or use of force, coercion or manipulation, or the threat thereof with the objective of preventing a person from or punishing a person for interacting with, marrying, eating with, living with, socialising with, becoming friends with, visiting, working with, travelling with, or contracting with another because of a protected characteristic.

Illustrations

The following acts amount to segregation because of:

1. Caste: an employer operates separate canteens for upper-caste Hindus and all others.
2. Religious identity: a Hindu boy is threatened with violence unless he breaks off his romantic relationship with a Muslim girl.
3. Marital status: an adult consenting couple, walking hand in hand in a park, is set upon by a mob which, on discovering that they are not married, forces the woman to tie a *rakhi* on the man's wrist.
4. Caste and sex: a woman has her movements restricted or monitored by her family because she is seen at a cinema hall in the company of a man belonging to the same *gotra* as herself.
5. Marital status: when a person is forced into marrying another against her will.

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

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

10. Discriminatory Violence

(1) Discriminatory violence means any overt or implicit abetment, support, encouragement, facilitation or use of violence or coercion that is targeted against members of a protected group.

Illustration

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

(2) A public servant

(i) who has the duty to protect the public from violence or coercion, and

(ii) fails to make, or causes or attempts to cause others to fail to make sufficient efforts to protect members of a protected group from such violence or coercion

has committed discriminatory violence.

11. Victimisation

(1) Victimisation means subjecting to a detriment or adverse effect any person for

(i) bringing a complaint under this Act, or

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

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

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

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

(vi) doing anything else in connection with the purposes or provisions of this Act, or

(vii) providing financial, logistical or other support to anyone who does any of these things.

(2) Victimisation includes subjecting to a detriment or adverse effect any person who intends to do, or is believed to have done, or is believed to be likely to do, or is believed to have the intention of doing any of the acts mentioned in sub-section (1) of this section.

(3) Victimisation includes subjecting to a detriment or adverse effect any person who is or is believed to be associated with any person protected under sub-section (1) or (2) of this section.

12. Anti-discrimination Duty

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

(i) B, or

(ii) any person who seeks to, or would seek to, become B, or

(iii) any person who was B or believed to be B.

(2) In accordance with the guidelines issued by the Commission under sub-section (6)(i) of section 24, A, or a representative of A, shall take reasonable steps to ensure that B is protected from discrimination, harassment, boycott, segregation, discriminatory violence and victimisation by others over whom A has any direct or indirect supervisory, managerial, contractual or other power or control.

(3) The duty in sub-section (2) of this section includes the duty to institute a readily accessible, independent and well-publicised formal complaints mechanism and the duty to duly investigate and act on any complaints, in accordance with the guidelines issued by the Commission under sub-section (6)(i) of section 24.

(4) The following do not constitute a breach of the anti-discrimination duty:

(i) diversification, including collecting information for, calculating or publishing the diversity index, whether done mandatorily under sections 17 and 18 or voluntarily;

(ii) providing diversity training under section 19;

(iii) undertaking affirmative action, as defined in section 20;

(iv) giving due regard to the need to eliminate discrimination and to promote equality and diversity, as provided in section 21; and

(v) doing, making, communicating, adopting or instituting, in good faith, anything mentioned in the Second Schedule to this Act.

(5) A's group membership, including her membership of the same protected group as B, is irrelevant to determining whether A has breached her duty under this Act.

(6) In this Act, A and B shall be construed broadly, and in accordance with the table below:

A	B
employer	employees
landlord	purchaser, tenant
trader	consumer
service provider	consumer
public authority	any person affected by an act of a public authority
private persons performing public functions	any person affected by their public function

(7) For the purposes of this Act, A shall not include any person constituted by an exercise of any power located in List I of Seventh Schedule, read with Article 246, of the Constitution of India.

13. Remedies against Discrimination

(1) Subject to other provisions of this section, the Adjudicatory Division of the Commission may issue any appropriate order, declaration, injunction, relief or award to remedy the breach of the antidiscrimination duty, including by requiring A, or any other person who is a party to the proceedings before it, to:

- (i) amend or abandon the discriminatory conduct, policy, criterion, practice or structure,
- (ii) pay damages, mesne profits, back wages or salary, compensation for any detriment caused, and any other costs, along with any interest, after adjustment for inflation, to the aggrieved persons and, exceptionally, to any other person,
- (iii) apologise in writing to the aggrieved persons, including publicise such apology in a manner directed by the Adjudicatory Division,
- (iv) adopt suitable diversification or affirmative action measures,
- (v) undergo, or require a person under her supervision or control to undergo, diversity training,
- (vi) investigate and act upon harassment or victimisation by another,
- (vii) put processes, mechanisms or structures in place to avoid future breaches,
- (viii) guarantee, in writing, the non-repetition of the breach,
- (ix) pay punitive damages, in addition to any other remedies, if the discrimination is intentional or repetitive, to the aggrieved persons.

