Delhi Equality Bill 2015: Highlights

India is amongst the few regimes with a constitutional commitment to a liberal democracy that nevertheless lack a comprehensive, multi-ground, antidiscrimination legislation. A conversation on the need and shape of an antidiscrimination law began after it was recommended by the Sachar Committee in 2006. While the UPA government did briefly consider setting up an Equal Opportunity Commission, the idea was quietly buried. The policy debate on an antidiscrimination law has been going on for about a decade. It is hoped that the existence of a draft Bill will give concrete shape to this conversation and draw attention to details. This Bill is one such effort. It is designed with NCT-Delhi in mind, but can be adapted for other states or the centre. Comments and criticism are welcome. Highlights of this Bill include the following:

- The Bill creates civil liability for acts of discrimination.
- Discrimination includes direct and indirect discrimination, harassment and victimisation.
- Aggravated discrimination includes boycott, segregation and discriminatory violence.
- The duty to refrain from discrimination applies not only to public authorities and private persons performing a public function but also to all employers, landlords, traders and service providers (whether public or private).
- Everyone has a duty to refrain from aggravated discrimination.
- The protection against discrimination and aggravated discrimination is (with a few exceptions) available symmetrically to dominant as well as disadvantaged groups and to majorities as well as minorities: to men as well as women, Hindus as well as Muslims, brahmins as well as dalits.
- Public authorities and private persons performing public functions have a diversification duty to progressively increase the participation of substantially excluded disadvantaged groups.
- Public authorities have a duty to give due regard to the need to eliminate discrimination.
- Voluntary affirmative action in favour of disadvantaged group is permitted if proportionate.
- District courts designated as Equality Courts have the primary responsibility for civil enforcement.
- A permanent and independent Equality Commission has the responsibility to promote the objectives of the Bill and aid its implementation.
- Protection orders against aggravated discrimination may be obtained from the Magistrate’s court.

Dr. Tarunabh Khaitan
Delhi Equality Bill 2015: Highlights

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Statement of Objects

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

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

Noting numerous reports of cases of discrimination in all spheres of social, economic and political life, especially against dalits, Muslims, women, gays and lesbians, hijras, disabled persons, persons from North-Eastern states, 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 normally minorities suffer discrimination, the law is more likely to be successful if it, in general, 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 buttressed by additional statutory protections,

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

Recognising the particularly pernicious effects of aggravated forms of discrimination,

Noting that India has become an exception among liberal democracies for not enacting a comprehensive antidiscrimination law covering the public and the private sector,

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,

It is hereby enacted:
A. Preliminaries

1. Short title, Scope etc
(1) This Act may be called the Delhi Equality Act 2015.

(2) It extends to the whole of the National Capital Territory of Delhi.

(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 Delhi, whichever is earlier.

2. Definitions
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, symbolic adverse effects or detriments and minimal or nominal adverse effects or detriments;

(iv) ‘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;

(v) ‘disadvantaged group’ has the meaning prescribed in section 20;

(vi) ‘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;

(vii) ‘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;

(viii) ‘Equality Commission’ means the Commission established under section 22;
(ix) ‘Equality Court’ means a court designated as such under section 24;

(x) ‘Government of Delhi’ means the executive government of the National Territory of Delhi headed by the Lieutenant Governor, who shall exercise any powers or functions under this Act in accordance with the advice given by the Council of Ministers for the National Capital Territory of Delhi;

(xi) ‘High Court’ means the High Court of Delhi;

(xii) ‘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;

(xiii) ‘law in force’ means 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 Delhi and which relates to a subject over which the Legislative Assembly has legislative competence;

(xiv) ‘Legislative Assembly’ means the Legislative Assembly of the National Capital Territory of Delhi;

(xv) ‘person’ includes, but is not limited to, a company, 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;

(xvi) ‘private person performing a public function’ relates to functions of the Government of Delhi and includes, but is not limited to, public contractors and special purpose vehicles formed in relation to public-private partnerships;

(xvii) ‘protected characteristic’ has the meaning prescribed in section 3;

(xviii) ‘protected group’ has the meaning prescribed in section 4;

(xix) ‘public authority’ means any authority or body or institution that is under the jurisdiction, competence, control or supervision of the National Capital Territory of Delhi and

