

Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018

JAMMU & KASHMIR

India

Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018

Act 46 of 2018

- Published on 14 December 2018
- Commenced on 14 December 2018
- [This is the version of this document from 14 December 2018.]
- [Note: The original publication document is not available and this content could not be verified.]

Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018(Act No. 46 of 2018)[Dated 14th December, 2018.]An Act to provide for the constitution of a State Commission for Protection of Women and Child Rights and Courts for providing speedy trial of offences against women and children or of violation of women and child rights and for matters connected therewith or incidental thereto.In exercise of the powers vested under Proclamation No. P-1/18 of 2018 dated 20th June, 2018, the Governor is pleased to enact as follows :-

Chapter I Preliminary

1. Short title and commencement.

(1)This Act may be called the Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018.(2)It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"Act" means the Jammu and Kashmir State Commissions for Protection of Women and Child Rights Act, 2018 ;(b)"Chairperson" means the Chairperson of the Commission ;(c)"child rights" includes the children's rights adopted in the United Nations Convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992 ;(d)"Commission" means the Jammu and Kashmir State Commission for Protection of Women and Child Rights constituted under section 3

;(e)"Government" means the Government of Jammu and Kashmir ;(f)"Member" means the member of the Commission and includes the Chairperson ;(g)"notification" means the notification issued under this Act and published in the Government Gazette ;(h)"Prescribed" means prescribed by rules made under this Act ;(i)"State" means the State of Jammu and Kashmir.

Chapter II

State Commission for Protection of Women and Child Rights

3. Constitution of State Commission for Protection of Women and Child Rights.

(1)The Government shall constitute a body to be known as the State Commission for Protection of Women and Child Rights to exercise the powers conferred on, and to perform the functions assigned to it, under the Act.(2)The Commission shall consist of the following members namely :-(a)a whole time Chairperson to be nominated by the Government from amongst the eminent persons, who have done outstanding work for protection and welfare of women and children ; and(b)Four members nominated by the Government, out of whom one member shall be permanent and a woman and three part time members, out of whom at least two shall be women committed to the cause of women and child rights and must be persons of eminence, ability, integrity, standing and experience in the following fields :-(i)education ;(ii)child health, care, welfare or child development ;(iii)juvenile justice or care of neglected or marginalized children or children with disabilities or children in distress ;(iv)elimination of child labour ;(v)child psychology or sociology ; and(vi)laws relating to children.

4. Appointment of Chairperson and Members.

- The Government shall, by notification, appoint the Chairperson and other members :Provided that the Chairperson and Members shall be appointed on the recommendation of a three member selection committee constituted by the Government under the Chairmanship of Minister Incharge, Social Welfare Department.

5. Term of office and conditions of services of Chairperson and Members.

(1)The Chairperson and every Member shall hold office as such for a term of three years from the date on which he assumes office :Provided that the Chairperson or Member shall not hold office for more than two terms :Provided further that the Chairperson or Member shall not hold office as such after he has attained-(a)in a case of the Chairperson, the age of sixty-five years ; and(b)in the case of a member, the age of sixty two years.(2)The Chairperson or a Member may, by writing under his/her hand addressed to the Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.

6. Salary and allowances of Chairperson and Members.

- The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the Government, from time to time :Provided that neither the salary and allowances nor the other terms and conditions of services of the Chairperson or a Member, as the case may be, shall be varied to his disadvantage after his appointment.

7. Removal from office.

(1)Subject to the provisions of sub-section (2), the Chairperson or a Member may be removed from his office by an order of the Government on the ground of proved misbehaviour or incapacity in such manner and by such authority as may be prescribed.(2)Notwithstanding anything contained in sub-section (1), the Government may by order remove from office the Chairperson or a Member, if the Chairperson or, as the case may be, such Member,-(a)is adjudged an insolvent ; or(b)engages during his term of office in any paid employment outside the duties of his/her office ; or(c)refuses to act or becomes incapable of acting ; or(d)is of unsound mind and stands so declared by a competent court ; or(e)has so abused his office as to render his/her continuance in his office detrimental to the public interest ; or(f)is convicted and sentenced to imprisonment for an offence which in the opinion of the Government involves moral turpitude ; or(g)is without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.(3)No person shall be removed under this section until that person has been given a reasonable opportunity of being heard in the matter.

8. Vacation of office by Chairperson or Members.

(1)If the Chairperson or, as the case may be, a member,-(a)becomes subject to any of the disqualifications mentioned in section 7 ; or(b)tenders his/her resignation under sub-section (2) of section 5, his seat shall thereupon become vacant.(2)If a casual vacancy occurs in the office of the Chairperson or a Member, whether by reason of his death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making a fresh appointment in accordance with the provisions of section 4, and the person so appointed shall hold office for the remainder of the term of office for which the Chairperson, or a Member, as the case may be, in whose place he/she is so appointed would have held that office.

