

Equality Bill 2016

Statement of Objects.....	3
A. Preliminaries	4
1. Short title, Scope etc	4
2. Definitions & Interpretation.....	4
B. Protected Characteristics and Protected Groups.....	6
3. Protected Characteristics	6
4. Protected Groups.....	7
C. Prohibited Acts.....	7
5. Direct Discrimination.....	7
6. Indirect Discrimination	9
7. Harassment.....	10
8. Boycott	11
9. Segregation.....	11
10. Discriminatory Violence	11
11. Victimisation.....	12
12. Antidiscrimination Duty.....	12
13. Remedies against Discrimination.....	13
14. Aggravated Discrimination	14
15. Additional Remedies against Aggravated Discrimination.....	14
D. Positive Duties	14
16. Disadvantaged Groups.....	14
17. Diversification	15
18. Diversification Duty	16
19. Diversity Training	17
20. Affirmative Action.....	17
21. Due Regard Duty	17
E. Equality Commissions.....	18
22. Central Equality Commission: Composition.....	18
23. State Equality Commissions: Composition	20
24. Equality Commissions: Powers and Duties.....	23

F. Civil Enforcement.....	25
25. Jurisdiction: Equality Courts	25
26. Jurisdiction: High Courts	26
27. Jurisdiction: Miscellaneous.....	26
28. Right to information	26
29. Proof.....	27
30. Interim Relief.....	27
31. In Camera Proceedings.....	27
32. Separate Criminal Offences	27
G. Protection Orders	28
33. Protection Order for Aggravated Discrimination	28
34. Breach of a Protection Order	29
H. Miscellaneous.....	30
35. Existing Rights Unaffected	30
36. Application to Union Territories and Delhi.....	30
37. Rule-making Power	30
First Schedule: Oath and Affirmation.....	30
Second Schedule: Exceptions	30
Third Schedule: Diversity Index.....	31

Statement of Objects

Whereas the Constitution of India promises justice, liberty and equality,

Whereas discrimination denies these constitutional promises to those subject to it,

Noting numerous reports of cases of discrimination in all spheres of social, economic, cultural and political life, especially against *dalits*, Muslims, women, gays and lesbians, *hijras*, disabled persons, tribals, persons from North-Eastern states, Africans, unmarried couples and non-vegetarians,

Recognising the need to protect everyone subject to all forms of unfair discrimination under a single comprehensive legislation,

Recognising that although minorities suffer the brunt of discrimination, the law is more likely to be successful if it protects minorities as well as majorities,

Recognising the need for the law to reduce the social salience of group membership that exacerbates group disadvantage, while celebrating difference and pluralism,

Recognising the need to encourage diversity and affirmative action until these group-based identities remain salient,

Recognising that the constitutional protections against discrimination in Articles 14, 15, 16 and 17 are necessary but not sufficient, and therefore need to be supplemented by additional statutory protections to fully realise their purpose,

Noting further the constitutional directives under Articles 38, 39 and 46, as well as the fundamental duty of all citizens under sub-articles (b) and (e) of Article 51A,

Recognising the need to focus on the effects of discrimination on those subject to it more than on the guilt of the discriminator,

Recognising the particularly pernicious effects of aggravated forms of discrimination,

Recognising the need to prevent a person's membership of a protected group from having a detrimental impact on the success of his or her life,

Recognising the need to celebrate unity in diversity,

Now, therefore, it is expedient to enact a comprehensive antidiscrimination law covering the public and the private sector,

Be it enacted by Parliament in the sixty-seventh year of the Republic of India:

A. Preliminaries

1. Short title, Scope etc

- (1) This Act may be called the Equality Act, 2016.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) All provisions of this Act, except those contained in Parts E and F, shall come into force at once.
- (4) Parts E and F of this Act shall come into force on the sixtieth day of its enactment, or on the date appointed by the Government of India, whichever is earlier.