(2) If the antidiscrimination duty is breached in relation to disability, pregnancy, gender identity, gender expression, religious identity, linguistic identity or age, A may be ordered to make exceptions to reasonably accommodate the needs of specific aggrieved persons.

(3) A person aggrieved by an order of the Commission may appeal against such order to the High Court of ABC within forty-five days from the date on which the order was served upon her.

14. Aggravated Discrimination

(1) Aggravated discrimination means engaging in, attempting to engage in or calling for boycott, segregation or discriminatory violence.

(2) Every person, including anyone who is not A, is under a duty to refrain from committing acts of aggravated discrimination.

15. Additional Remedies against Aggravated Discrimination

(1) Any remedy specified in sub-section (1) of section 13 may also be ordered against anyone, including anyone who is not A, who commits aggravated discrimination.

(2) A remedial order against a person who commits aggravated discrimination in relation to a disadvantaged group shall normally include, but may not be limited to, an order for exemplary damages, a written and public apology and a written and public non-repetition guarantee to the affected persons or, if they are deceased or their whereabouts are unknown, to their nearest relatives:

Provided that no such relative should have participated in or supported in any way the commission of the said discrimination against the affected person,

Provided further that if a Commission decides not to award exemplary damages or require an apology in a case of aggravated discrimination, it shall do so for special reasons to be recorded in writing.

(3) For the purposes of this section, nearest relative includes, but is not limited to, any unmarried or cohabiting spouse or partner or any person the deceased intended to marry or was in a romantic or sexual relationship with.

(4) If no such persons are identifiable after due diligence, exemplary damages shall be awarded to the Commission for use towards the performance of its statutory duties:

Provided that the Commission shall keep the award in trust for such persons who may later become identifiable for a period of two years from the date of the award, before using it for its own purposes.

(5) The quantum of any exemplary damages ordered against each respondent under this section may extend up to the annual salary of the Governor of ABC at the time the order is made.

CHAPTER IV

POSITIVE DUTIES

16. Disadvantaged Groups

For the purposes of this Act, "disadvantaged group" means, with respect to—

(i) caste: the scheduled castes recognised under Article 341 of the Constitution of India, any other group that has been or continues to be a target of the practice of ‘untouchability’ irrespective of its religious identity.

(ii) race, ethnicity or descent: any racial and ethnic minorities in the State of ABC, including persons who originate from North-Eastern states of India;

(iii) sex: women and intersex persons;

(iv) gender identity: transgendered persons, *hijras* and gender-non-conforming persons;

(v) sexual orientation: gays, lesbians, bisexuals, *kothis* and other sexual minorities;

(vi) religious identity: religious minorities in the State of ABC;

(vii) tribe: the scheduled tribes recognised in Article 342 of the Constitution of India;

(viii) disability: persons living with a disability;

(xi) linguistic identity: linguistic minorities in the State of ABC;

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

17. Diversification

(1) Diversification is the adoption by A, through reasonable means, of a conduct, law, policy, criterion, practice or structure that is designed to increase or encourage the participation of a disadvantaged group that, in relation to its population in the State of ABC, is substantially excluded from its composition or activities.

(2) Whether a disadvantaged group suffers substantial exclusion of the sort mentioned in sub-section (1) of this section shall be determined by calculating the Diversity Index in accordance with the formula developed by the Commission under sub-section (6)(ii) of section 24.

(3) Reasonable means of diversification include, but are not limited to, adoption of or provision for scholarships, targeted advertising and outreach activities, allocation of up to 10% extra marks in any examination for members of a

substantially excluded disadvantaged group, special pre-recruitment or post-recruitment training, tie-breaker rules that favour members of a substantially excluded disadvantaged group, reasonable incentives for third parties to benefit substantially excluded disadvantaged groups and any other affirmative action measure.

18. Diversification Duty

(1) All persons falling within the sectors designated in the Third Schedule to this Act shall accurately calculate and publish their Diversity Index in relation to the protected characteristics identified in the said Schedule, and report it to the Commission.

(2) The duty imposed in sub-section (1) of this section must be performed within three years of the enactment of this Act, and then annually thereafter.

(3) All public authorities shall undertake due measures to progressively realise diversification in all aspects of their work and at all levels of their workforce.

(4) All private persons performing public functions shall undertake measures to progressively realise diversification in the aspects of their work and workforce related to the discharge of their public function.