9. Vacancies etc. not to invalidate proceedings of Commission.

- No act or proceeding of the Commission shall be invalid merely by reason of-(a)any vacancy in, or any defect in the Constitution of, the Commission ; or(b)any defect in the appointment of a person as the Chairperson or a Member ; or(c)any irregularity in the procedure of the Commission not affecting the merits of the case.

10. Procedure for transaction of business.

(1)The Commission shall meet regularly at its office at such time as the Chairperson thinks fit, but three months shall not intervene between its last and the next meeting.(2)All decisions at a meeting shall be taken by majority :Provided that in the case of equality of votes, the Chairperson, or in his/her absence the person presiding, shall have and exercise a second or casting vote.(3)If for any reason, the Chairperson, is unable to attend a meeting of the Commission, any member chosen by the members present amongst themselves at the meeting, shall preside.(4)The Commission shall observe such rules of procedure in the transactions of its business at a meeting, including the quorum at such meeting, as may be prescribed.(5)All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by Secretary in this behalf.

11. Secretary, officers and other employees of Commission.

(1)The Government may, by notification, appoint an officer not below the rank of Additional Secretary to the Government from the Department of Law, Justice and Parliamentary Affairs, as the Secretary of the Commission and Government shall make available to the Commission such other officers and employees as may be necessary for the efficient performance of its functions of the Commission under this Act :Provided that staff appointed for State Commission for Women constituted under the Jammu and Kashmir State Commission for Women Act, 1999 shall be deemed to have been appointed as staff of the Commission.(2)The Secretary shall be responsible for the proper administration of the affairs of the Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed.(3)The salary and allowances payable to, and the other terms and conditions of service of the Secretary, other officers and employees, appointed for the purpose of the Commission shall be such as may be prescribed.

12. Salaries and allowances to be paid out of grants.

- The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, other officers and employees referred to in section 11, shall be paid out of the grants referred to in sub-section (1) of section 19.

Chapter III

Functions and powers of the Commission

13. Functions of the Commission.

(1)The Commission shall perform all or any of the following functions :-(a)investigate, examine and review all matters relating to the safeguards provided for women and children rights under the

Constitution and any law for the time being in force for their protection and recommend measures for their effective implementation ;(b)present to the Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards ;(c)inquire into violation of women and child rights and made in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women and children by the State ;(d)review, from time to time, the existing provisions of the Constitution of Jammu and Kashmir and laws affecting women and child and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations ;(e)take up the cases of violation of the provisions of the Constitution and of other laws relating to women and child with the appropriate authorities ;(f)examine all factors that inhibit the enjoyment of rights of women and children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures ;(g)look into the matters relating to women and children in need of special care and protection including women and children in distress, marginalized and disadvantaged, women and children in conflict with law, women and children without family and women and children of prisoners and recommend appropriate remedial measures ;(h)study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on women and child rights and make recommendations for their effective implementation in the best interest of women and children ;(i)undertake and promote research in the field of women and child rights ;(j)spread women and child rights literacy among various sections of the society and promote awareness of the safeguard available for protection of these rights through publications, the media, seminars and other available means ;(k)inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Government or any other authority, including any institution run by a social organisation ; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary ;(l)inquire into complaints and take suo moto notice of matters relating to-(i)deprivation and violation of women and child rights ;(ii)non-implementation of laws enacted to provide protection to women and children and also achieve the objective of equality and development ; and(iii)non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to, and ensuring welfare and relief of the women and children or take up the issues arising out of such matter with appropriate authorities ; and(m)call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and children and identify the constraints so as to recommend strategies for their removal ;(n)undertake promotional and educational research so as to suggest ways of ensuring due representation of women and children in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity ;(o)participate and advise on the planning process of socio- economic development of women and children ;(p)evaluate the progress of the development of women under the State ;(q)inspect or cause to be inspected a jail, remand home, women's and children institution or other place of custody where women and children are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary ;(r)fund litigation involving issues affecting a large body of women and children ;(s)make

periodical reports to the Government on any matter pertaining to women and children and in particular various difficulties under which women and children toil ;(t)such other functions as it may consider necessary for the promotion of women and child rights ;(u)any other matter incidental to the above functions ;(v)such other functions as may prescribed ; and(w)any other matter which may be referred to it by the Government.(2)The Commission shall not inquire into any matter which is pending before any other Commission duly constituted under any law for the time being in force.(3)The Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendation and the reasons for the non-acceptance, if any, of any of such recommendations.