2. Definitions & Interpretation

- (1) In this Act,
 - (i) 'A' and 'B' have the meanings prescribed in section 12;
 - (ii) 'aggrieved person' means any person who alleges that she or he has been subjected to direct or indirect discrimination, harassment, boycott, segregation, discriminatory violence or victimisation;
 - (iii) 'adverse effect' and 'detriment' include the withholding of a benefit given to others as well as minimal, symbolic or nominal adverse effects or detriments;
 - (iv) 'Central Equality Commission' means the Commission established 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) '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;
 - (viii) '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 his or her employees;

- (ix) 'Equality Court' means a court designated as such under section 25;
- (x) '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;
- (xi) 'law in force' includes any law, other than the Constitution of India, which is or can be enforced by any court, tribunal, regulator or any other adjudicatory or administrative body in India;
- (xii) 'Leader of Opposition' means the leader of the single largest opposition party in the House of the People or in a State's Legislative Assembly, as the case may be;
- (xiii) '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, 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;
- (xiv) '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 any government that is not ordinarily available to other businesses;
- (xv) 'protected characteristic' has the meaning prescribed in section 3;
- (xvi) 'protected group' has the meaning prescribed in section 4;
- (xvii) 'public authority' means any authority, person, board, department, body or institution that is:
- (a) established or constituted by or under the Constitution, or by any law made by Parliament, or by any law made by the legislative of a State, or
 - (b) owned, controlled or substantially financed, directly or indirectly, by funds provided by the Government of India or a State Government, or
 - (c) registered as a political party under the Representation of People Act 1951;
- (xviii) 'purchaser' includes, but is not limited to, any person who is a transferee of a property, whether or not he or she has paid any consideration;
- (xix) 'religion and belief' includes, but is not limited to, recognised or unrecognised sects within a religion, the religion of an individual's parent, an individual's religion before or after a conversion or reconversion, atheism and agnosticism, and any other political or philosophical belief that is compatible with the objectives of this Act;
- (xx) 'service provider' means any person who is a provider of any service, 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;

(xxi) ‘State Equality Commission’ means a Commission established under section 23;

(xxii) ‘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;

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

(xxiv) ‘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 any Government or the local authority or a government company or a corporation or a co-operative society; (b) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, 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) Examples provided in this Act may be used as interpretive aids for its substantive provisions, but may 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 diverse society that is in keeping with our constitutional morality.

B. Protected Characteristics and Protected Groups

3. Protected Characteristics

A protected characteristic means:

(i) caste, race, ethnicity, descent, sex, gender identity, pregnancy, sexual orientation, religion and belief, tribe, disability, linguistic identity, HIV-status, nationality, marital status, food preference, skin tone, place of residence, 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 of any of the above.

4. Protected Groups

(1) Subject to other provisions in this section, a protected group is a social group defined by a protected characteristic.

Examples:

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 religion.

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

Example: Dalits constitute a social group even though they may lack formal recognition as a social group.

(3) In relation to the protected characteristics of pregnancy, the only relevant protected group is persons who are, or are likely to become, pregnant, or a sub-group thereof.

(4) 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.

Examples:

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.

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

C. Prohibited Acts

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, cause a detriment to or adversely affect a protected group.

Example:

1. An employer refuses to interview a candidate because he 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) It is based on stereotypical assumptions about members of a protected group.

Examples:

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.
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.

Example: A housing society advertisement offers apartments on rent 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.

Example: 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.

Example: 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) 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 compelling objective, and

(ii) was adopted in good faith.

Examples:

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 compelling 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 even a legitimate objective, let alone a compelling one.

(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 29 and 30 of the Constitution, shall not be regarded as a compelling objective.

(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.

Example: An employer prohibits its female employees from working the night shift. Ensuring the safety of its employees is a compelling 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 special 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.

Examples:

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 Masters degree. In the relevant geographical area, persons belonging to the scheduled castes are substantially less likely to have Masters degrees compared with others. This is prima facie indirect discrimination in relation to caste.

3. A law school administers an entrance test for its admissions. Of those who sit the test, 55% candidates are ordinarily resident in rural areas. However, only 10% of those who pass the test are ordinarily resident in rural areas. This is prima facie indirect discrimination in relation to place of residence.
4. 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 religion.

(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.

Examples:

1. In Example 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 Example 2 to sub-section (2) 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 Masters 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.

Example: In Example 3 to sub-section (1) of this section, it is found that rural candidates particularly underperform in the part of the entrance test that examines prior knowledge of law. It is shown that prior knowledge of law has no correlation with an aptitude to study law. Continued testing of prior knowledge of law will not be a proportionate means of achieving the legitimate objective (in this case, of selecting candidates with the best aptitude to study law). This is indirect discrimination in relation to place of residence.

7. Harassment

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

Examples:

1. A schoolboy who refuses to play sports is called a 'sissy' by his teacher. This is harassment in relation to gender identity.
2. A co-worker sprinkles 'holy water' on a machine previously operated by a colleague belonging to a scheduled caste to 'purify' it. This is harassment in relation to caste.