(5) Sexual, caste, tribal and religious diversification, especially in policing and public procurement, shall be given urgent priority.

(6) Diversification measures in any given year may focus on any one or more substantially excluded disadvantaged groups:

Provided that no single group shall be the subject of such focus for more than two consecutive years.

(7) The diversification duty applies only in relation to persons who ordinarily reside in the State of ABC.

(8) Without prejudice to its other powers under this Act, the Inquiry Division of the Commission may seek any information, including information necessary to calculate the Diversity Index, and conduct any investigation in relation to the diversification duty.

(9) The Inquiry Division shall report any findings of any investigation to the Adjudicatory Division of the Commission within seven days of the conclusion of such investigation.

(10) If the investigation report revealed a breach, the Adjudicatory Division shall make suitable recommendations to remedy such breach after hearing the person or authority in breach.

(11) The person or authority in breach must adopt these recommendations within two months or propose an alternative set of remedial measures within that time frame.

(12) After the expiry of two months from the date its recommendations were received by the person or authority in breach, the Adjudicatory Division may reissue these recommendations, including any modifications it may deem fit, as an order.

(13) A person aggrieved by an order of the Commission under this section may appeal against such order to the High Court of ABC within forty-five days from the date on which the order was served upon her.

19. Diversity Training

(1) All public authorities shall, in liaison with the Regulatory Division of the Commission, conduct regular training sessions for their personnel to sensitise them to the importance of equality, antidiscrimination and diversity and to educate them in relation to the purposes and provisions of this Act.

(2) Training courses for members of the police force, Magistrates in charge of issuing Protection Orders under this Act, and officers in charge of implementing the Special Marriage Act, 1954, shall be conducted within two years of the enactment of this Act, and continue to be conducted on an annual basis thereafter.

(3) Training courses for other public servants who deal directly with members of the public shall begin within three years of the enactment of this Act.

(4) The Regulatory Division of the Commission may order any public authority to require any or all of its personnel to undergo diversity training courses.

20. Affirmative Action

(1) Direct affirmative action is the adoption of a conduct, law, policy, criterion, practice or structure that:

- (i) includes a reference to a protected characteristic, whether on its own or in combination with any other criteria, and
- (ii) is designed to extend certain benefits, privileges or preferences to one or more disadvantaged groups, and
- (iii) is a proportionate means of extending such benefits, privileges or preferences.

(2) Indirect affirmative action is the adoption of a conduct, law, policy, criterion, practice or structure that:

- (i) does not include any reference to any protected characteristic, and
- (ii) is designed such that its benefits, privileges or preferences shall mainly benefit one or more disadvantaged groups, and
- (iii) is a reasonable means of extending such benefits, privileges or preferences.

Illustration

A university has a fee waiver policy for candidates whose parents are engaged in the occupation of selling minor forest produce. In the relevant geographical area, students belonging to some Scheduled Tribes are likely to be the main beneficiaries of this policy. The policy does not include any reference to any protected characteristic, and yet is a reasonable means of benefiting a disadvantaged group.

(3) Nothing in this Act affects the continued operation of any provision of quotas or reservations or any other affirmative action measures currently in force under any other law.

21. Due Regard Duty

(1) All public authorities, when making a rule, regulation, policy or strategic decision, shall give due regard to the need to eliminate all forms of discrimination and to promote equality and diversity.

(2) Failure to comply with sub-section (1) of this section shall be a ground for judicial review of such rule, regulation, policy or decision by the High Court of ABC.

CHAPTER V

EQUALITY COMMISSION

22. ABC Equality Commission: Composition

(1) The Government shall, by notification in the Official Gazette constitute a permanent and autonomous Commission to be known as 'The ABC Equality Commission' to exercise the powers conferred on, and to perform the functions and duties assigned to, it under this Act.

(2) The Commission shall consist of

- (i) an Adjudicatory Division, consisting of three judicial commissioners;
- (ii) an Inquiry Division, consisting of one inquiry commissioner;
- (iii) a Regulatory Division, consisting of three regulatory commissioners.

(3) The judicial commissioners shall have a proven commitment to and sufficient expertise in realising the purposes of this Act, and shall either be:

- a. Advocates of at least ten years' standing before a High Court or the Supreme Court; or
- b. Academics who have been a Professor or an Associate Professor working in any area of law at any University:

Provided that judicial commissioners who are academics, shall be granted leave without prejudice by their employing universities for their term of appointment or until the date of their retirement from their academic appointment, whichever is earlier.