(a) is established or constituted by or under the Constitution, or by any law made by Parliament, or by any law made by the Legislative Assembly, or

(b) is a body owned, controlled or substantially financed, directly or indirectly by funds provided by the Government of Delhi, or

(c) is registered as a political party under the Representation of People Act 1951;

(xx) ‘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;
B. Protected Characteristics and Protected Groups

3. Protected Characteristics
A protected characteristic means:
(i) caste, race, ethnicity, sex, gender identity, pregnancy, sexual orientation, religion, tribe, disability, linguistic identity, HIV-status, nationality, marital status, food preference, skin tone, place of residence, age or
(ii) any other personal characteristic which:
   (a) is either insufficiently within a person’s 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 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) 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.

(3) In relation to the protected characteristic of disability, the only relevant protected
group is persons living with a disability, or a sub-group thereof.

(4) 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. An person without disability who has caring responsibilities for her disabled
   son is protected from disability discrimination.

(5) 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) An act, policy, criterion, practice or structure is prima facie directly discriminatory
if:
(i) it is intended to harm, injure, humiliate, cause a detriment or adversely affect a
   protected group, or
(ii) it is motivated by prejudice against or stereotypical assumptions about members
   of a protected group, or
(iii) it includes a reference to a protected characteristic, whether on its own or in
    combination with any other criteria, or
(iv) 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, or
(v) 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 adversely affect all members of any other group defined by the same protected characteristic to whom it is or would be applied.

**Examples:**

1. An employer refuses to interview a candidate because he is a *dalit*. This is prima facie direct discrimination in relation to caste.
2. 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.
3. 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.
4. 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.
5. A advertises to sell his house, and the advert says that only non-Muslims shall be accepted as potential buyers. This is prima facie direct discrimination in relation to religion.
6. A doctor administers ‘conversion therapy’ to ‘cure’ a lesbian of her same-sex attraction. This is direct discrimination in relation to sexual orientation.
7. An employer administers a discretionary travel fund, which in practice is usually disbursed to any employee, except to employees who originate from North-Eastern states. This is prima facie direct discrimination in relation to race and ethnicity.
8. 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.

(2) Subject to the other provisions of this section, the satisfaction of sub-section (1) of this section is sufficient to constitute direct discrimination unless the respondent shows that the act, 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. Assuming this was done in good faith, this advert does not amount to direct discrimination in relation to sex.
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. This is direct discrimination in relation to religion.

(3) Prima facie direct discrimination in relation to disability, nationality or age shall be sufficient to constitute direct discrimination unless the respondent shows that the act, policy, criterion, practice or structure
(i) is a proportionate means of achieving a legitimate objective, and
(ii) was adopted in good faith.

(4) 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.

(5) An act, 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. This is direct discrimination in relation to sex.

6. Indirect Discrimination

(1) A generally applicable act, 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, *dalits* are substantially less likely to have
Masters degrees than non-*dalits*. 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) The satisfaction of sub-section (1) of this section is sufficient to constitute indirect
discrimination unless the respondent shows that the act, 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 dalits, 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) An act, 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
Harassment is any communication or conduct related to a protected characteristic that has the purpose or effect of creating an intimidating, hostile, degrading, bullying, humiliating or offensive environment for a person belonging to a protected group.

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 dalit colleague to ‘purify’ it. This is harassment in relation to caste.

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 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 either because they belong to different protected groups.
defined by the same protected characteristic, or because they belong to the same protected group.

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 or any other provision of the Indian Penal Code 1860 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 illegal force that is targeted against members of a protected group.

(2) A public servant
(i) who has the duty or ability to protect the public from violence, 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 violence
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 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) 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 and well-advertised formal complaints mechanism and the duty to duly investigate and act on any complaints.

