

The Public Servants (Inquiries) Act, 1850

February 26, 2013

INTRODUCTION

During the British regime some of them who were holding high position in the governance of the Indian Dominion were found to be acting as autocrat. Their behavior as public servants became a cause of concern for the Government. In order to have a check on their behavior various legislative measures were taken but they were found to be inadequate. In order to have stringent measure Bill was introduced in the Legislature.

Act 37 OF 1850

The Bill having been passed by the Legislature was assented on the 1st November, 1850. By Act 10 of 1897 its nomenclature was changed as THE PUBLIC SERVANTS (INQUIRES) ACT, 1850 (37 of 1850).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Repealing Act, 1870 (14 of 1870).
2. The Repealing Act, 1876 (12 of 1876).
3. The Public Servants (Inquires) Act (1850) Amendment Act, 1897 (1 of 1897).
4. The Repealing and Amending Act, 1914 (10 of 1914)
5. The Government of India (Adaptation of India Laws) Order, 1937.
6. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948
7. The Adaptation of Laws Order, 1950.



Preamble

[Act No. 37 of 1850]

[1st November 1850]

For regulating inquiries into the behaviour of public servants.

WHEREAS it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable (from their appointments) without the sanction of Government and to make the same uniform throughout India.

It is enacted as follows:

STATE AMENDMENT

Bihar

In the preamble, omit the words "not removable from their appointments without the sanction of Government, and to make the same uniform throughout India."

[Bihar Act 34 of 1951]

1. Repeal of Acts.-

Repealed by the Repealing Act, 1870 (14 of 1870), sec. 1 and Sch., Part II.

2. Articles of charge to be drawn out for public inquiry into conduct of certain public servants.-

Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehavior by any person in the service of the Government, non-removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles or charge, and may order a formal and public inquiry to be made into the truth thereof.

STATE AMENDMENT

Bihar

In Section 2, omit the words "not removable from his appointment without the sanction of the Government." [Bihar Act 34 of 1951]

3. Authorities to whom inquiry may be committed-Notice to accused.-

The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

STATE AMENDMENT

Bihar

In Section 3, omit the words "Court, Board or other".

4. Conduct of Government prosecution.-

When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

5. Charge by accuser to be written and verified-Penalty for false accusation-

Institution of inquiry by Government- When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall willfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties or perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.



6. Security from accuser left by the Government to prosecute.-

Where the imputation shall have been made by an accuser; and the government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer and counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury, as case may be.

7. Power of Government to abandon prosecution and to allow accuser to continue it.-

At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case, may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. Powers of commissioner's -Their protection – service of their process-Powers of Court, etc., acting under commission. –

Their protection. Service of their process-Powers of Court, etc. acting under commission.-The commissioners shall have the same power of punishing contempt's and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898 (5 of 1898) and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature thereto. When the commission has been issued to a court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commissions.

STATE AMENDMENT

Maharashtra

In Section 8 for the word "Bombay" substitute "Greater Bombay" [Bom. Act17 of 1945]

9. Penalty for disobedience to process.-

All persons disobeying any lawful process issued as aforesaid for the purposes of the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. Copy of charge and list to be furnished to accused.-

A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the



beginning of the inquiry, exclusively of the day of delivery and the first day of the inquiry.

11. Procedure at beginning of inquiry-Non-appearance of accused and admission of charge.-

Non-appearance of accused and admission of charge.-At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith reasonably recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent.

12. Prosecutor's right of address.-

The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

13. Evidence for prosecution and examination of witnesses-Re-examination by prosecutor.-

The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

14. Power to admit or call for new evidence or prosecution-Accused's right to Adjournment.-

Accused's right to adjournment.-If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demands it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

15. Defence of accused-To be recorded only when written.-

When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

16. Evidence for defence and examination of witnesses.-

the evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.



17. Examination of witnessed and evidence by prosecutor.-

Repealed by the Repealing act, 1876 (12 of 1876), sec. 2 and Sch. Part I.

18. Notes of oral evidence.-

The commissioners or some person appointed by them shall take notes in English of all oral evidence which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

19. Inquiry when closed with defence Prosecutor when entitled to reply and give evidence-Accused not entitled to adjournment.-

Prosecutor when entitled to reply and give evidence-Accused not entitled to adjournment.-If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

20. Power to require amendment of charge and to adjourn-Reason for refusing adjournment to be recorded.-

When the commissioners shall be of opinion that the articles of charge, or any of them are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon,, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

21. Report of commissioners proceedings.-

After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observation as they think fit on the whole case.

22. Power to call for further evidence or explanation. Inquiry into additional articles of charge-Reference of report of special commissioners' final orders.-

The Government, on consideration of the report of the commissioners, may order then to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been adopted, the Government may also, if it thinks



fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

STATE AMENDMENT

Bihar

(i) Section 22 renumbered as sub-section (1) thereof and in the said subsection so renumbered-

(a) Omit the words "Court or other";

(b) After the words "pass such orders thereon" insert the words "or direct the authority to which the person accused is subordinate to pass such orders thereon."

(ii) Add the following sub-section (2) after the renumbered sub-section (I)-

"(2) Where the orders under sub-section (1) are passed by any authority other than the Government, the Government shall always have the power to review the orders and pass such orders as appear to it to be just and proper."

[Bihar Act 34 of 1951]

23. 'Definition of "Government".-

In this Act, "the Government" means the Central Government in the case of persons employed under that Government and the State Government in the case of persons employed under that Government.

24. Saving of enactments as to dismissal of certain officers-Commission under Act for their trial.-

Commission under Act for their trial-Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr. Amins. Or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the government shall think it expedient.

25. Saving of power of removal without inquiry under Act.-

Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

STATE AMENDMENT

Bihar



For Section 25, substitute the following: –

“25 Saving of power of removal without inquiry under Act. -Nothing in this Act shall be construed to affect the power of the Government or the authority to which the person accused is subordinate to suspend or remove any public servant for any cause without an enquiry under this Act.”

[Bihar Act 34 of 1951]