- (4) The inquiry commissioner and the regulatory commissioners shall have a proven commitment to and sufficient expertise, in realising the purposes of this Act.
- (5) The judicial commissioners, inquiry commissioner and regulatory commissioners, shall be collectively referred to as 'Equality Commissioners', and shall be appointed as per the procedure prescribed in the Fourth Schedule to this Act.
- (6) No person who is or has held office as a member of the legislature of any State or Union Territory, or an office of the Central or a State Government, or an office of profit except by way of employment in a public university, or is member of any political party, shall be eligible for appointment as an Equality Commissioner.
- (7) The Equality Commissioners shall make or subscribe before the Governor or some other person appointed by her for this purpose, an oath or affirmation according to the form set out in the First Schedule to this Act.
- (8) The term of office of the Equality Commissioners shall be five years from the date she enters office or when she attains the age of seventy, whichever is earlier, and shall not be renewable:
- (9) The salaries, allowances and other terms and conditions of service of the Equality Commissioners shall not be varied to their disadvantage after their appointment, and shall be the same as that of a State Election Commissioner.
- (10) An Equality Commissioner may, at any time, by writing under her hand addressed to the Governor, resign from her office.
- (11) The Governor may, on the recommendation of the Legislative Assembly, by order remove from office an Equality Commissioner if she:
- (i) is adjudged an insolvent, or
 - (ii) has been convicted of an offence which involves moral turpitude, or
 - (iii) is unfit to continue in office by reason of infirmity of mind or body, or
 - (iv) has acquired such financial or other interest as is likely to affect prejudicially her functions as an Equality Commissioner.

Provided that the recommendation of the Legislative Assembly to the Governor to remove an Equality Commissioner shall require a resolution to that effect, passed by a majority of not less than two-thirds of the total membership of the Legislative Assembly.

23. Appointment of other Staff of the Commission-

- (1) Within sixty days from the date of enforcement of this Act, the Government shall appoint an officer not below the rank of Joint Secretary to the Government, as the Member Secretary to the Commission for a period of three years, to carry out directions issued by the Commission and to exercise the functions conferred on her by this Act;
- (2) Within sixty days from the date of enforcement of this Act, the Government shall appoint temporary staff as maybe necessary to assist the Member Secretary in implementing the appointment procedure prescribed under the Fourth Schedule to this Act.
- (3) Following the constitution of the Commission, the Government shall, in consultation with the Commission, provide resources, staff and funds as may be necessary for the efficient performance of their functions and exercise of their powers under this Act.

Provided that any reduction in funds, officers and employees of the Commission shall require a resolution to that effect passed by a majority of the total membership of the Legislative Assembly and by a majority of not less than two-thirds of the members of that House present and voting.

- (4) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (3) of this section shall be such as may be prescribed by the Government in consultation with the Commission.

(5) In addition to the employees and officers appointed under sub-section (3) of this section, the Commission may employ or avail the services of any expert, consultant, intern, through an open and publicly advertised selection process.

(6) The salaries, allowances and other terms and conditions of service of the Member-Secretary or other members of the staff shall not be varied to their disadvantage after their appointment.

(7) Subject to sub section (1) of this section, the Government shall nominate a new Member Secretary at least thirty days before the current Member Secretary is expected to leave office, to take office on the date the vacancy arises or as soon as possible thereafter.

(8) No officer below the rank of Joint Secretary to the Government will be eligible for appointment as a Member Secretary.

(9) A Member Secretary may be appointed under sub section (7) of this section only upon the receipt of a recommendation from a committee that includes:

- (i) nominees of eligible political parties, in accordance with paragraph 5 of the Fourth Schedule to this Act, and
- (ii) the Equality Commissioners.

24. ABC Equality Commissions: Powers and Duties

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

(2) Without prejudice to any other power or duty specified in this Act, the Regulatory Division of the Commission shall:

- (i) promote understanding of the importance of equality, anti-discrimination and diversity,
- (ii) encourage the formulation and adoption of good practice in relation to equality, antidiscrimination and diversity,
- (iii) promote awareness and understanding of the rights and duties under this Act,
- (iv) work towards the elimination of discrimination, harassment, boycott, segregation, discriminatory violence and victimisation,
- (v) promote equality of opportunity, especially for disadvantaged groups,
- (vi) encourage diversification and affirmative action,
- (vii) support aggrieved persons in seeking legal remedies provided under this Act,
- (viii) provide or facilitate the provision of diversity training, including by developing training modules,
- (ix) monitor the enforcement of this Act, and
- (x) review the functioning of this Act and make recommendations for its improvement from time to time.

(3) Without prejudice to any other power or duty specified in this Act, the Commission may:

- (i) approach any court for the enforcement of this Act,
- (ii) require any public servant to undergo diversity training, and
- (iii) take any other reasonable action towards the implementation of this Act or the realisation of its purposes.