(2) For the purposes of this section, whether a communication or conduct has the purpose or effect of creating an intimidating, hostile or bullying environment for a

person belonging to a protected group shall be determined from the point of view of a reasonable person belonging to that protected 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, economic, political, cultural or other form of avoidance, ostracism, excommunication, expulsion or exclusion that is targeted against or likely to adversely affect members of a protected group.

Example: A *khap panchayat* orders villagers to stop all interaction with the families of a couple who belong to different religions. This is boycott in relation to religion-cum-marital status.

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 interacting with, relating to, marrying, eating with, living with, socialising with, becoming friends with, visiting, working with, or contracting with another because of a protected characteristic.

Examples: The following acts amount to segregation:

1. An employer operates separate canteens for upper-caste Hindus and all others.
2. A Hindu boy is threatened with violence unless he breaks off his romantic relationship with a Muslim girl.
3. 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. A young woman has her movements restricted and monitored by her family because she is seen at a cinema hall in the company of a young man belonging to the same *gotra* as herself.

(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 reliable statement made by the person falsely alleged to have been kidnapped or otherwise affected shall be sufficient, although not necessary, to prove that the complaint was false, even if he or 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.

Example: 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 or ability 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 also 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. Antidiscrimination 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.

(2) In accordance with the guidelines issued by the Central Equality Commission under sub-section (5)(i) of section 24, A, or a representative of A, shall take all 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 Central Equality Commission under sub-section (5)(i) of section 24.

- (4) The following do not constitute a breach of the antidiscrimination duty:
- (i) diversification, including collecting information for, calculating or publishing the diversity index, under sections 17 and 18;
 - (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 defined in section 21; and

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

(5) A's group membership, including his or her membership of the same protected group as B, is irrelevant to determining whether A has breached his or 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 affected person
private persons performing public functions	any person affected by their public function

13. Remedies against Discrimination

(1) Subject to other provisions of this section, but without prejudice to its ordinary judicial powers, an Equality Court 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, law, policy, criterion, practice or structure,

(ii) pay damages, mesne profits, back wages or salary, 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,

(iv) adopt suitable diversification or affirmative action measures,

(v) undergo, or require a person under his or 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) do or refrain from doing anything else.

(2) If the breach of the antidiscrimination duty entails a breach of sub-section (2) of section 5 or section 11, or an intentional breach of section 7, a remedial order shall normally include, but may not be limited to, an order for damages for an amount not less than two times the monthly salary of a Member of Parliament at the time of making the order, a written apology and a written non-repetition guarantee to each aggrieved person.

(3) Damages or apology shall not normally be ordered for indirect discrimination.

(4) If the antidiscrimination duty is breached in relation to disability, religion, pregnancy, gender identity, linguistic identity or age, A may be ordered to make exceptions to reasonably accommodate the needs of specific aggrieved persons, rather than to amend or abandon the discriminatory conduct, law, policy, criterion, practice or structure as a whole.

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 apology and a written 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 court 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 enter into a romantic or sexual relationship with.

(4) If no such persons are identifiable, exemplary damages shall be awarded to the Central or a State Equality Commission for use towards the performance of their statutory duties.

(5) The quantum of any exemplary damages ordered against each respondent under this section shall not ordinarily be less than the annual salary of the President of India at the time the order is made.

D. Positive Duties

16. Disadvantaged Groups

(1) 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’;

- (ii) race, ethnicity or descent: any racial and ethnic minorities in the relevant geographical area, including persons who originate from North-Eastern states of India, persons of Tibetan origin and persons of African origin;
- (iii) sex: women and intersex persons;
- (iv) gender identity: transgendered persons, *hijras* and gender-non-conforming persons;
- (v) pregnancy: those who are or are likely to become pregnant;
- (vi) sexual orientation: gays, lesbians, bisexuals, *kothis* and other sexual minorities;
- (vii) religion and belief: religious minorities in the relevant geographical area, atheists and agnostics;
- (viii) tribe: the scheduled tribes recognised in Article 342 of the Constitution of India;
- (ix) disability: persons living with any disability;
- (x) linguistic identity: linguistic minorities in the relevant geographical area;
- (xi) HIV-status: persons living with HIV/AIDS;
- (xii) nationality: foreign nationals, naturalised citizens;
- (xiii) marital status: unmarried persons, cohabiting couples, same-sex couples, separated persons, divorced persons, widows;
- (xiv) food preference: persons who are not vegetarians;
- (xv) skin tone: persons with a darker skin tone;
- (xvi) place of birth or residence: persons born in or ordinarily resident in a rural area;
- (xvii) age: persons over the age of sixty-five, persons under the age of eighteen;
- (xviii) an analogous protected characteristic under section 3(ii): any group suffering widespread and substantial social, economic, political, cultural, or educational disadvantage and notified as a disadvantaged group under sub-section (2) of this section; and
- (xix) a sub-set of or a combination of any of the above.

