

A STUDY OF THE EVOLUTION AND  
JURISPRUDENCE OF  
NATIONAL HUMAN RIGHTS COMMISSION

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fulfillment of the requirement for the award of the degree of

Master of Philosophy

*Submitted by*

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**CERTIFICATE**

This is to certify that the dissertation entitled **A STUDY OF THE EVOLUTION AND JURISPRUDENCE OF NATIONAL HUMAN RIGHTS COMMISSION** submitted by **LEELADHARA BHANDARY M** is in partial fulfillment of the requirement for the degree of *Master of Philosophy* (M.Phil.) of this university. It is his original work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this university or of any other university.

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(Chairperson)

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*Dedicated to  
my Loving Papa and Amma,  
Who never said No*

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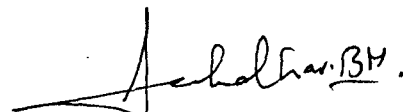
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Leeladhara Bhandary M.

## ABBREVIATIONS

AFDR	-	Association For Democratic Rights
APCLC	-	Andhra Pradesh Civil Liberties Committee
APDR	-	Association for the Protection of Democratic Rights
BSF	-	Border Security Force
CEDAW	-	Committee on the Elimination of Discrimination Against Women
ECOSOC	-	Economic and Social Council
FIR	-	First Information Report
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICJ	-	International Court of Justice
ILO	-	International Labour Organisation
NCM	-	National Commission for Minorities
NCW	-	National Commission for Women
NGOs	-	Non-Governmental Organisations
NHRC	-	National Human Rights Commission
NHRI	-	National Human Rights Institution
POTO	-	Prevention of Terrorism Ordinance
PUCL	-	People's Union for Civil Liberties
PUDR	-	People's Union for Democratic Rights
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNCHR	-	United Nations Commission for Human Rights
UNESCO	-	United Nations Educational Scientific and Cultural Organisation
UNHCHR	-	United Nations High Commission for Human Rights
UNHCR	-	United Nations High Commission for Refugees
UNICEF	-	United Nations International Children's Emergency Fund
WHO	-	World Health Organisation

**CHAPTER I**  
**INTRODUCTION**

## INTRODUCTION

“Every human being has a right to live and therefore to find wherewithal to feed himself and where necessary to clothe himself”.

— Mahatma Gandhi<sup>1</sup>.

These words of the Mahatma clearly say that food, clothing, shelter, health, education etc., are the basic amenities for human survival. But not only are these basic amenities enough to make a man happy, he needs other freedoms as well. Every human being needs fundamental freedoms for self-development. These freedoms including the above rights to survival forms the most fundamental of the rights called Human Rights. Knowledge of Human Rights is essential as a tool for the observance and the promotion of human rights. The UN has described human rights as “those rights which are inherent in our nature and without which we cannot live as human beings”.<sup>2</sup>

Human Rights can be defined as those rights, which every individual possesses because one is a human being. In other words, they are the inalienable rights or natural rights of the members of a human family.<sup>3</sup> Human Rights have been identified as those rights which are “important, moral and universal”.<sup>4</sup> They may also be called as “rights” in some moral order or perhaps under some natural law.<sup>5</sup> Human Rights of the individual are “those conditions of social life without which no man can seek, in general, to be himself at his best”.<sup>6</sup> Every State is

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1. Arun Kumar, “Exemplifications of Human Rights”, *PRP Journal of Human Rights*, vol. 1, no. 2 (1997), p. 37.
  2. United Nations, *Human Rights: Questions and Answers* (1987), p. 4. See Paramjit S. Jaswal and Nishtha Jaswal, *Human Rights and the law* (New Delhi, 1996), p. 2.
  3. T.S.N. Sastry, “Fundamental Rights vis-à-vis Bandhs Need for and Enactment”, *PRP Journal of Human Rights*, vol.3, no.2 (1999), p. 25.
  4. Jerome J. Shestak, “The Jurisprudence of Human Rights”, in Theodor Meron, ed., *Human Rights in International Law: Legal And Policy Issues* (Oxford, 1984), p. 74.
  5. Louis Henkin, “International Human Rights and Rights in the United States”, in Theodor Meron, ed., *Human Rights in International Law: Legal And Policy Issues* (Oxford, 1984), p. 25.
  6. V.S. Mani, *Human Rights in India: An Overview*, Institute for World Congress On Human Rights Occasional Paper, no. 4, (1997), p. 5. For detailed discussion see Harold J. Laski, *A Grammar of Politics* (London, 5<sup>th</sup> edn., 1967), p. 91.

known by the rights that it maintains.<sup>7</sup> Since the State exists to make possible that achievement, it is only by maintaining the rights that its end may be secured. Rights, therefore, are prior to the State in the sense that, recognised or not, they are that from which its validity derives.<sup>8</sup>