(4) Towards the enforcement of this Act, and without prejudice to any other power granted under this Act, the Inquiry Division of the Commission may:

- (i) conduct equality impact assessments of the activities or composition of any public authority or any private person performing a public function,
- (ii) investigate any alleged violation of the diversification duty, and
- (iii) issue a notice of violation to any person following such investigation.

(5) The Inquiry Division of the Commission shall assist the Regulatory Division and the Adjudicatory Division by investigating into any matter when requested to do so.

(6) The Regulatory Division of the Commission shall:

- (i) issue guidelines for internal enforcement mechanisms envisaged by sub-sections (2) and (3) of section 12, and revise such guidelines from time to time,

- (ii) develop a formula for calculating the diversity index for the purposes of sections 17 and 18,
- (iii) consider, from time to time, recommending to the Government an expansion of the sectors and protected characteristics designated in the Third Schedule to this Act, with a view to continuously expand the coverage of the duty under sub-section (1) of section 18.

(7) The Regulatory Division of the Commission may make recommendations for amending the Second or Third Schedules to this Act to the Government, which, upon receipt of such recommendations but not otherwise, may amend the said Schedule strictly in accordance with the recommendation by notification in the Official Gazette:

Provided that no such notification shall be issued unless a draft of the said notification has first been placed before the Legislative Assembly for a period of thirty days,

Provided further that the Government shall not act upon any recommendation which is incompatible with the purpose or spirit of this Act.

(8) The Regulatory Division of the Commission may from time to time issue or revise guidelines specifying particular acts in specific sectors or in relation to particular protected characteristics as amounting to or not amounting to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimisation.

(9) The Regulatory Division of the Commission shall submit an annual Equality Report on the operation of this Act to the Government, and publish it on its website on the date of such submission:

Provided that the Government, upon receipt of the Equality Report, shall table such Report for a period of thirty days before the Legislative Assembly

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

(11) The Regulatory Division of the Commission shall consult the adjudicatory commissioners and the inquiry commissioner before exercising its powers or functions under this Act.

25. ABC Equality Commission: Dispute Resolution

(1) Subject to sub-section (2) of this section, the Adjudicatory Division of the Commission shall have original jurisdiction with regard to any breach of Chapter III of this Act, other than a breach by a law in force, if

- (i) the person aggrieved temporarily or permanently resides or carries on business or is employed in ABC, or
- (ii) the respondent temporarily or permanently resides or operates or carries out business or is employed or is headquartered in ABC, or
- (iii) the cause of action has arisen in ABC.

(2) If the alleged breach of Chapter III of this Act is occasioned by any form of speech, expression or communication, the Adjudicatory Division of the Commission will have original jurisdiction with regard to such breach only if the respondent ordinarily resides in ABC and shall take cognizance of the matter after giving due regard to the importance of the fundamental right guaranteed under Article 19(1)(a) of the Constitution.

(3) The Adjudicatory Division of the Commission shall abide by the norms of procedural fairness and natural justice while discharging its judicial functions, and shall hear all matters *en banc*.

26. Right to Information

(1) B has a right to seek the following information from A in a format that shall be prescribed by the Commission, any information necessary to substantiate a potential or actual claim under this Act.

(2) With respect to persons covered by the Right to Information Act, 2005, the format and mechanism prescribed under that Act may be used in lieu of the format prescribed by the Commission to exercise the right to information guaranteed under this section.

(3) Without prejudice to any rights guaranteed by the Right to Information Act, 2005, A's refusal or failure to provide the information sought within thirty days of the request shall be a ground for B to complain to the Adjudicatory Division of the Commission.

(4) If the Adjudicatory Division of the Commission is satisfied that B has the right to the said information, it shall order A to provide it.

27. Proof

(1) In any proceeding before the Adjudicatory Division of the Commission under this Act, the plaintiff has the burden of establishing a prima facie breach of any duty under this Act on the balance of probabilities:

Provided that if any information is or is likely to be in the possession of the respondent or sought from the respondent under section 26, the respondent's failure to produce such information within thirty days from the date the request was made shall require the Commission to draw an adverse inference against the respondent, unless, for reasons to be recorded in writing, the Commission decides that doing so will cause substantial injustice.

(2) The respondent has the burden of refuting the prima facie case or of proving that the prima facie case does not amount to a substantive breach of the duty.

(3) The Adjudicatory Division of the Commission may rely upon the findings in any report submitted by the Inquiry Division.

Provided that no such reliance shall be placed until the parties to the dispute have been given reasonable opportunity to challenge such findings.

28. Interim Relief

(1) If a prima facie case of the breach of any duty imposed by this Act is made out in the submissions of the plaintiff, the Adjudicatory Division of the Commission may order appropriate interim relief in favour of the plaintiff.