(2) (i) No notification under sub-section (1)(xviii) of this section shall be issued without a recommendation of an independent five-member inquiry committee set up by the Central Equality Commission for investigating the status of the group in question, which, along with the Report containing such recommendation, has been laid before both Houses of Parliament for a period of thirty days.

(ii) The inquiry committee shall include at least three members of the Central Equality Commission, at least one of whom shall be a legal member and another an academic member.

(iii) In order to constitute a valid recommendation, at least 4 members of the inquiry committee, including its legal and academic members, must agree with the recommendation.

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 relevant geographical area, is substantially excluded from its 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 Central Equality Commission under sub-section (5)(ii) of section 24.

(3) Reasonable means of diversification include, but are not limited to, adoption of or provision for scholarships, targeted advertising, allocation of 10% extra marks in any examination for membership of a substantially excluded disadvantaged group, special pre-recruitment or post-recruitment training, tie-breaker rules, reasonable incentives for third parties to benefit the 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 shall accurately calculate and publish their Diversity Index in relation to the protected characteristics identified in the said Schedule, and report it to the Central Equality 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.

(7) The diversification duty applies only in relation to citizens of India who ordinarily reside in the relevant geographical area.

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

(9) If the Central or a State Equality Commission's investigation reveals a breach, it shall make suitable recommendations to remedy such breach after hearing the person or authority in breach.

(10) 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.

(11) After the expiry of two months from the date its recommendations were received by the person or authority in breach, the Central or a State Equality Commission may reissue these recommendations, including any modifications it may deem fit, as an order.

19. Diversity Training

(1) All public authorities shall, in liaison with the Central or a State Equality Commission, as the case may be, 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, armed forces deployed in civilian areas, judges of the Equality Court, 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 Central or a State Equality Commission may order any public authority to require 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.

Example: A university has a fee waiver policy for candidates whose parents are engaged in certain specified occupations. In the relevant geographical area, Scheduled Tribe students 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 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.

E. Equality Commissions

22. Central Equality Commission: Composition

(1) The Government of India shall, by notification in the Official Gazette within sixty days of the enactment of this Act, constitute a permanent and autonomous body called the Central Equality Commission to exercise the powers conferred on, and to perform the functions and duties assigned to, it under this Act.

(2) The Central Equality Commission shall consist of

- (i) a Chief Equality Commissioner, who shall have a proven commitment to and sufficient expertise in realising the purposes of this Act, and
- (ii) the following persons, or their representative nominated for this purpose, as ex-officio members:
 - a. the Chairperson of the National Commission for Scheduled Castes,
 - b. the Chairperson of the National Commission for Scheduled Tribes,
 - c. the Chairperson of the National Commission for Backward Classes,
 - d. the Chairperson of the National Commission for Women,
 - e. the Chairperson of the National Commission for Minorities,
 - f. the Chairperson of the National Commission for the Protection of Child Rights,
 - g. the Chief Commissioner for Persons with Disabilities,
 - h. the Chairperson of the National Human Rights Commission, and
- (iii) up to ten other Equality Commissioners, who shall have a proven commitment to and sufficient expertise in realising the purposes of this Act, including
 - a. at least two legal members, who shall be advocates of at least ten years' standing before the High Court or the Supreme Court, or retired judges of the High Court or the Supreme Court,
 - b. at least two academic members, each of whom shall have a doctoral degree in the social sciences and an academic position at a university: Provided that these academic members shall be granted leave without prejudice by their employing universities for the duration of their term of appointment or until the date of their retirement from their academic appointment, whichever is earlier,
 - c. at least two representatives of the civil society who have worked for organisations committed to advancing the purposes of this Act:

(3) At least half of the Equality Commissioners mentioned in sub-section (2)(iii) of this section shall belong to one or more disadvantaged groups, and at least two of them shall be women.

(4) The Chief Equality Commissioner or an Equality Commissioner shall not be a Member of Parliament or Member of the legislature of any State or Union Territory, or be an officer of the Central or a State Government, or hold any office of profit except by way of employment in a public university, or be a member of any political party or of any organisation, union or institution formally or informally allied with a political party.