### I.1. Evolution of Human Rights in India

The concept of Human Right is not a new phenomenon. It is as old as the history of civilisation. It can be traced to the origins of human society on earth. Respect for the dignity of an individual and striving for peace and harmony in society, have been an abiding factor in Indian culture. The Indian culture has been the product of the assimilation of diverse cultures and religions that came into contact in the enormous Indian sub-continent over time.<sup>9</sup> The spirit of unity and universality in our tradition extends to the whole world. It is said in the *Rig Veda*: “There is one race; of human beings” and the validity of different traditions, religions, indeed of paths to Truth, has always been respected. Our guiding principle has been *Sarva Dharma Samanvaya*.<sup>10</sup> According to Nagendra Singh, “The individual in ancient India existed as a citizen of the State and in that capacity he had both rights and obligations”.<sup>11</sup> These rights and duties have largely been expressed in terms of duties (Dharma)—duties to oneself, to one’s family, to other fellowmen, to the society and the world at large.<sup>12</sup>

The guiding principles laid down for the Kings were, however, taken mainly from the species of *dhammic* texts like the *Vedas* and the *Vedanta* under the genus *Sanatan Dharma* which enshrines “Truth is one” and “God resides in every human being”. Besides *Vedas*, *Upanishads*, *Mahabharata* and *Bhagavat Gita* also furnished philosophic foundations for subsequent social developments, thereby

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7. Laski, *ibid*, p. 89.

8. Laski, *ibid*, p. 91.

9. Mani, n. 6, p. 7.

10. Manoj K. Sinha, *Implementation of Basic Human Rights* (New Delhi, 1999), p. 2.

11. Nagendra Singh, *India and International Law* (New Delhi, 1969), p. 78, cited in Mani, n. 6, p. 8.

12. Jawaharlal Nehru, *The Discovery of India* (New Delhi, 1946, 12<sup>th</sup> Impression, 1992) p. 87, cited in Mani, *ibid*, n. 6 and C.B. Weeramantry, “The International Court of Justice in the Age of Multiculturalism”, *Indian Journal of International Law*, vol. 36, no. 2 (1996), pp. 29-32.

enriching the doctrine of human rights. *Upanishads*, emphasizing the individual self and its truth say that “there is nothing higher than the person”. *Mahabharata* also emphasises the point that “without ethical and moral principles, there is no true happiness and a society cannot hold together; the principles such as truth, self control, asceticism, generosity, non-violence, constancy in virtue should serve as the means of one’s success”. *Bhagavat Gita* being a part of *Mahabharata* preaches us to meet the obligations and duties of life, always keeping in view the spiritual background of human existence which is the manifestation of an ultimate and the infinite.<sup>13</sup>

According to Nagendra Singh, the Buddhist doctrine of non-violence in deed and thought “is a humanitarian doctrine *par excellence*, dating back to the third century B.C.”<sup>14</sup> Both Buddhism and Jainism emphasised the principles of equality, non-violence and denial of materialistic pleasures. In ancient times the first and foremost duty of the King was to protect his people. Protection consists in meeting internal threats as well as external aggression to man’s liberty.<sup>15</sup> An extremely high ideal was placed before the King by Kautilya in the *Arthashastra*, proclaims that “ideal in the happiness of the subjects lies the happiness of the King, in their welfare lies his welfare; the good of the King does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good”.<sup>16</sup>

The great tradition of India, which enjoins peace, friendship, equality, respect for human life and dignity provided the inspiration for our freedom struggle. Our Independence Movement represented a struggle for securing the fundamental human rights for people of India. From the above discussion we can understand the development of human rights in India was not a recent phenomenon, but has its root in ancient times.

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<sup>13.</sup> Arun Ray Mohapatra, *Formation, Function and Future Prospects* (Radha Publications, New Delhi, 2001) p. 29.

<sup>14.</sup> Cited in Mani, n. 6, p. 8.

<sup>15.</sup> Sinha, n. 10, p. 3.

<sup>16.</sup> Mohapatra, n. 13, p. 30.

## I.2. Evolution of Human Rights on International Plane

The institutionalisation of human rights in national and international constitutional and other instruments is a development, which has penetrated into the international system at the end of 18<sup>th</sup> century.<sup>17</sup> The English, American and French Revolutions stand testimony to the indication of certain human values by declaration of British Bill of Rights in 1688, The Virginia Bill of Rights 1776, The French Declaration of Man and of the Citizen 1789, The United States Bill of Rights 1791 etc., which made a distinction between Rights of man on one hand and the Rights of the Citizen on the other. On this sense the Rights of Man are natural and inalienable rights, while the rights of the citizen are positive rights. For this reason Human Rights are fundamental rights because, they existed before the stage whereas rights of the citizen are subordinate to and dependent upon them.<sup>18</sup>

The human civilisation has always had concern for human rights throughout history. The world became divided into political units called states and each state claimed sovereignty. The idea of state sovereignty traditionally meant that individuals were subjects of state sovereignty and that they were the exclusive concern of the state.<sup>19</sup> The claim of a state to exclusive jurisdiction over its individuals has slowly weakened over long periods of history. A small beginning for recognition of human rights in Europe was made since the Peace of Westphalia of 1648, which ended a long religious war between the Catholic and the Protestant Princes.<sup>20</sup>

A second area of international concern for individuals found in the Battle of Solferino of 1859. In that time Count Henri Dunant, a Swiss philanthropist established the concept of Red Cross Society, a voluntary organisation which

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17. Sinha, n.10, p. 4.

