

Bill No. 125 of 2022

THE PROTECTION OF HUMAN RIGHTS (AMENDMENT)
BILL, 2022

By

SHRIMATI SUPRIYA SULE, M.P.

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BILL

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

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Human Rights (Amendment) Act, 2022.

Short title and commencement.

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

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

Amendment of section 2.

(a) after clause (e) the following clause shall be inserted, namely:—

“(ea) “inquiry” means investigation of complaints relating to human rights violations by the Commission or through any officer or investigation

agency of the concerned Government under sections 13, 14, 16, 17 and 18;” and

(b) after clause (m), the following clauses shall be inserted, namely:—

“(ma) “recommendation” means order or direction issued by the Commission to the concerned Government, authority or person; and

(mb) “reparation” means compensation and rehabilitation provided to the victims of human rights violations, determined and quantified based on the principles mentioned under clause (ca) of section 18;”.

Substitution of new sections for section 15.

3. For section 15 of the principal Act, the following sections shall be substituted, namely:—

Statement made by persons to the Commission.

“15. Any statement made by a person in the course of giving evidence before the Commission may subject him to, or be used against him in, civil or criminal proceedings:

Provided that the statement—

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry; and

Evidentiary value of evidence and statements produced by the Commission.

15A. Any evidence collected and the statements made before the Commission under sections 12, 13, 14, 15, 16, 17 and 18 during the course of investigation into complaints relating to human rights violations shall have evidentiary value and shall be accepted as evidence in any civil or criminal proceedings in the courts, as the case may be.”.

Amendment of section 18.

4. In section 18 of the principal Act,—

(a) in clause (a), in sub-clause (i) for the words “compensation or damages”, the words “reparation” shall be substituted;

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

“(b) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, the Commission may initiate proceedings for prosecution against the concerned person or persons by approaching the Supreme Court or the High Courts and invoking their writ jurisdictions under articles 32 and 226 of the Constitution, respectively;” and

(c) after clause (c) the following clause shall be inserted, namely:—

“(ca) determine the quantum of reparations to be paid to the victims of human rights violations based on the United Nation Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 which shall be proportional to the gravity of the violation and the harm suffered, including —

(A) compensation to be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, including,—

(i) physical or mental harm;

(ii) lost opportunities, including employment, education and social benefits;

(iii) material damages and loss of earnings, including loss of earning potential;

(iv) moral damage;

(v) costs required for legal or expert assistance, medicine and medical services, psychological and social services; and

(B) rehabilitation including medical, psychological, legal and social services”.

5. After section 18 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 18A. State Responsibility and Liability.

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“18A. (1) The Central Government and State Government concerned shall be responsible for the violations of human rights occurring within their jurisdiction and payment of reparation to such victims, as determined under clause (ca) of section 18.

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(2) The Central Government and State Governments may recover the reparation paid by them to the victims under sub-section (1), from the officers of the concerned Government who had been found responsible for causing the human rights violations in such manner as may be prescribed.”

Amendment of section 21.

6. In section 21 of the principal Act, in sub-section (1), for the word “may” the word “shall” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The full bench of the Madras High Court in *Abdul Sathar vs. the Principal Secretary (Tamil Nadu State Government)* on 5th February 2021 ruled that the recommendations made by the State Human Rights Commission (SHRC) under section 18 of the Protection of Human Rights Act, 1993 are binding on the Government or Government authority. The bench observed that the recommendations of SHRC are adjudicatory orders that are legally and immediately enforceable. The bench also recommended the Parliament to make necessary amendments to the Protection of Human Rights Act, 1993, so as to empower the Commissions to directly execute their recommendations.

Section 13 of the Protection of Human Rights Act, 1993 confers upon the National and State level Human Rights Commissions the powers of a civil court during inquiry into human rights violations. As such, all proceedings before the Human Rights Commissions are deemed to be judicial proceedings under section 13 of the Act. But after the Commission completes its investigation and human rights violations are brought to light, the Commission does not have the penal powers to prosecute human rights violations. Section 18 of the Act only provides for the Human Rights Commission to recommend to the concerned Government or the authority to take suitable action against such human rights violators. As a result, the Commission is unable to hold such people and organisations accountable for their acts of human rights violations.

Over the years in various judgments, the Supreme Court and High Courts have lamented that the National and the State Human Rights Commissions have become toothless tigers. The Indian Judiciary has observed that the original intent of the framers of this legislation was to protect and promote human rights, so as, such the recommendations of the Commission are enforceable, binding and ought to be implemented. It held that constructing the word 'recommend' to be treated as opinion or suggestion by the Commission, would defeat the very statutory object of this Human Rights Act. Recognising this lacunae in the legislation and the need to protect the citizens' fundamental rights, this Bill amends recommendation to mean order or directions which will be binding on the authority or Government receiving it.

The Act is silent on the standards to be followed while determining the reparations to be given to the victims of human rights violations. Thus there is no clarity on how the compensation and damages will be quantified. In addition, Section 18(a) of the Act provides only for compensation to be recommended to the concerned Government or authority.

The need is to address this gap by providing principles for determining reparation and measuring damages caused. It is also required to provide for compulsory relief to victims of human rights violations by holding the Central and State Governments responsible and liable for any human rights violations happening under their jurisdictions.

When the Protection of Human Rights Act was brought in 1993, the intent of the legislation was to bring greater accountability and transparency in the system of administration of justice and devise efficient and effective methods of dealing with issues relating to human rights. But by failing to hold people and authorities accountable for their actions of committing or abetting human rights violations, the Act in its current form has failed to achieve this objective.

Hence this Bill.

NEW DELHI;
1 July, 2022

SUPRIYA SULE

ANNEXURE

EXTRACT FROM PROTECTION OF HUMAN RIGHTS ACT, 1993

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2. (1) *	*	*	*	Definitions.
(a)	*	*	*	
(e) “Human Rights Court” means the Human Rights Court specified under section 30;				
*	*	*	*	
(m) “public servant” shall have the meaning assigned to it in section 21 of the Indian Penal Code (45 of 1860);				
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15. No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement: Provided that the statement— (a) is made in reply to the question which he is required by the Commission to answer; or (b) is relevant to the subject matter of the inquiry.				Statement made by persons to the Commission.
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18. The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:—				Steps during and after inquiry.
(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority—				
(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;				
(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;				
(iii) to take such further action as it may think fit;				
(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;				
(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;				
(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;				
(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;				
(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.				
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21. (1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.				Constitution of State Human Rights Commission.
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further to amend the Protection of Human Rights Act, 1993

(Shrimati Supriya Sule, M.P.)