(5) The Chief Equality Commissioner and the Equality Commissioners shall be appointed by the President of India on the recommendation of a committee consisting of:

- (i) the Prime Minister,
- (ii) the Leader of Opposition in the House of the People,
- (iii) the Chief Justice of India, and
- (iv) the Chairperson of the University Grants Commission.

(6) The committee mentioned in sub-section (5) of this section shall make its recommendations within three months of any vacancy arising, and after duly consulting the following persons:

- (i) the Vice Chancellors of at least two universities,
- (ii) the President of the Supreme Court Bar Association,
- (iii) the Chairperson of the Bar Council of India,
- (iv) the Chairperson of the National Commission for Scheduled Castes,
- (v) the Chairperson of the National Commission for Scheduled Tribes,
- (vi) the Chairperson of the National Commission for Backward Classes,
- (vii) the Chairperson of the National Commission for Women,
- (viii) the Chairperson of the National Commission for Minorities,
- (ix) the Chairperson of the National Commission for the Protection of Child Rights,
- (x) the Chief Commissioner for Persons with Disabilities, and
- (xi) the Chairperson of the National Human Rights Commission.

(7) The Chief Equality Commissioner and the Equality Commissioners shall make or subscribe before the President or some other person appointed by him or her for this purpose, an oath or affirmation according to the form set out in the First Schedule.

(8) The term of office of the Chief Equality Commissioner and the Equality Commissioners shall be five years from the date he or she enters office or when he or she attains the age of seventy, whichever is earlier, and shall not be renewable: Provided that, as a transitional arrangement applicable only to the initial constitution of the Central Equality Commission, three Equality Commissioners shall be appointed for a term of four years and three others shall be appointed for a term of six years.

(9) The salaries, allowances and other terms and conditions of service of the Chief Equality Commissioner and the Equality Commissioners shall not be varied to their disadvantage after their appointment, and:

- (i) for the Chief Equality Commissioner shall be the same as that of the Chief Election Commissioner,
- (ii) for an Equality Commissioner shall be the same as that of an Election Commissioner.

(10) An Equality Commissioner is eligible for appointment as the Central Chief Equality Commissioner during or after the end of his or her term, as long as he or she satisfies all other requirements specified in this Act.

(11) The Chief Equality Commissioner or an Equality Commissioner may, at any time, by writing under his or her hand addressed to the President, resign from his or her office.

(12) The President may, on the advice of the Prime Minister, by order remove from office the Chief Equality Commissioner or an Equality Commissioner if he or 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 his or her functions as the Chief Equality Commissioner or an Equality Commissioner.

(13) The Government of India shall, in consultation with the Chief Equality Commissioner, provide the Chief Equality Commissioner and the Equality Commissioners with such funds, officers and employees 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 Central Equality Commission shall require a Resolution to that effect passed by a majority of the total number of members of present and voting in both Houses of Parliament; Provided further that the number of officers available at any time to the Central Equality Commission shall not be less than ten, including at least one officer in the rank of a Secretary to the Government of India, who shall act as the Secretary to the Central Equality Commission.

(14) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (13) of this section shall be such as may be prescribed by the Government of India in consultation with the Chief Equality Commissioner.

(15) In addition to the employees and officers appointed under sub-section (13) of this section, the Central Equality Commission may employ up to twenty university graduates, preferably in the social sciences and law, for internships lasting up to a period of two years.

(16) The Government of India shall make provision for reasonable official, living and maintenance costs of any interns employed by the Central Equality Commission.

23. State Equality Commissions: Composition

(1) Every State Government shall, by notification in the Official Gazette within ninety days of the enactment of this Act, constitute a permanent and autonomous body called the State Equality Commission to exercise the powers conferred on, and to perform the functions and duties assigned to, it under this Act.

(2) The State Equality Commission shall consist of

- (i) the State Chief Equality Commissioner, who shall have a proven commitment to and sufficient expertise in realising the purposes of this Act, and
- (ii) the Chairperson of the State Human Rights Commission, if any, or his or her representative nominated for this purpose, as an ex officio member, and

- (iii) up to ten other State Equality Commissioners, who shall have a proven commitment to and sufficient expertise in realising the purposes of this Act, including
 - a. at least two legal members, who shall be advocates of at least ten years' standing before a High Court or the Supreme Court, or retired judges of a High Court,
 - b. at least two academic members, each of whom shall have a doctoral degree in the social sciences and an academic position at a university: Provided that these academic members shall be granted leave without prejudice by their employing universities for the duration of their term of appointment or until the date of their retirement from their academic appointment, whichever is earlier,
 - c. at least two representatives of the civil society who have worked for organisations committed to advancing the purposes of this Act.