18. Ibid.

19. V.S.Mani, "Human Rights and the United Nations; A Survey", *Journal of the Indian Law Institute*, vol. 40, no. 1-4 (1998), p. 39.

20. Ibid.

worked for the amelioration of the conditions of the sick and the wounded soldiers in the battlefield.<sup>21</sup> This movement accepted by the states and made some restrictions on war for the protection and amelioration of the individuals who for no fault of theirs, participated in the war. The first international agreement for this adopted in 1864 and it has been revised on the basis of experience of different wars, in 1899,1907,1929,1949 and 1977.<sup>22</sup>

A third area of evolution of international concern for human rights related to colonies. The establishment of the League of Nations in 1920, set down an international principle, self-determination, and provided a modest institutional mechanism, paving the way for decolonisation of most of the European colonies. A fourth area of evolution of international concern for human rights related to protection of minority rights. After the First World War the European situation clearly showed that it was necessary to establish a system of international guarantees for protection of minority rights.

All these developments led to states authorising and empowering international organisations, even it in a small measure, to take initiatives in the socio-economic fields. In fact the Treaty of Versailles, 1919 contained the Constitutions of two important international organisations, namely the League of Nations and the International Labour Office (later renamed as the International Labour Organisation or ILO). The mandate of the ILO is to promote social justice for the working people everywhere through formulating the policies and programmes to help the working and living conditions of workers, creates international labour standards, assist the labourers in their respective territories, and also assist them in with technical advice, training and education in these fields. The ILO Declaration 1944 affirmed that “all human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. These ideas strongly influenced not only the drafting of

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<sup>21.</sup> Ibid.

<sup>22.</sup> Ibid.



the UN Charter, but the subsequent evolution of human rights, both within and outside the UN.

### I.3. UDHR – Importance of UDHR in Human Rights Jurisprudence

The UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10<sup>th</sup> December 1948. UDHR drafted and recommended by the Commission of Human Rights to the General Assembly, through Economic and Social Council (ECOSOC). The preamble of the UDHR emphasises that, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>23</sup> It also emphasises that, a common understanding of the human rights and freedoms enshrined in the UN Charter “is of greatest importance for the full realization of the pledge”.<sup>24</sup>

Articles 1 to 21 of the Declaration relate to Civil and Political Rights, Articles 22 to 27 relate to Economic, Social and Cultural Rights, and Articles 28 to 30 deal with general application. The UDHR in Article 29(2) itself recognises that ultimate goal of international effort is in meeting the just requirements of morality, public order and the general welfare in a democratic society.<sup>25</sup> UDHR provided the normative basis for all future activities of the UN in the field of human rights. It led to the drafting of the two International Covenants on Human Rights in 1966-both of which, along with UDHR constitute the International Bill of Rights.<sup>26</sup> Later another phase on the international level, in safeguarding human rights, by the Regional Arrangements setting up of European Commission of Human Rights, became effective in settling various human rights issues. But it was later realised that, the actual realisation of these human rights can be accomplished in their own communities and in their own conditions of social life. International aid in various forms could be gained through the home forum. The enjoyment and exercise of human rights within State presupposes a general level

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23. Preamble of the UDHR, UN General Assembly Resolution... (III) of 1948, 1<sup>st</sup> para.

24. Ibid, 7<sup>th</sup> para.

25. See Publications of the United Nations Department of Public Information, *The International Bill of Human Rights*, DPI/925/Rev.1-93-25952-June 1993-20M, p. 9.

26. Ibid, 19, p. 48.

of political, economic and social discipline and ability, which can be attained by education, training and hard work by the home forum and, not with orders and regulations of the positive law.

By the realisation of this truth a number of countries set up Human Rights Commissions or similar bodies dealing with human rights grievances. These include U.K., Canada, Australia and the Philippines, to name a few. In the year 1993 India established a Commission on Human Rights, namely the National Human Rights Commission (NHRC).

