

# The Jammu And Kashmir Commission Of Inquiry Act, 1962

JAMMU & KASHMIR

India

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### Act 32 of 1962

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The Jammu And Kashmir Commission Of Inquiry Act, 1962[Act No. 32 of 1962][17th November, 1962]An Act to provide for the appointment of Commission of Inquiry and for vesting such Commission with certain powers.Be it enacted by the Jammu and Kashmir State Legislature in the Thirteenth Year of the Republic of India as follows:-

### 1. Short title

This Act may be called the Jammu and Kashmir Commission of Inquiry Act, 1962.

### 2. Definitions

In this Act, unless the context otherwise requires, -(a)"Commission" means a Commission of Inquiry appointed under section 3;(b)"prescribed" means prescribed by rules made under this Act.

### 3. Appointment of Commission

(1)The Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the Jammu and Kashmir State Legislative Assembly or the Jammu and Kashmir Legislative Council, by notification in the Government Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance which shall be specified in the notification, and performing such functions being functions necessary or incidental to the inquiry and within such time as may be so specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.(2)The commission may consist of one or more members appointed by the Government, and where the Commission consists of more than one member, one of them may be appointed by the Government

as the Chairman thereof.(3)The Government may, at any stage of the inquiry by the Commission,-(a)fill any vacancy which may have arisen in the office of a member of the Commission (whether constituting of one or more than one member), or(b)increase the number of members of the Commission.(4)The Commission shall complete its inquiry and make its report to the Government within such period as may be specified by the Government by notification in the Government Gazette, or within such further period as the Government may by like notification specify.

#### **4. Powers of Commission**

(1)The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, Svt. 1977, in respect of the following matters, namely:-(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of any document;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any Court or Office;(e)issuing commission for the examination of witnesses or documents;(f)any other matter which may be prescribed.Explanation.—For the purpose of enforcing the attendance of any person, the local limits of the jurisdiction of the Commission shall be throughout the State.(2)For the removal of doubts, it is hereby declared that notwithstanding any Judgment, Order or direction of any Court, Tribunal or Commission to the contrary, nothing in this Act, shall empower or be deemed ever to have empowered the Commission to-(a)compel or permit any person to give evidence derived from unpublished official records relating to any affairs of the State, except with the permission of the officer at the Head of the Department;(b)compel any public officer to disclose any information or communication made to him in official confidence, if he considers that the public interests are likely to suffer by the disclosure; and(c)compel or permit the discovery and production of any document relating to the affairs of the State or any communication written in official confidence, if the officer at the Head of the Department concerned considers that public interests are likely to suffer by such discovery, production or disclosure of the document.

#### **5. Additional powers of Commission**

(1)Where the Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) should be made applicable to a Commission, the Government may, by notification in the Government Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.(2)The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be bound to furnish such information.(3)The Commission, or any officer, not below the rank of a Gazetted officer, specially authorised in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies there-from, subject to the provisions of section

102 and section 103 of the Code of Criminal Procedure, Svt. 1989, in so far as they may be applicable.(4)The Commission shall be deemed to be a Civil Court and when any offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989, is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, Svt. 1989, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, Svt. 1989.(5)If any person does any act or publishes any writing which is calculated to bring the Commission or any member thereof into disrepute or to lower its or his authority or to interfere with any lawful process of the commission, he shall be deemed to be guilty of an offence and-the Commission may, after recording the facts constituting the offence, forward the case to the Magistrate having jurisdiction to try the same for taking cognizance thereof; and the Magistrate, if he finds him guilty, may sentence him to simple imprisonment which may extend to six months, or to fine which may extend to one thousand rupees, or both.(6)Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989.

## **6. Statement made by persons to the Commission**

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 a question which he is required by the Commission to answer, or(b)is relevant to the subject matter of the inquiry.

## **7. Secret process not to be disclosed**

Nothing in this Act shall make it compulsory for any person giving evidence before the Commission to disclose any secret process of manufacture.

## **8. Commission to cease to exist when so notified**

The Government may, if it is of opinion that the continued existence of a Commission is unnecessary, by notification in the Government Gazette, declare that the Commission shall cease to exist from such date as may be specified in this behalf in such notification and thereupon the Commission shall cease to exist.

## **9. Procedure to be followed by the Commission**

The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit

in public or in private) any may act notwithstanding the temporary absence of any member or the existence of a vacancy among the members.

## **10. Opportunity to the persons to explain their conduct and representation of Government, by a legal practitioner**

(1) If at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and producing evidence in his defence: Provided that nothing in this sub-section shall apply when the credit of a witness is being impeached. (2) The Government, every person referred to in sub-section (1) and with the permission of the Commission, any other person whose evidence is recorded by the Commission—(a) may cross-examine any person appearing before the Commission other than a person produced by it or him as witness, (b) may address the Commission. (3) The Government, every person referred to in sub-section (1) and, with the permission of the Commission, any other person whose evidence is recorded by the Commission, may be represented before the Commission by a legal practitioner, or with the permission of the Commission, by any other person.

## **11. Inquiry not to be interrupted by reasons of vacancy or change in constitution**

(1) When the Commission consists of two or more members it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its members: Provided that if the Government notifies the Commission that the services of the Chairman have ceased to be available, the Commission shall not act unless a new Chairman is appointed. (2) Where during the course of an inquiry before the Commission a change has taken place in the constitution of the Commission by reason of any vacancy having been filled or by an increase in the number of members of the Commission or for any other reason, it shall not be necessary for the Commission to commence the inquiry afresh.

## **12. Protection of action taken in good faith**

No suit or other legal proceeding shall lie against the Government, the Commission or any member thereof, or any person acting under the direction either of the Government or of the Commission in respect of anything which is in good faith done, or intended to be done in pursuance of this Act or of any rules or orders made there under or in respect of the publication, by or under the authority of the Government or the Commission, of any report, paper or proceedings.

## **13. Members, etc. to be public servants**

Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of

section 21 of Jammu and Kashmir State Ranbir Penal Code, Svt.1989.

#### **14. Act to apply to other inquiring authorities in certain cases**

Where any authority (by whatever name called), other than Commission appointed under section 3, has been or is set up under any resolution or order of the Government for the purpose of making an inquiry into any definite matter of public importance and the Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority, the Government may, by notification in the Government Gazette, direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification, that authority shall be deemed to be a Commission appointed under section 3 for the purposes of this Act.

#### **15. Power to make rules**

(1)The Government may, by notification in the Government Gazette, make rules to carry out the purposes of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-(a)the term of office, the conditions of service of the members of the Commission;(b)the appointment by the Commission as assessors of persons being experts or having special knowledge of any matter relevant to the inquiry to assist it in its deliberations;(c)the manner in which inquiries may be held under this Act and the procedure to be followed by the Commission in respect of the proceedings before it;(d)the powers of Civil Court which may be vested in the Commission;(e)the travelling and other expenses payable to persons summoned by the Commission to give evidence before it or to perform other acts incidental to the enquiry before it.