(3) At least half of the State Equality Commissioners mentioned in sub-section (2)(iii) of this section shall belong to one or more disadvantaged groups, and at least two of them shall be women.

(4) The State Chief Equality Commissioner or a State Equality Commissioner shall not be a Member of Parliament or a Member of the legislature of any State or Union Territory, or be an officer of the Central or a State Government, or hold any office of profit except by way of employment in a public university, or be a member of any political party or of any organisation, union or institution formally or informally allied with a political party.

(5) The State Chief Equality Commissioner and the State Equality Commissioners shall be appointed by the Governor or the Lieutenant Governor, as the case may be, on the recommendation of a committee consisting of:

- (i) the Chief Minister,
- (ii) the Leader of Opposition in the Legislative Assembly,
- (iii) the Chief Justice of the High Court, and
- (iv) the Chief Equality Commissioner, or an Equality Commissioner nominated by the Chief Equality Commissioner for this purpose.

(6) The committee mentioned in sub-section (5) of this section shall make its recommendations within three months of any vacancy arising, and after duly consulting the following persons:

- (i) the Vice Chancellor of at least two universities,
- (ii) the President of the High Court Bar Association,
- (iii) the Chairperson of the State Bar Council,
- (iv) the Chairperson of the National Commission for Scheduled Castes,
- (v) the Chairperson of the National Commission for Scheduled Tribes, the Chairperson of the National Commission for Backward Classes,
- (vi) the Chairperson of the National Commission for Women,
- (vii) the Chairperson of the National Commission for Minorities,

- (viii) the Chairperson of the National Commission for the Protection of Child Rights,
- (ix) the Chief Commissioner for Persons with Disabilities, and
- (x) the Chairperson of the National Human Rights Commission.

(7) The State Chief Equality Commissioner and the State Equality Commissioners shall make or subscribe before the Governor or the Lieutenant Governor, as the case may be, or some other person appointed by him or her for this purpose, an oath or affirmation according to the form set out in the First Schedule.

(8) The term of office of the State Chief Equality Commissioner and the State Equality Commissioners shall be five years from the date he or she enters office or when he or she attains the age of seventy, whichever is earlier, and shall not be renewable:

Provided that, as a transitional arrangement applicable only to the initial constitution of the State Equality Commission, three State Equality Commissioners shall be appointed for a term of four years and three others shall be appointed for a term of six years.

(9) The salaries, allowances and other terms and conditions of service of the State Chief Equality Commissioner and the State Equality Commissioners shall not be varied to their disadvantage after their appointment, and:

- (i) for the State Chief Equality Commissioner shall be the same as that of an Election Commissioner,
- (ii) for a State Equality Commissioner shall be the same as that of the Chief Secretary to the State Government.

(10) A State Equality Commissioner is eligible for appointment as the State Chief Equality Commissioner, an Equality Commissioner or the Chief Equality Commissioner during or after the end of his or her term, as long as he or she satisfies all other requirements specified in this Act.

(11) A State Chief Equality Commissioner is eligible for appointment as an Equality Commissioner or the Chief Equality Commissioner during or after the end of his or her term, as long as he or she satisfies all other requirements specified in this Act.

(12) The State Chief Equality Commissioner or a State Equality Commissioner may, at any time, by writing under his or her hand addressed to the Governor, resign from his or her office.

(13) The Governor or the Lieutenant Governor, as the case may be, may, on the advice of the Chief Minister, by order remove from office the State Chief Equality Commissioner or a State Equality Commissioner if he or 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 his or her functions as the State Chief Equality Commissioner or a State Equality Commissioner.

(14) The State Government shall, in consultation with the State Chief Equality Commissioner, provide the State Chief Equality Commissioner and the State Equality Commissioners with such funds, officers and employees 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 State Equality Commission shall require a Resolution to that effect passed by a majority of the total number of members present and voting in the Legislative Assembly and the Legislative Council, if any; Provided further that the number of officers available at any time to the State Equality Commission shall not be less than ten, including at least one officer in the rank of a Secretary to the State Government, who shall act as the Secretary to the State Equality Commission.

(15) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (14) of this section shall be such as may be prescribed by the State Government in consultation with the State Chief Equality Commissioner.

(16) In addition to the employees and officers appointed under sub-section (14) of this section, the State Equality Commission may employ up to fifteen university graduates, preferably in the social sciences and law, for internships lasting up to a period of two years.