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

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

(3) Interim relief may include a protection order of the nature specified in sub-section (7) of section 31.

29. In Camera Proceedings

The Adjudicatory Division of the Commission may, on the request of the aggrieved person, give directions to protect the anonymity of any person and may conduct any proceedings under this Act *in camera*:

Provided that, at the request of the aggrieved person, up to two persons supporting her shall be permitted to be present during the proceedings.

30. Separate Criminal Offences

If the same action simultaneously constitutes or could constitute a civil offence under this Act and a criminal offence under any law for the time being in force, including under any provision of this Act, its criminal investigation or prosecution or the outcome of such investigation or prosecution shall not prejudice the independent civil proceedings under this Act.

CHAPTER VI

PROTECTION ORDERS

31. Protection Order for Aggravated Discrimination

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

- (i) the person aggrieved temporarily or permanently resides or carries on business or is employed, or
- (ii) the alleged discriminator temporarily or permanently resides or operates or carries out business or is employed or is headquartered, or
- (iii) the cause of action has arisen.

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

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

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

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

(6) A protection order may be granted ex parte.

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

(7) A protection order may

- (i) order particular persons (and their formal or informal members, affiliates, volunteers and representatives) to refrain from:
 - a. committing or encouraging others to commit any acts prohibited under this Act,
 - b. communicating in any form with the person aggrieved or any persons providing support to the person aggrieved,
 - c. entering the place of residence, education or workplace of or any other place frequented by the person aggrieved or any persons providing support to the person aggrieved,
 - d. committing any other act specified in the protection order;
- (ii) order persons generally, or persons resident or operating in a particular geographical area, to refrain from:
 - a. committing or encouraging others to commit any acts prohibited under this Act against members of the protected group to which the aggrieved person belongs or against anyone else,
 - b. committing any other act specified in the protection order;
- (iii) order the Government, to protect, generally or through specific directions such as quashing any complaints or providing safe accommodation, the safety and security of any person's body, property and rights, including the rights against discrimination guaranteed under this Act:

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

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

(9) Save as otherwise provided in this section, all proceedings under this section and under section 32 shall be governed by the Code of Criminal Procedure, 1973.

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

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

32. Breach of a Protection Order

(1) A breach of a protection order issued under section 31 shall be punishable with imprisonment of either description for a term that may extend to one year, or with fine which may extend up to the annual salary of the Governor of ABC at the time the sentence is imposed, or with both.

(2) The offence under sub-section (1) of this section shall be tried, as far as is practicable, by the Magistrate who had passed the protection order, the breach of which is alleged to have been caused by the accused.

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

CHAPTER VII

INCOMPATIBILITY WITH LAWS IN FORCE

33. Original Jurisdiction of the High Court

The High Court of ABC shall have original jurisdiction with regard to any incompatibility between this Act and any other law in force.

34. Remedies

(1) If a law in force is directly or indirectly discriminatory, or is incompatible with Chapter III of this Act in any other way, the High Court of ABC shall interpret it so far as it is possible to do so, to remove or mitigate the said incompatibility.

(2) Subject to sub-section (3) of this section, if the interpretation required by sub-section (1) of this section is not possible, or cannot fully remove the incompatibility, the High Court of ABC shall declare the law to be impliedly repealed, to the extent of its incompatibility with this Act:

Provided that the High Court of ABC may, alternatively or in addition, suspend the operation of its order under this sub-section for a period extending up to one year to allow the Legislative Assembly to amend the incompatible law in order to make it compatible with this Act.

(3) Sub-section (2) of this section may not be used to strike down or read down an Act enacted by the Parliament of India after the coming into force of the Constitution of India:

Provided further that nothing in this Act prejudicially affects the powers that the High Court of ABC has under the Constitution of India.

(4) Sub-section (2) of this section may not be used to strike down or read down an Act of the Legislative Assembly enacted after the enactment of this Act:

Provided that the High Court of ABC may still declare any provision of such Act that is incompatible with the provisions of Chapter III of this Act to be discriminatory, without affecting the legal validity of the impugned provision.

(5) In this section, unless the context otherwise requires, “law in force” includes laws passed by the Legislative Assembly or by its predecessor legislative bodies, personal laws, customs, applicable to the State of ABC or the geographical region which is now recognized as the State of ABC.

CHAPTER VIII

MISCELLANEOUS

35. Jurisdiction: Miscellaneous

In addition to any reliefs sought under this Act, criminal proceedings may also be initiated by the affected parties before the relevant courts.