#### **I.4. Circumstances of Establishment of NHRC**

(NHRC), which sets a benchmark in the Indian Human Rights movement was not a sudden development, rather its necessity was felt on various grounds. The current Indian Human Rights movement reached a high point in last two decades as a reaction to the threat of the Indian democratic set up during the period of emergency and because of the emergence of terrorist violence in 1980's, both of which posed serious threat to civil liberties and credibility of the Indian State as well. The State in order to maintain its governability and to combat terrorist violence has taken recourse to coercive measures, which has further led to the phenomenon of State-terrorism i.e., human rights violation by security forces. As such the local human rights groups like the People's Union for Democratic Rights (PUDR) and People's Union for Civil Liberties became more active and started reporting the incidence of such violations to generate public pressure on the Government for preservation of human rights. Because of these pressures from various organisations and scholars, as also International pressures the Union Government thought it fit to promulgate an ordinance to establish the NHRC with immediate effect.

Hence it was initially constituted on 12<sup>th</sup> October 1993 under the Protection of Human Rights Ordinance of 28<sup>th</sup> September 1993. Subsequently it was converted into an Act of Parliament. The Statement of Objects and Reasons of the Act noted that since India is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social

and Cultural Rights (ICESCR) adopted by the General Assembly of the UN on the 16<sup>th</sup> of December 1966, and since there is a growing concern in the country and abroad on the issues relating to human rights, a framework was set up to deal with human rights issues, there is a need for the establishment of a national institution of human rights.

The Protection of Human Rights Act, 1993 contains 43 sections. Chapter I includes first 2 sections relating to preliminary aspects; Chapter II covers sections 3 to 11 on the Constitution and the Appointment of the Chairperson and other members; Chapter III deals with sections 12 to 16 on the Functions and Powers of the Commission; Chapter IV includes sections 17 to 20 relating to procedural aspects; Chapter V, with sections 21 to 31 is on the State Human Rights Commissions; Chapter VI through sections 32 to 35 provides for Finance, Accounts and Audit of the Commission and finally Chapter VIII deals with sections 36 to 43 on the miscellaneous aspects.

Protection and implementation of human rights is a legal problem, which requires the definition and codification of rights in the form of municipal laws and treaties. It is also a political problem, which requires enforcement action by the political institutions of the State. It is simultaneously a social problem requiring the social pressure in the form of public opinion. All these elements involve international, regional and national activity for effective protection of human rights. Thus the notion of human rights falls within the frame work of Constitutional law and International law, the purpose of which is to safeguard by institutionalised means the rights of human beings against violations committed by the organs of the State and to promote the establishment of humane living conditions and the all round development of the human personality.

The rights of man, natural rights, human rights or fundamental rights and a host of other such terminologies have been used at different times of evolution of human civilization with different degrees of emphasis as to reflect one common feature those elementary rights considered indispensable for the attainment of an

individuals wholesome personality.<sup>27</sup> The significant development of International law, after Second World War yielded a new progeny to the ancient concept of natural rights, i.e., the modern human rights conception with its essential thrust on the 'universality' of rights.

Are Human Rights Universal? Should there be an International Human Rights movement? Do Human Rights issues get politicised at international level? All human beings in the world are alike and all fundamental rights are universal and uniform, then why should there be any discrimination, apartheid, and poverty, and why should people suffer indignity, violation of basic rights concerning their dignity and pride? Various Conventions have been adopted in the international level, various State parties to them were obliged to promote universal respect for the human rights. India is one of them, it has gone a step further for achieving this object by creating a home forum called National Human Rights Commission. A brief period of its functioning hitherto has raised great hopes in the minds of Indians. A systematic study of this institution and its further possibilities is called for.

### **I.5. Issues raised in the Present Study**

Despite India's legal normative and institutional edifice for the protection of human rights, the large-scale human rights violations take place in our country. Ordinarily these violations must be tried before a court of law, but very often the social conditions do not allow them to reach the judicial process, despite the Public Interest Litigation procedure. NHRC is the forum exclusively deals with these matters. The primary object of the present study is to give a general picture of the structure and functioning of the NHRC in India. The work also seeks to focus on the following issues: -

Whether the object of the Commission to deal exclusively with human rights violation is being fulfilled?

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<sup>27</sup>. G.S. Bajwa, *Human Rights in India-Implementation and Violations* (Anmol Publications Pvt. Ltd., New Delhi, 1995) pp. 1-2.

Whether the Commission was able to propagate the concept of human rights to the mass of this country by taking adequate measures to educate them about Human Rights and their enforcement?

Whether as an Ombudsman, the Commission has been able to help the administration of justice and enforcement of people's right? What is the impact of the Commission on the traditional set up of Courts?

#### **I.6. Objectives of the Present Study**

The objectives of the present study are: -

- A. To evaluate the circumstances, that impelled India to set up the NHRC and its functioning.
- B. To identify the areas of human rights violations in which the NHRC interposed, the methods adopted and remedies given in redressing human rights violations and to evaluate the jurisprudence of the Commission in this regard.