(17) The State Government shall make provision for reasonable official, living and maintenance costs of any interns employed by the State Equality Commission.

24. Equality Commissions: Powers and Duties

(1) The Central and the State Equality Commissions 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) The general superintendence, direction and management of the affairs of the Central and the State Equality Commissions shall vest in the Central or the State Chief Equality Commissioners respectively, who, assisted by their respective Equality Commissioners, may exercise all such powers, perform all such functions and duties and do all such acts and things which may be exercised, performed or done by their respective Commissions autonomously, without being subjected to any control, supervision or directions by any other authority, including any department of the Government of India or a State Government, as the case may be.

(3) Without prejudice to any specific power or duty specified in this Act, the Central and the State Equality Commissions shall:

- (i) promote understanding of the importance of equality, antidiscrimination 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) investigate complaints with regard to the breach of the diversification duty,
- (viii) provide or facilitate the provision of diversity training, including by developing training modules,
- (ix) monitor the enforcement of this Act,
- (x) facilitate alternative dispute resolution before the institution of or during the pendency of any legal proceedings, if the aggrieved person freely requests such facilitation, and
- (xi) review the functioning of this Act and make recommendations for its improvement from time to time.

(4) Towards the enforcement of its duties, and without prejudice to any other power granted under this Act, the Central and State Equality Commissions 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 this Act,
- (iii) issue a notice of violation to any person following such investigation,
- (iii) support aggrieved persons in seeking legal remedies provided under this Act,
- (iv) approach any court for the enforcement of this Act,
- (v) require any public servant to undergo diversity training,
- (vi) facilitate alternative dispute resolution before the institution of or during the pendency of any legal proceedings, if the aggrieved person freely consents to such facilitation.

(5) The Central Equality Commission, in consultation with the State Equality Commissions, 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 of India an expansion of the sectors and protected characteristics designated in the Third Schedule, with a view to continuously expand the coverage of the duty under sub-section (1) of section 18.

(6) The Central Equality Commission, in consultation with the State Equality Commissions, may make recommendations for amending the Second or Third Schedules to this Act to the Government of India, 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 both Houses of Parliament for a period of thirty days, Provided further that the Government of India shall not act upon any recommendation which is incompatible with the purpose or spirit of this Act.

(7) The State Equality Commission shall submit an annual State Equality Report on the operation of this Act, including the functioning of the State Equality Commission and the Equality Courts, to the State Government and publish it on its website on the date of such submission:

Provided that the State Government, upon receipt of the Equality Report, shall table such Report for a period of 30 days before the Legislative Assembly and the Legislative Council, if any.

(8) The Central Equality Commission shall submit an annual Central Equality Report on the operation of this Act, including the functioning of the Central Equality Commission and the Equality Courts, to the Government of India and publish it on its website on the date of such submission:

Provided that the Government of India, upon receipt of the Equality Report, shall table such Report for a period of 30 days before both Houses of Parliament.

(9) The Central and the State Equality Commissions shall exercise their powers and duties in a transparent and consultative manner, with a view to advance the purposes of this Act.

F. Civil Enforcement

25. Jurisdiction: Equality Courts

(1) Every State Government shall, in consultation with the Chief Justice of the relevant High Court and within sixty days of the enactment of this Act, by notification in the Official Gazette, designate for each district, one or more District Courts as Equality Courts for the purposes of this Act:

Provided that if at any time the total number of pending cases under this Act before an Equality Court exceeds fifty, the State Government shall, by notification in the Official Gazette within sixty days of the filing of the fiftieth pending case, require such Equality Court to adjudicate upon these pending cases on every working day to the exclusion of all other matters,

Provided further that any order issued under the first proviso of this sub-section shall not be withdrawn as long as there are any cases pending under this Act before that Equality Court.

(2) Subject to sub-sections (3) and (4) of this section, the Equality Court shall have original jurisdiction with regard to any breach of Part C of this Act, other than a breach by a law in force, if, within its local limits,

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

(3) If the alleged breach of Part C of this Act is occasioned by any form of speech, expression or communication, an Equality Court will have original jurisdiction with regard to such breach only if the respondent ordinarily resides within its local limits.

(4) The Equality Court shall refuse to take cognizance of any breach that is alleged to have been occasioned by a speech, expression or communication that is prima facie protected under Article 19 of the Constitution.