36. Existing Rights Unaffected

Nothing in this Act shall reduce or take away any right, interest or privilege that an aggrieved person has or may have under any other law for the time being in force.

37. Making a Complaint

(1) A complaint under this Act may be made by:

- (i) an aggrieved person; or
- (ii) if the aggrieved person is deceased, her nearest relative, including any unmarried or cohabiting spouse or partner or any person the deceased intended to marry or enter into a romantic or sexual relationship with; or
- (iii) an organisation representing the aggrieved person, following such person's written consent for such representation; or
- (iv) where there are numerous aggrieved persons having the same interest, any of them acting on behalf of or for the benefit of all of them:

Provided that such class action requires the permission of the Commission, which shall not give its permission unless it has taken reasonable measures to notify, either directly or through a notification in at least two widely read local newspapers in Malayalam and English, all aggrieved persons or as many of them as is possible to do so.

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

38. Rule-making Power

The Government may, by notification in the Official Gazette, make rules to specify matters of detail and operation with the objective of achieving the purposes of this Act:

Provided that such rules shall not be in conflict with the purpose, spirit or the letter of the provisions of this Act,

Provided further that such rules shall be framed following a transparent, consultative and public process,

Provided further that any rules sought to be issued under this shall be framed in consultation with and with the concurrence of the Regulatory Division of the Commission,

Provided further that no notification may be issued under this section until the draft rules have been considered by a legislative standing committee and placed before the Legislative Assembly for a period of thirty days.

FIRST SCHEDULE

[see sections 22(7)]

Form of oath or affirmation to be made by the Equality Commissioner

"I,, having been appointed Equality Commissioner solemnly affirm/swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, 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 and that I will uphold the Constitution and the laws."

SECOND SCHEDULE

[See sections 12(4) & 24(7)]

1. Any act whose prohibition would amount to disproportionate interference with any rights of the defendants that are guaranteed under the Constitution, to the extent of such disproportionality.

2. Any form of speech or expression protected by Article 19 of the Constitution.

3. Provision for a same-sex service provider for personally intimate services, such as nursing or personal hygiene.

4. Restriction of access to public welfare or public offices to citizens.
5. Requirement of a same-sex tenant for a shared dwelling where the landlord and the tenant share a kitchen, bathroom, living room, or bedroom.
6. Restriction of food menus to certain cuisines, to the exclusion of other food preferences.
7. Political boycott of any government, organisation or company, or a representative of such government, organisation or company that is not designed to target a disadvantaged group.
8. Restriction of membership of an association, whose primary objective is to facilitate social interaction between members of a protected group, to persons belonging to that protected group.
9. Any conduct, practices or manifestations which are protected by Article 25 or Article 26 or Article 30 of the Constitution.
10. Measures designed to protect or benefit children.
11. Provision for a retirement age for employees who are sixty years of age or older.
12. An act amounting to segregation under sub-section (1) of section 9 by a parent in relation to her child who is under the age of eighteen.

Provided that this exemption does not extend to any act that amounts to segregation under sub-section (2) of section 9.

THIRD SCHEDULE

[See sections 18, 24(6)(iii) & 24(7)]

Designated Sectors	Applicable Protected Characteristics
Police	Caste, Sex, Religious identity, Tribe
Public sector employers with a workforce of over a hundred workers	Caste, Sex, Religious identity, Tribe
Public universities	Caste, Sex, Religious identity, Tribe

FOURTH SCHEDULE

[See section 22 (5) and 23 (2)]

1. For the constitution of the Commission immediately after the enforcement of this Act, the Member Secretary shall, within fourteen days from the date of her appointment, issue an advertisement in such manner as may be prescribed, for applications from persons who wish to be recommended for appointment as Equality Commissioners.

2. For subsequent appointments, the Member Secretary shall, no later than six months prior to any vacancy arising due to retirement or completion of term, or no later than one month after the death, resignation or removal of an Equality Commissioner, issue an advertisement in such manner as may be prescribed, for applications from persons who wish to be recommended for appointment to fill the said vacancy.

3. All advertisements issued by the Member Secretary shall clearly indicate the nature of work required for the office of Equality Commissioner, and shall invite applicants to specify the division of the Commission for which their applications should be considered. The deadline for submission of applications shall be no sooner than thirty days from the date of publication of advertisement. The advertisement shall be published in at least one English newspaper and two Malayalam newspapers with wide circulation in the State of ABC.

4. The Member Secretary shall request eligible political parties to nominate members to the Short-listing Committee and the Recommendation Committee no later than fourteen days from the date of publication of the advertisement required by Paragraph 1 and Paragraph 2.