#### **I.7. Methodology**

The methodology adopted to frame this work is essentially analytical, historical and comparative. It will examine selected cases dealt with the Commission, on the basis of original sources, i.e., documents accessed with the help of the NHRC. It makes use of the available secondary material on the work of the Commission.

#### **I.8. Scope of the Study**

This dissertation is divided into five chapters. The present one is the first chapter introducing this topic for dissertation.

The second chapter explains the concept of National Human Rights Institutions (NHRIs). It mainly highlights the origin and growth of the Institution and how it is protecting the Human Rights as a guardian of the human being? It also explains what are the systems followed under this Institutions; What is the

relationship between UN and National Institutions; and what are the elements required for effective functioning of National Institutions?

The third chapter makes an evolution of the origin of the NHRC in India. What factors internally and externally compelled India to set up such a Commission? Analysing various human rights violations that have been caused, starting from national liberation struggle, and after independence to till this date. Similarly, how the denouncement of Indian human rights record by the foreign Non-Governmental Organisations (NGOs) like Amnesty International, Asia Watch etc., had ultimately forced India to go for the establishment of the Commission on Human Rights? This chapter also describes how the NHRC in India was constituted and what are its powers and functions, by taking into consideration the relevant provisions of the Protection of the Human Rights Act, 1993.

The fourth chapter dwells on the Jurisprudence and other promotional work of NHRC, through surveying selected cases that came before the Commission. In the concluding chapter, some important suggestions have been highlighted for the reforms by the NHRC in safeguarding Human Rights.

**CHAPTER II**  
**THE CONCEPT OF NATIONAL HUMAN**  
**RIGHTS INSTITUTIONS**

## CHAPTER II

### THE CONCEPT OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Strong and effective National Human Rights Institutions (NHRIs) can contribute substantially to the realisation of human rights and fundamental freedoms.<sup>1</sup> Today, Human Rights considerations are relevant to almost every sphere of governmental activity and indeed, to many other areas of public and private life. The number and range of “institutions” concerned with the human rights issues reflect this reality. The activities of Non-Governmental Organisations (NGOs), Religious Institutions, Trade Unions and the Mass Medias touch directly on human rights issues, as do those of the most government departments, the courts and the legislature.<sup>2</sup>

The concept of a National Human Rights Institution is, however, far more specific- referring as it does to a body, whose functions are specifically defined and dedicated in terms of Promotion and Protection of Human Rights. National Institutions are but one component of a complex, multi-level system, which has been developed for the promotion and protection of human rights.

The setting up of a National Institution is one of the most effective means to perform the various functions relating to the implementations of the human rights. In the law of human rights, the individuals and the States constitute the two opposing subjects of *rights* and *duties*. While the former has rights and the latter has a duty to protect them. All member states of the United Nations, by their forming the organisation, solemnly commit themselves to the brooding omnipresence of universality in the Charter and the Universal Declaration of Human Rights (UDHR). These have subsequently been endorsed in the International and Regional Treaties, Conventions, Declarations, Judgements of the

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<sup>1</sup>. *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (UN publication, New York and Geneva, 1995), p. 1.

<sup>2</sup>. Office of the High Commissioner for Human Rights: Fact Sheet No. 19, *National Institutions for the Promotion and Protection of Human Rights*, p. 3. See also [www.unhrc.doc](http://www.unhrc.doc).



Courts and Policy Pronouncements by Governments all over the world.<sup>3</sup> It is in this context that, we may see the development of the NHRIs all over the world, formed under different circumstances prevailing in these countries, with the specific objective of promoting human rights. These National Institutions differ in their mandates, with reference to the methodologies and decisional processes adopted by them, which vary from country to country. The effectiveness of the measures of implementation of human rights is inextricably linked with the attitude of States. It is the responsibility of each state to ensure respect for human rights within its jurisdiction.

## II.1. Origin and Growth of National Human Rights Institutions

The original concern of the United Nations (UN) with National Institutions dates back to 1946, when the issue was first addressed by the ECOSOC.<sup>4</sup> The Secretariat in its memorandum on *supervision and enforcement of human rights* in 1947 had suggested for the creation of such a body in each state.

The Council asked Member States to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission of Human Rights. In 1960, the ECOSOC, in a Resolution<sup>5</sup> recognised the unique role which the National Institutions could play in the protection and promotion of human rights, invited Governments to encourage the formation and continuation of such bodies as well as to communicate their ideas and information on the subject to the UN Secretary General. In 1966, the General Assembly adopted a Resolution for considering the advisability of the proposal for the creation of national institutions to perform certain functions pertaining to the observance of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural

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3. C.Rajkumar, "Role and Contributions of National Human Rights Commissions in Promoting National and International Human Rights Norms in the National Context", *Indian Journal of Public Administration*, vol. XLVII, no. 2 (April-June 2001), p. 222.

