

# Protection of Human Rights (Amendment) Act, 2006

February 27, 2013

## **PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT, 2006<sup>1</sup>**

[No. 43 OF 2006]

[September 13, 2006]

An Act further to amend the Protection of Human Rights Act, 1993

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

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1. Received the assent of the President on September 13, 2006 and published in & : Gazette of India, Extra., Part II, Section 1.

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

2. The Bill, inter alia, seeks to-

(a) clarify that the Chairpersons of NHRC and State Human Rights Commission (SHRCs) are distinct from the Members of the respective Commission;

(b) make judges of the Supreme Court with at least three years service as such to be eligible to be appointed as the Chairperson of the NHRC.

(c) make judges of the High Courts with at least five years of service as such to be eligible to be appointed as Chairperson of the SHRCs and a District Judge with at least seven years of experience in that capacity to be a Member of the SHRC;

(d) enable the NHRC to transfer complaints received by it to the concerned SHRC;

(e) enable the NHRC to visit any jail or detention centre without prior intimation to the State Government;

(f) Enable the Chairperson and Members of the NHRC to address their resignations in writing to the President and the Chairperson and Members of the SHRCs to the Governor of the State



concerned;

(g) clarify that the absence of any member in the Selection Committee for selection of the Chairperson and Members of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees;

(h) enable the NHRC and the SHRCs to make interim recommendations during an inquiry;

(i) empower the NHRC and its Chairperson to delegate certain powers and functions of the Commission to the Secretary-General of the NHRC;

(j) provide that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be Members of the NHRC;

(k) enable the Central Government to notify future international covenants and conventions to which the Act would be applicable.

3. The Bill seeks to achieve the above objects.

## Section 1. Short title and commencement

(1) This Act may be called the Protection of Human Rights (Amendment) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

## Section 2. Amendment of Section 2

In Section 2 of the Protection of Human Rights Act, 1993 (10 of 1994) (hereinafter referred to as the principal Act), in sub-section (1),-

(a) for clause (f), the following clause shall be substituted, namely:-

“(f) “International Covenants” means the International Covenants on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;”

(b) for clause (g), the following clause shall be substituted, namely:-

“(g) “Member” means a Member of the Commission or of the State Commission, as the case may be;”

(c) for clause (i), the following clauses shall be substituted, namely:-



(i) "National Commission for the Scheduled Castes" means the National Commission for the Scheduled Castes referred to in Article 338 of the Constitution;

(i-a) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled Tribes referred to in Article 338-A of the Constitution;

### Section 3. Amendment of Section 3

In Section 3 of the principal Act,-

(a) in sub-section (3), for the words "the National Commission for the Scheduled Castes and Scheduled Tribes", the words "the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes" shall be substituted;

(b) in sub-section (4), for the words "as it may delegate to him", the brackets, words, figures and letter "(except judicial functions and the power to make regulations under Section 40-B) as may be delegated to him by the Commission or the Chairperson, as the case may be" shall be substituted.

### Section 4. Amendment of Section 4

In Section 4 of the principal Act,-

(a) in sub-section (1), for the words "other Members", the words "the Members" shall be substituted;

(b) in sub-section (2), for the words "vacancy in the Committee", the words, brackets and figure "vacancy of any member in the Committee referred to in the first proviso to sub-section (1)" shall be substituted.



### Section 5. Substitution of new section for Section 5

For Section 5 of the principal Act, the following section shall be substituted, namely:-

"5. Resignation and removal of Chairperson and Members.-

(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

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

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

(a) is adjudged an insolvent; or

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

(c) is unfit to continue in office by reason of infirmity of mind or body; or

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

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.”.

## Section 6. Substitution of new section for Section 6

For Section 6 of the principal Act, the following section shall be substituted, namely:-

“6. Term of office of Chairperson and Members.-

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

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

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

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

## Section 7. Substitution of new section for Section 8

For Section 8 of the principal Act, the following section shall be substituted, namely:-

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

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

## Section 8. Amendment of Section 10

In Section 10 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) Subject to the provisions of this Act and the rules made there under, the Commission shall have the power to lay down by regulations its own procedure.”.

## Section 9. Amendment of Section 12



In Section 12 of the principal Act,-

(a) in clause (a), after the words "or any person on his behalf, the words "or on a direction or order of any court" shall be inserted;

(b) for clause (c), the following clause shall be substituted, namely:-

"(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;"

## Section 10. Amendment of Section 13

In Section 13 of the principal Act, after subsection (5), the following sub-sections shall be inserted, namely:-

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

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

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

## Section 11. Substitution of new section for Section 18

For Section 18 of the principal Act, the following section shall be substituted, namely:-

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

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;



(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

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

## Section 12. Amendment of Section 21

In Section 21 of the principal Act,-

(a) for sub-section (2), the following sub-section shall be substituted, namely:-

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

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.”;

(b) after sub-section (5), the following sub-section shall be inserted, namely:-

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

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

## Section 13. Amendment of Section 22

In Section 22 of the principal Act,-

(a) in the marginal heading for the words “other Members”, the word “Members” shall be substituted;

(b) in sub-section (1), for the words “other Members”, the word “Members” shall be substituted;

(c) in sub-section (2), for the words “any vacancy in the Committee”, the words, brackets and figure “any vacancy of any Member in the Committee referred to in sub-section (1)” shall be substituted.



## Section 14. Amendment of Section 23

In Section 23 of the principal Act,-

(a) for the marginal heading "Removal of a Member of the State Commission", the marginal heading "Resignation and Removal of Chairperson or a Member of the State Commission" shall be substituted;

(b) for sub-section (1), the following sub-sections shall be substituted, namely:-

"(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.

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

(c) in sub-section (2),-

(a) for the word, brackets and figure "sub-section (1)" the word, brackets, figure and letter, sub-section (1-A)" shall be substituted;

(b) for the words "other Member" at both the places where they occur, the word "Member" shall be substituted.



## Section 15. Substitution of new section for Section 24

For Section 24 of the principal Act, the following section shall be substituted, namely:-

"24. Term of office of Chairperson and Members of the State Commission.-

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

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

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

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

## Section 16. Substitution of new section for Section 26

For Section 26 of the principal Act, the following section shall be substituted, namely:-

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

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

## Section 17. Amendment of Section 40

In Section 40 of the principal Act, in sub-section (2), in clause (a), for the word “Members”, the words “Chairperson and Members” shall be substituted.

## Section 18. Insertion of new Section 40-B

After Section 40-A of the principal Act, the following section shall be inserted, namely:-

“40-B. Power of Commission to make regulations.-

(1) Subject to the provisions of this Act and the rules made there under, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions 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 following matters, namely:-

(a) the procedure to be followed by the Commission under sub-section (2) of Section 10;

(b) the returns and statistics to be furnished by the State Commissions;

(c) any other matter which has to be, or may be, specified by regulations.

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

## Section 19. Amendment of Section 41

In Section 41 of the principal Act, in sub-section (2), in clause (a), for the words “the Members”, the words “the Chairperson and Members” shall be substituted.





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