(4) The following are deemed not to breach the antidiscrimination duty:
(i) pursuing diversification as defined in section 16 of this Act;
(ii) providing diversity training, as defined in section 18 of this Act;
(iii) undertaking affirmative action, as defined in section 19 of this Act;
(iv) giving due regard to the need to eliminate discrimination and to promote equality and diversity, as defined in section 21 of this Act; and
(v) doing, adopting or instituting, in good faith, any act, policy, criterion, policy or structure mentioned as an exception to the antidiscrimination duty in the 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:

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<thead>
<tr>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>employer</td>
<td>employees</td>
</tr>
<tr>
<td>landlord</td>
<td>purchaser, tenant</td>
</tr>
<tr>
<td>trader</td>
<td>consumer</td>
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<tr>
<td>service provider</td>
<td>consumer</td>
</tr>
<tr>
<td>public authority</td>
<td>any person</td>
</tr>
<tr>
<td>private persons performing</td>
<td>any person affected by</td>
</tr>
<tr>
<td>public functions</td>
<td>their public function</td>
</tr>
</tbody>
</table>
13. Remedies against Discrimination

(1) Subject to other provisions of this section, upon the breach of the antidiscrimination duty, a court may order A, or any other person who is a party to the proceedings before it, to:

(i) amend or abandon the discriminatory act, 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, including 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) do or refrain from doing anything else by issuing an appropriate order, declaration, injunction, or award.

(2) If the breach of the antidiscrimination duty entails direct discrimination under section 5(1)(i), 5(1)(ii) or 5(1)(iv) or harassment or victimisation, 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 and for a written apology 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 reasonable accommodations as exceptions for specific aggrieved persons, rather than to amend or abandon the entire discriminatory act, policy, criterion, practice or structure.

(5) 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.

(6) If the interpretation in sub-section (5) of this section is not possible, or cannot fully remove the incompatibility, the High Court

(i) may strike down the incompatible provisions of any primary legislation already in force at the enactment of this Act, either with immediate effect or with effect from a specified date,
(ii) may declare the incompatible provisions of a primary legislation enacted after the enactment of this Act to be discriminatory and recommend their reconsideration by the appropriate legislature: Provided that the appropriate legislature’s failure to satisfactorily act on the recommendation within a period of one year shall be sufficient ground for the High Court to strike it down,
(iii) shall strike down the incompatible provisions of any law in force that is not primary legislation, either with immediate effect or with effect from a specified date:
Provided that, in exceptional cases and for reasons to be recorded in writing, the High Court may instead declare such provisions to be discriminatory and recommend their reconsideration, provided further that the appropriate legislature’s failure to satisfactorily act on the recommendation within a period of one year shall be sufficient ground for the High Court to strike it down.

(7) Nothing in this section affects the powers that the High Court has under the Constitution of India.

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 of this Act may also be ordered against anyone, including anyone who is not A, who commits aggravated discrimination.

(2) A person who commits aggravated discrimination in relation to a disadvantaged group may, additionally, be asked to pay exemplary damages to and to apologise to any 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 Equality Commission for use towards the performance of its 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. Diversification, Affirmative Action and Due Regard Duty

16. Diversification
(1) Diversification is the adoption by A, through reasonable means, of an act, 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.
Example: The proportion of Sikhs in the local police force is 0.5%, against their 5% share in the local population. In this case, Sikhs are substantially excluded from the personnel of the police force.

(2) Reasonable means of diversification include, but are not limited to, adoption of or provision for scholarships, targeted advertising, allocation of up to 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 indirect affirmative action measure.

17. Diversification Duty
(1) All public authorities shall undertake measures to progressively realise diversification in all aspects of their work and at all levels of their workforce.

(2) 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.

(3) Sexual, caste, tribal and religious diversification, especially in policing and public procurement, shall be given urgent priority.

(4) Diversification measures in any given year may focus on any one or more substantially excluded disadvantaged groups.

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

(6) Without prejudice to its other powers under this Act, the Equality Commission may seek any information and conduct any investigation in relation to the diversification duty.

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

(8) 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.

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

18. Diversity Training
(1) All public authorities shall, in liaison with the Equality Commission, conduct regular training sessions for their personnel to sensitise them to the importance of equality, antidiscrimination and diversity and to the purposes and provisions of this Act.
(2) Training courses for members of the police force, judges of the Equality Court, Magistrates specified in section 30 of this Act, and officers in charge of implementing the Special Marriage Act 1954 shall be conducted within a year 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 two years of the enactment of this Act.

(4) The Equality Commission may order any public authority to require its personnel to undergo diversity training courses.

19. **Affirmative Action**

(1) Direct affirmative action is the adoption of an act, 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.