4. UN Doc. E/CN.A/AC.1/12. p. 23.

5. ECOSOC Resolution 772 B (XXX) of 25<sup>th</sup> July 1960.

Rights (ICESCR).<sup>6</sup> The UN when it met in 1978 for its 34<sup>th</sup> Session had an important item on its agenda i.e., “Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, including the question of programmes and methods of the Commission”.<sup>7</sup> A resolution was approved inviting Member States and Governments to understand and appreciate the real importance of the concept of institutionalisation of human rights. This led to in the establishment of NHRIs in various countries.

The UN has been fully involved for many years in promoting and strengthening effective and independent NHRIs.<sup>8</sup> It has been argued that the setting up of the various institutions in the form of National Human Rights Commissions (NHRC) by the Governments was preceded by systematic and large-scale initiatives in the form of public mobilisation that took place in these countries.<sup>9</sup> However, it remains to be seen as to how far the various States that have established NHRIs had true political and social discourse on the subject within their national arena before actually embarking in the task of establishing a NHRI.<sup>10</sup> This is important and in most cases indispensable as it is only by this process that we can evolve and determine the particular shape, characteristics, functions and priorities that the Commission should have for itself while addressing the issue of human rights that affect its society.

This may be the reason why some of the NHRIs which have been established failed miserably in some countries in fulfilling the ideals of the NHRIs as there was no thought given to the need, suitability and demand or otherwise of a NHRI. The role of the UN should be subject to serious evaluation and circumspection, when it blindly resorts to establish such commissions regardless

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6. General Assembly Resolution 2200 C (XXI), of 16<sup>th</sup> Dec., 1966.

7. Centre for Human Rights, *Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights: Professional Training Series No.4* (Geneva, 1995), p. 4.

8. Subhash Chandra Kare, *Human Rights and United Nations* (Metropolitan book co. pvt. Ltd., New Delhi, 1977), p. 103.

9. S. Subramanian, *Human Rights International Challenges* (Manas Publications, New Delhi, 1997), P. 67.

10. Rajkumar, n. 3, p. 223.

of the nature of the civil and political society in a particular country.<sup>11</sup> This, it is submitted, in the long run has the potential to harm the institutional credibility as well as legitimacy that these institutions ought to have in that particular country.

The strong argument against the conception of the NHRI being inherently good is the fact that, even after the establishment of NHRIs in so many countries/regions, there have not been any substantial improvements in the human rights situations in any country or region.<sup>12</sup> Also, there have been mal-administration and total lack of autonomy and independence in the functioning of some of the NHRIs as they have been acting as another branch of the government.<sup>13</sup> This raises issues of *independence* and *autonomy*, both in the administrative as well as financial situation of the NHRI.<sup>14</sup>

A detailed set of principles on the status of National Institutions was developed at a United Nations sponsored meeting of representatives of national institutions in Paris in 1991.<sup>15</sup> These principles endorsed by the UN Commission on Human Rights (UNCHR) in Resolution 1992/54 as principles relating to the status of national institutions and subsequently by the General Assembly in its Resolution 48/134 of 20<sup>th</sup> of December 1993, became the foundation and reference point for United Nations activity on this subject. These principles will be set out in a latter part of this chapter. It is important to evaluate the validity and efficacy of any such set of principles that are intended to be uniformly applicable to all NHRIs. These principles need to be carefully analysed to ensure their suitability to the particular legal system. In addition, any adherence to such

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11. Ibid, p. 224.

12. Anna Lena Srensson, *The International Law of Human Rights and State of Exception* (Martinus Nijhoff Publishers, Dordrecht, 1998), pp. 78-82.

13. B.G. Ramacharan, *The Principle of Legality in International Human Rights Institutions* (Martinus Nijhoff Publishers, Dordrecht, 1989), p. 92.

14. R.V.Pillai, "Human Rights Training For National Institutions", in Seminar on *Human Rights Education and National Institutions* (Canadian Human Rights Foundation: Joint Sponsors NHRC and Canadian Human Rights Commission, 1996), p. 111.

15. Commission on Human Rights Resolution 1992/54 of 3<sup>rd</sup> March 1992, annex (Official Records of the Economic and Social Council, 1992 Supplement No. 2 (E/1992/22), chap II, sect. A): General Assembly Resolution 48/134 of 20<sup>th</sup> December 1993, annex. See also Arun Kumar Palai, *National Human Rights Commission of India; Formation, Functioning And Future Prospects* (1998), p.38.

principles is conditional on the particular nation state's freedom to interpret the scope and impact in accordance to the needs and objectives of the NHRI in a given situation. It is important that the States are given as much leverage in using their legislative and executive creativity, native jurisprudence, constitution, laws, rules and regulations and other practices that prevail in a country to develop a human rights system that the NHRI can engage in protecting and promoting.