14. Powers relating to inquiry.

(1)The Commission shall, while inquiring into any matter referred to in clause (l) of sub-section (1) of section 13, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, Samvat 1977 and, in particular, 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 commissions for the examination of witnesses and documents ; and(f)any other matter which may be prescribed.(2)The Commission shall have the powers to forward any 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 has been forwarded to him under section 482 of the Code of Criminal Procedure, Samvat 1989.

15. Steps after inquiry.

- The Commission may take any of the following steps upon the completion of an inquiry held under the Act, namely :-(i)where the inquiry discloses the commission of violation of women child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons ;(ii)approach the High Court for such directions, orders or writs as the High Court may deem necessary ; and(iii)recommend to the Government or any authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

16. Annual and special reports of Commission.

(1)The Commission shall submit an annual report to the Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.(2)The Government shall cause all the reports referred to in sub-section (1) to be laid before each House of State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the non-acceptance, if any, of any of such recommendations.(3)The annual report shall be prepared in such form, manner and contain such details as may be prescribed.

Chapter IV

Constitution of Courts and Conduct of Cases

17. Women and Children's Courts.

- Notwithstanding anything to the contrary contained in any other law for the time being in force, the Government may for the purpose of providing speedy trial of offences against women and children or of violation of women and child rights, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, the Court of Session to be a Women and Children's Court to try the said offences :Provided that nothing in this section shall apply if-(a)a Court of Session is already specified as a special court ; or(b)a special court is already constituted or designated ;for such offences under any other law for the time being in force :Provided that pending issuance of a notification under this section, the Principal Sessions Court having territorial jurisdiction, shall be deemed to have been designated as such and shall have jurisdiction to try offences under this Act.

18. Special Public Prosecutor.

- For every Women and Children's Court, the Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Chapter V

Finance, Accounts and Audit

19. Grants by the Government.

(1)The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilized for the purpose of this Act.(2)The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

20. Accounts and audit of the Commission.

(1)The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Government in consultation with the Comptroller and Auditor General of India.(2)The accounts of the Commission shall be audited by the Comptroller and Auditor General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor General.(3)The Comptroller and Auditor General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act

shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.(4)The accounts of the Commission, as certified by the Comptroller and Auditor General or any other persons appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Government by the Commission and the Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of the State Legislature.

21. Annual report.

- The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.

22. Annual report and audit report to be laid before State Legislature.

- The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received before each House of State Legislature.

Chapter VI

Miscellaneous

23. Protection of action taken in good faith.

- No suit, prosecution 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 the Commission, in respect of anything which is in good faith done or intended to be done in pursuance of the Act or of any rules made thereunder or in respect of the publication by or under the authority of the Government or the Commission of any report or paper.

24. Chairperson, Members and staff of the Commission to the public servants.

- The Chairperson, the members, officers and other employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code, Samvat 1989.

25. Directions by the Government.

- In the discharge of its functions under the Act, the Commission shall be guided by such directions on questions of policy relating to State or national purposes, as may be given to it by the Government.(2)If any dispute arises between the Government and the Commission as to whether or not a questions is or is not a question of policy relating to State or national purposes, the decision of the Government thereon shall be final.

26. Returns or information.

- The Commission shall furnish to the Government such returns or other information with respect to its activities as the Government may, from time to time, require.

27. Pending proceedings before the State Commission for Women.

- The proceedings pending before the State Commission for Women after coming into force of the Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018 shall be deemed to be pending before the Commission established under section 3 of the Act.

28. Construction of references to the State Commission for Women in any other laws, orders etc.

- Any reference in any other law, order, rule or notification, in force in the State immediately before the commencement of the Jammu and Kashmir State Commission for Protection of Women and Child Rights Act, 2018 to the State Commission for Women shall unless context otherwise requires be construed as reference to the State Commission for Protection of Women and Child Rights.

29. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty :Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of the Act.(2)Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

30. Government to consult Commission.

- The Government shall consult the Commission on all major policy matters affecting women and children.

31. Power to make rules.

(1)The Government may, by notification in the Government Gazette, make rules for carrying out the provisions 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)terms and conditions of service of the Chairperson and Members of the Commission and their salaries and allowances under section 6 ;(b)the procedure to be followed by the Commission in the transaction of its business at a meeting under sub-section (4) of section 10 ;(c)the powers and duties which may be exercised and performed by the Secretary of the Commission under sub-section (2) of section 11 ;(d)the salary and allowances and other terms and conditions of service of officers and other employees of the Commission under sub-section (3) of section 11 ;(e)form of the statement of accounts and other records to be prepared by the Commission under section (1) of section 20.

32. Repeal and savings.

(1)From the date of commencement of the Act, the State Commission for Women Act, 1999 shall stand repealed.(2)Notwithstanding such repeal, anything done, any action taken, any order issued or any proceeding instituted under the repealed Act shall be deemed to have done, taken, issued or instituted, as the case may be, under the corresponding provisions of the Act.