5. The Short-listing Committee shall consist of the following persons:

(i) Two persons nominated by each of the political parties with the largest and second largest number of Members of the Legislative Assembly;

(ii) One person nominated by each of the political parties with the third largest and fourth largest number of Members of the Legislative Assembly.

Provided that a political party must have at least five percent of the total number of Members of the Legislative Assembly, as its members, in order to make nominations to the Short-listing Committee.

Provided further that where more than one political party has the second largest number of Members of the Legislative Assembly, then each of these political parties shall nominate two persons each to the Short-listing Committee, and no nominations shall be made by the political party with the fourth largest number of Members of the Legislative Assembly.

Provided further that where more than one political party has the fourth largest number of Members of the Legislative Assembly, then neither of these political parties shall make any nominations to the Short-listing Committee.

Explanation.— Persons nominated to the Short-listing Committee need not be Members of the Legislative Assembly or members of the political party which nominates them.

6. The Recommendation Committee shall consist of three members, such that each of the three political parties with largest number of members in the Rajya Sabha from the State of ABC shall nominate one member.

Provided that where more than one political party has the third largest number of members in the Rajya Sabha from the State of ABC, then neither of these political parties shall make any further nominations to the Recommendation Committee.

Explanation. — Persons nominated to the Recommendation Committee need not be members of the Rajya Sabha or members of the political party which nominates them.

7. Every application received by the Member Secretary within the deadline in response to the advertisement issued to fill vacancies in the Commission shall be forwarded to the Short-listing Committee, no later than ten days from the expiry of the deadlines specified in the advertisement.

8. The Member Secretary shall facilitate any discussion or decisions of the Short-listing Committee and the Recommendation Committee by convening meetings in person or through virtual forums or by circulating proposals and accepting votes by electronic mail or any other format.

9. Members of the Short-listing Committee may seek additional information from any applicant or may invite for them to an interview.

10. Every member of the Short-listing Committee may propose no more than one name for each vacancy from among the valid applications received, no later than thirty days from the receipt of the applications from the Member-Secretary.

11. The Member Secretary shall compile the full list of applicants proposed by the members of the Short-listing Committee as per paragraph 10, and organize an election of three finalists by way of single transferable vote by the members of the short-listing committee, no later than seven days from the date on which such applicants were proposed.

12. The three finalists for the relevant vacancy thus selected by the Short-listing Committee shall be forwarded to the Recommendation Committee, no later than seven days from the date on which the finalists were selected.

Provided that all official documents in the possession of the Short-listing Committee in relation to the three names selected, shall also be forwarded to the Recommendation Committee along with the list of three finalists.

13. The Member Secretary shall organize an election of one person for the vacant position, from among the short-listed finalists, by way of single transferable vote by the members of the Recommendation Committee, no later than fourteen days from the short-listing decision.

14. The person elected by the Recommendation Committee for the position as Equality Commissioner, shall be forwarded by the Member-Secretary to the Governor within one day of the date of the election.

15. The Governor shall appoint the person elected by the Recommendation Committee, within three days of receipt of the recommendation.

STATEMENT OF OBJECTS AND REASONS

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

Cases of discrimination continue to be witnessed in all spheres of social, economic and political life. They are frequently directed against *dalits*, tribals, religious minorities, racial minorities, women, persons of different sexual orientations, *hijras*, persons with disabilities, persons from North-Eastern States, unmarried couples among others. There is a need to protect everyone who is subject to any form of unfair discrimination under a single comprehensive legislation.

Existing constitutional protections against discrimination under Articles 14, 15, 16 and 17 can only be enforced in constitutional courts, and only provide minimum constitutional guarantees that need to be supplemented by legislation. The constitutional directives under Articles 38, 39 and 46, as well as the Fundamental Duty of all citizens under clauses (c) and (e) of Article 51A are demand such legislative augmentation towards ensuring equality among all.

In order to strengthen the constitutional principles of equality, pluralism, inclusiveness, fraternity, and justice, the Legislative Assembly needs to enact a comprehensive anti-discrimination law, covering both the public and the private sectors, imposing civil liabilities for acts of discrimination.

Hence this Bill.

FINANCIAL MEMORANDUM

Clause 22 of the Bill provides that Government shall constitute The ABC Equality Commission to perform the functions and duties assigned to it under this Act. Clause 23 provides for appointment of a Member-Secretary and staff members by the Government, to assist the Commission. Clause 23(3) provides for the Government to provide requisite funds to the Commission. Clause 23(4) provides for salaries and allowances payable to the staff of the Commission. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of the State. It is estimated that a recurring expenditure of about rupees of five crores per annum would involve from the Consolidated Fund of State.

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 38 of the Bill empowers the Government, in consultation with the Commission, to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.