In response to mandates<sup>16</sup> provided by the Commission on Human Rights and the General Assembly and the 1993 Vienna Declaration and Programme of Action, the United Nations subsequently organised a series of International meetings of representatives of NHRIs. In 1993, a Co-ordination Committee of National Institutions was established with the UN and other institutions to promote greater co-operation. The Vienna Declaration encouraged the establishment and strengthening of United Nations activities and programmes to meet requests for assistance from states regarding the establishment or strengthening of national institutions. Numerous NHRIs have subsequently been established throughout the world and many more are under consideration.<sup>17</sup> The UNCHR has recognised the valuable contribution that independent NHRCs can

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<sup>16.</sup> The mandate of the Office of the United Nations High Commissioner for Human Rights derives from Article 1, 13, and 55 of the Charter of the UN, the Vienna Declaration and Programme of Action and Assembly Resolution 48/141 of 20<sup>th</sup> December 1993, by which the Assembly established the post of United Nations High Commissioner for Human Rights. In connection with the programme for reform of the United Nations (A/51/950, para. 79), the Office of the United Nations High Commissioner for Human Rights and the Centre for Human Rights were consolidated into a single Office of the United Nations High Commissioner for Human Rights as of 15<sup>th</sup> September 1997. For more discussion see [www.unhcr.ch/html/hchr.htm](http://www.unhcr.ch/html/hchr.htm).

<sup>17.</sup> For example, New Zealand Human Rights Commission, <http://www.hrc.co.nz/>; Indonesian National Commission on Human Rights, <http://www.komnas.go.id/endex.html>; Australian Human Rights and Equal Opportunities Commission, <http://www.fl.asn.au/practice/human.html>; Indian National Human Rights Commission, <http://nhrc.nic.in/>; South Africa Human Rights Commission, <http://www.sahrc.org.za/>; Asia Pacific Forum of National Human Rights Institutions, <http://www.apf.hreoc.gov.au/>; European Court of Human Rights, <http://194.250.50.200/>; New Brunswick Human Rights Commission, Canada, <http://www.gov.nb.ca/hrc-cdp/e/thehrc.htm>; Nova Scotia Human Rights Commission, Canada, <http://www.gov.ns.ca/humanrights/>; Ontario Human Rights Commission, Canada, <http://www.ohrc.on.ca/>; Saskatchewan Human Rights Commission, Canada, <http://www.gov.sk.ca/shrc/>, etc.

of a particular vulnerable group (such as ethnic minorities, indigenous populations, refugees, women or children).<sup>20</sup> The UN defines an NHRI as a government body, whose functions are specifically designed to promote and protect human rights.<sup>21</sup> In summary, the key criteria of the Paris Principles are, *independence* guaranteed by the statute or constitution, *autonomy* from government, *pluralism* including membership, *a broad mandate* based on universal human rights standards, *adequate powers of investigation* and sufficient *resources*.<sup>22</sup> Even though the Paris Principles have been the starting point for much of the discussion on this subject, it would be useful to delineate the crucial issues in the dynamics of the NHRCs and then address them thematically.

The principles adopted at Paris are comprehensive and ambitious, indeed so much so that some of them may not reflect the needs and aspirations of the national institutions in some regions and countries. There should be continuous re-thinking on these issues as it not only affects our concepts of institutionalisation of human rights in specific countries but also affects the formation of an institution that achieves our goals of enforcing human rights.

Any academic discourse that begins its analysis and understanding of the NHRC from the United Nations initiatives or even the Paris Principles perspective is bound to presume that these institutions are inherently good and have an implicit value attached to them.<sup>23</sup> It is for this reason that much of the academic writings on this subject have turned out to be purely an evaluation of the working of the NHRC on the basis of national and international standards.

This is not to suggest that the UN initiatives, Paris principles, national and international standards are in any way inferior or irrelevant to examine, but to bring home the point that the questioning of the existence of an institution like

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<sup>20</sup>. UN, *National Institutions for the Protection and Promotion of Human Rights*, Fact Sheet No. 19. See also, Amnesty International, *Proposed Standards for National Human Rights Commissions*, AI Index: IOR 40/01.93, (January 1993).

<sup>21</sup>. Ibid.

<sup>22</sup>. Rajkumar, n. 3. p. 229.

<sup>23</sup>. B.G. Ramacharan, *The Concept of Present Status of the International Protection of Human Rights* (Martinus Nijoff Publishers, Dordrecht, 1989). P. 122.

NHRC is extremely useful and relevant to understand their working.<sup>24</sup> It would not only help us understand the importance or otherwise of this institution, but also examine its working, not just with reference to some predetermined set of principles and standards, but with particular emphasis on the context and circumstances under which these institutions have come to be established. This would be a good launch pad for us to then go on with themes that may arise in the course of the discussion, while addressing the issues that confront the formation and working of the NHRC.