*Example:* A private medical school awards an extra 5% marks in its entrance examination to any Scheduled Caste candidates whose parent(s) do not have a graduation degree. The policy includes a reference to the protected characteristic caste.

(2) Indirect affirmative action is the adoption of an act, 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 rational means of extending such benefits, privileges or preferences.

*Example:* A university has a fee waiver policy for any first generation university entrant. In the relevant geographical area, Scheduled Caste students are likely to be the main beneficiaries of this policy. The policy does not include any reference to any protected characteristic but is a rational means of benefiting a disadvantaged group.

20. **Disadvantaged Groups**

(1) Disadvantaged group means, with respect to:

(i) caste: the scheduled castes recognised under Article 341 of the Constitution of India;

(ii) race and ethnicity: 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 likely to become pregnant;

(vi) sexual orientation: gays, lesbians, bisexuals, *kothis* and other sexual minorities;

(vii) religion: 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 (including persons of Indian origin who hold a foreign nationality), naturalised citizens;
(xiii) marital status: unmarried persons, cohabiting couples and same-sex couples;
(xiv) food preference: persons who are not vegetarians;
(xv) skin tone: persons with a darker skin tone;
(xvi) place of residence: persons ordinarily resident in a rural area;
(xvii) age: persons over the age of sixty-five;
(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 Equality Commission for investigating the status of the group in question, which, along with the Report containing such recommendation, has been laid before the Legislative Assembly for a period of thirty days.
(ii) The inquiry committee shall include at least three members of the 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.

21. Due Regard Duty
All public authorities, when making a strategic or policy decision, shall give due regard to the need to eliminate all forms of discrimination and to promote equality and diversity.

E. Equality Commission

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

(2) The Equality Commission shall consist of
   (i) the Chief Equality Commissioner, and
   (ii) up to ten Equality Commissioners, 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,
b. at least two academic members, who shall be experts with doctoral degrees in the social sciences and have academic appointments at a university, and who shall be granted leave without prejudice by their employing universities for the duration of their term in the Equality Commission or until the date of their retirement from their academic appointment, whichever is earlier,

c. at least two civil society members, who shall be persons of eminence in public life and representatives of organisations of good repute that have a proven track record of working to achieve the purposes of this Act.

(3) At least half of the members of the Equality Commission must individually belong to one or more disadvantaged groups, and at least two of them must 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, as the case may be, or hold any office of profit except by way of employment in a public university, or in any way be connected with any political party or 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 Lieutenant Governor on the recommendation of a committee consisting of:

(i) the Chief Minister,
(ii) the Leader of Opposition in the Legislative Assembly (that is, the leader of the opposition party with the largest number of seats in the Legislative Assembly), and
(iii) one Cabinet member of the Government of Delhi nominated by the Chief Minister.

(6) The committee mentioned in sub-section (5) of this section shall seek and duly consider suggestions for suitable candidates from the following persons before making its recommendations:

(i) the Chief Justices of the High Court and the Supreme Court,
(ii) the Vice Chancellors of at least two central universities,
(iii) the Chairperson of the National Commission for Scheduled Castes,
(iv) the Chairperson of the National Commission for Scheduled Tribes,
(v) the Chairperson of the National Commission for Women,
(vi) the Chairperson of the National Commission for Minorities,
(vii) the Chief Commissioner for Persons with Disabilities, and
(viii) the Chairperson of the National Human Rights Commission.

(7) 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, four initial Equality Commissioners to be appointed within sixty days of the commencement of this Act shall be appointed for a term of seven instead of five years.
(8) The salaries and allowances payable to and other terms and conditions of service of:
(i) the Chief Equality Commissioner shall be the same as that of an Election Commissioner,
(ii) the Equality Commissioner shall be the same as that of the Chief Secretary to the Government of Delhi.

(9) An Equality Commissioner is eligible for appointment as 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 section.

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

(11) The Lieutenant Governor may, on the advice of the Chief 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.

(12) The Government of Delhi shall 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.

(13) The salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed under sub-section (12) of this section shall be such as may be prescribed.

(14) In addition to the employees and officers appointed under sub-section (12) of this section, the Equality Commission may employ up to ten recent university graduates, preferably in the social sciences and law, for internships lasting up to a period of two years.

(15) The Government of Delhi shall make provision for reasonable living and maintenance costs of any interns employed by the Equality Commission.