26. Jurisdiction: High Courts

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

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

(3) Subject to sub-section (4) of this section, if the interpretation required by sub-section (2) of this section is not possible, or cannot fully remove the incompatibility, the High Court may strike down or read down any law to the extent of its incompatibility with this Act:

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

(4) Sub-section (3) of this section may not be used to strike down or read down an Act of Parliament enacted after the enactment of this Act:

Provided that the High Court may still make a declaration of incompatibility between the impugned Act and this Act, without affecting the legal validity of the impugned Act;

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

(5) A person subject to any order of an Equality Court or the Central or a State Equality Commission may appeal against such order to the High Court within whose jurisdiction the said Court or Commission is located within forty-five days from the date on which the order was served upon him or her.

27. Jurisdiction: Miscellaneous

(1) The reliefs available under this Act may also be sought in any legal proceeding before any court affecting the parties to such proceedings, in addition to any other relief that may be sought in such proceedings.

(2) Any order made under this Act by the Central or the State Equality Commission, an Equality Court or the High Court shall be enforceable at any place, even if that place is outside the jurisdiction of the Court or Commission that made such order.

28. Right to information

(1) B has a right to seek the following information, not being information that falls within the ambit of section 8 of the Right to Information Act, 2005, from A:

- (i) any information necessary to calculate the Diversity Index in relation to A,
- (ii) any information necessary to substantiate a claim under this Act.

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

(3) With respect to any other person, 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 State Equality Commission.

(4) On receipt of such complaint, if the State Equality Commission is satisfied that B has the right to the said information, it shall order A to provide it.

(5) The State Equality Commission shall not make any order until it has sought A's response to B's complaint, and at least one of its legal members has duly considered any response provided within thirty days of such response being sought.

29. Proof

(1) In any judicial proceeding 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 28, the respondent's failure to produce such information within thirty days from the date the request was made shall require the court to draw an adverse inference against the respondent, unless, for reasons to be recorded in writing, the court 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 on balance of probabilities.

30. 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 Equality Court may order appropriate interim relief that does not cause serious prejudice to the respondent in favour of the plaintiff.

(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 33.

31. In Camera Proceedings

The Equality Court 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 him or her shall be permitted to be present during the proceedings.

32. 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, its criminal investigation or prosecution or the outcome of such investigation or prosecution shall not prejudice the independent civil proceedings under this Act.

G. Protection Orders

33. Protection Order for Aggravated Discrimination

(1) Without prejudice to the civil jurisdiction of the Equality Court or the High Court 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 an Equality Court or the High Court 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 he or 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 him or 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 state, or any agency of the state, 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 of two different languages, 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.

34. Breach of a Protection Order

(1) A breach of a protection order issued under section 33 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 President of India 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.

H. Miscellaneous

35. 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.

36. Application to Union Territories and Delhi

(1) Subject to sub-section (2) of this section, the Government of India shall, mutatis mutandis, apply the provisions of this Act to the Union Territories.

(2) All powers and functions entrusted to a State Government under this Act shall, in relation to the National Capital Territory of Delhi, be exercised by the Lieutenant Governor acting on the advice of the Council of Ministers of Delhi.

37. Rule-making Power

The Government of India or a State Government, as the case may be, 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 the Central or a State Equality Commission, as the case may be,

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 each House of concerned legislature for a period of thirty days.

First Schedule: Oath and Affirmation

[see sections 22(7) & 23(7)]

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

"I,, having been appointed Chief Equality Commissioner/Equality Commissioner/State Chief Equality Commissioner/State 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: Exceptions

[See sections 12(4) & 24(6)]

1. Any form of expression protected by Article 19 of the Constitution.

2. Provision for a same-sex service provider for personally intimate services, such as nursing or personal hygiene.
3. Restriction of access to public welfare or public offices to citizens.
4. Requirement of a same-sex tenant for a shared dwelling where the landlord and the tenant share a kitchen, bathroom, living room, or bedroom.
5. Restriction of food menus to certain cuisines, to the exclusion of other food preferences.
6. 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.
7. 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.
8. Discrimination in relation to religion by a place of religious worship, with respect to activities that are essentially religious.
9. Measures designed to protect or benefit children.
10. Provision for a retirement age for employees who are sixty years of age or older.
11. An act amounting to segregation under sub-section (1) of section 9 by a parent in relation to his or her child who under the age of sixteen:
Provided that this exemption does not extend to any act that amounts to segregation under sub-section (2) of section 9.

Third Schedule: Diversity Index

[See sections 18, 24(5)(iii) & 24(6)]

Designated Sectors	Applicable Protected Characteristics
Police	Caste, Sex, Religion, Tribe
Employers with a workforce of over a hundred workers	Caste, Sex, Religion, Tribe