23. Equality Commission: Powers and Duties
(1) The Equality Commission shall, while inquiring into any matter 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 Equality Commission shall vest in the Chief Equality Commissioner who shall be assisted by the Equality Commissioners and may exercise all such powers and do all
such acts and things which may be exercised or done by the Equality Commission autonomously without being subjected to directions by any other authority.

(3) Without prejudice to any specific power or duty specified in this Act, the Equality Commission 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,
(ix) monitor the enforcement of this Act, and
(x) 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 Equality Commission 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,
(iv) support aggrieved persons in seeking legal remedies provided under this Act,
(v) approach any court for the enforcement of this Act,
(vi) require any public servant to undergo diversity training,
(vii) 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 Equality Commission shall submit an annual Equality Report on the operation of this Act, including the functioning of the Equality Commission and the Equality Courts, to the Government of Delhi and publish it on its website on the date of such submission.

(6) The Equality Commission shall organise an annual seminar, in conjunction with a law university or the law department of a public university, to discuss its Equality Report with academics, lawyers, judges, legislators, civil society and the media.

F. Civil Enforcement

24. Jurisdiction: Equality Courts and High Court
(1) The Government of Delhi shall, in consultation with the Chief Justice of the 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.
(2) The Equality Court shall have original jurisdiction with regard to any breach of this Act—other than the breach of the diversification duty or the due regard duty, or 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 carries out business or is employed, or
   (iii) the cause of action has arisen.

(3) The High Court shall have original jurisdiction with regard to any incompatibility between this Act and any other law in force and with regard to the breach of the due regard duty.

(4) The High Court may, on the application of the aggrieved person, transfer to itself any case pending for more than a year before the Equality Court.

(5) 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.

(6) A person subject to any order of the Equality Court or the Equality Commission may appeal against such order to the High Court within thirty days from the date on which the order was served upon him or her.

(7) Any order made under this Act by the 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 that made such order.

25. Right to information
(1) B has a right to any information, as defined under section 2 of the Right to Information Act 2005 and subject to the exemptions prescribed in that Act, in possession of A that may be relevant for the purposes of this Act, including for bringing any proceeding 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 Equality Commission.

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

(5) The 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.
26. 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, unless specifically permitted under this Act, proof of an intentional reliance on or explicit reference to a protected characteristic by the respondent shall be sufficient, although not necessary, to establish a prima facie breach;
Provided further that if any information is or is likely to be in the possession of the respondent or sought from the respondent under section 25, 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.

27. 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, appropriate interim relief may be ordered in favour of the plaintiff by the Equality Court or the High Court.
(2) Interim relief may be granted ex parte.
(3) Interim relief may include a protection order of the nature specified in sub-section (7) of section 30 of this Act.

28. In Camera Proceedings
A 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.

29. 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

30. 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 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 against them or providing safe accommodation, the safety and security of the aggrieved person’s body, property and rights, including the rights against discrimination guaranteed under this Act, and the safety and security of any persons providing support to the person aggrieved:
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 sub-section (7) of this 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 31 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.

31. Breach of a Protection Order
(1) A breach of a protection order issued under this section 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

32. 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.

33. Rule-making Power
The Government of Delhi 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 spirit or the letter of the provisions of this Act,
Provided further that any rules sought to be issued under this Act after the establishment of the Equality Commission shall be framed in consultation with that Commission,
Provided further that no notification may be issued under this Section until the draft rules have been considered by a standing committee of the Legislative Assembly and thereafter placed before the Legislative Assembly for a period of thirty days.

Schedule
(Exceptions to the Antidiscrimination Duty under section 12, sub-section 4)

1. Provision for a same-sex service provider for personally intimate services, such as nursing or personal hygiene.

2. Requirement of a same-sex tenant for a shared dwelling where the landlord and the tenant share a kitchen, bathroom, living room, or bedroom.

3. Restriction of restaurant menus to certain cuisines, to the exclusion of certain food preferences.

4. Political boycott of any government, organisation or company, or a representative of such government, organisation or company.

5. 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.

6. Discrimination in relation to religion by a place of religious worship, with respect to activities that are essentially religious.

7. Measures designed to protect or benefit children.

8. Provision for a retirement age for employees who are sixty years of age or older.