## II.2. Human Rights Implementation System: An Overview

The World Conference on Human Rights, 1993, realising the importance of such an institution/commission, stated that the World Conference on Human Rights urges Governments to strengthen national structures, institutions and organs of the society, which play a major role in promoting and safeguarding human rights.

### II.2.1. The United Nations and Human Rights

The Charter of the UN was adopted in 1945 as a consequence of crimes against humanity committed by Fascism, for the promotion respect for human rights and fundamental freedoms for all without distinction of race, sex, language or religion. In the preamble of the Charter of the UN, the people of the UN declare their determination to reaffirm faith in fundamental human rights. The UN has developed a comprehensive strategy aimed at achieving the human rights objectives set out in the Charter<sup>25</sup>. A wide variety of public information activity and a technical cooperation programme designed to provide practical help to states in their efforts to promote and protect human rights.

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<sup>24</sup>. Richard Falk A, "Theoretical Foundations of Human Rights", *Legal Perspectives-Annual Number on Human Rights*, 1994, pp. 6-8.

<sup>25</sup>. Article 1(3) of the UN Charter, "...to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex language, or religion."

Articles 13(1)(b),<sup>26</sup> 55(c),<sup>27</sup> 56,<sup>28</sup> 62(2),<sup>29</sup> 68<sup>30</sup> and 76(c)<sup>31</sup> make the promotion of human rights a basic objective of the UN in building a stable and peaceful world order. Since the Second World War the statesmen of various nations have recognised the urgent need for safeguarding the political and civil rights of individuals to ensure economic and social security for one and all without any discrimination. The UN in co-operation with governmental and private organisations strives hard to evolve a suitable international machinery for the protection of human rights. It is a constant reminder of the hopes and aspirations of common and uncommon men and women throughout the world of their desire to secure for themselves all the rights necessary for the enrichment and development of human personality. Through the Charter all UN Member States are legally bound to strive towards the full realization of all human rights and freedom.

United Nations practice in the field of human rights is based on the fundamental premise that universal respect for human rights requires the concerted effort of every government, every individual and every organ in society.<sup>32</sup> A close examination of the provisions of the UN Charter clearly brings out the aims of the founding fathers in the promotion and advancement of

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<sup>26</sup>. Article 13(1)(b) of UN Charter, "... promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

<sup>27</sup>. Article 55(c) of UN Charter, "... universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

<sup>28</sup>. Article 56 of UN Charter, "All members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55."

<sup>29</sup>. Article 62(2) of UN Charter, "It may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all."

<sup>30</sup>. Article 68 of UN Charter, "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

<sup>31</sup>. Article 76(c) of UN Charter, "...to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the people of the world."

<sup>32</sup>. V.T. Patil, "The United Nations and Human Rights", *The PRP Journal of Human Rights*, vol. 4, no. 1 (2000), p. 8.

fundamental human freedoms through an international organisation. The UN Charter calls upon the General Assembly and the ECOSOC to play a comprehensive role with regard to promotion of human rights, for the realisation of the objectives mentioned in the Charter.<sup>33</sup>

The General Assembly created a new post of the United Nations High Commissioner for Human Rights (UNHCHR) with special responsibility for the human rights activities of the UN, under the aegis of the UN Secretary-General. It also set up the Office of the UN High Commissioner for Refugees (UNHCR) to render humanitarian assistance to refugees.<sup>34</sup>

Although the San-Francisco Conference decided in 1945 not to include an International Bill of Human Rights in the Charter itself, it explicitly demanded in Article 68 the establishment of a Commission for the Promotion of Human Rights, which had as its first task the drafting of the International Bill of Human Rights.

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II.2.1.1. *The Universal Declaration of Human Rights*: The centerpiece of this code is the UDHR adopted by the General Assembly on 10 December 1948. Although it has only the character of a recommendation, the Declaration has played a key role in the further development of human rights instruments and become the foundation upon which the international system for protection and promotion of human rights has been built.

The Declaration,<sup>35</sup> which contains 30 Articles claims a "common standard of achievement for all peoples and all nations" and is formulated in general terms; it contains fundamental freedom of rights (Articles 3-19), political rights (Articles 20-21), and also economic, social and cultural rights (Articles 22-28) without any hierarchy among them. The basic rights laid down in the Universal Declaration

33. V.S. Mani, "Human Rights and United Nations: A Survey", *Journal of Indian Law Institute*, vol. 40, no's. 1-4 (1998), p. 43.

34. Falk, n. 24, p. 44.

35. Adopted and Proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.





have given birth to over 90 International Treaties, Declarations or other Instruments within the UN system.<sup>36</sup> One can mention six prominent treaties: -

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the International Covenant on Civil and Political Rights (ICCPR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Convention on the Elimination of Discrimination Against Women (CEDAW);
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- the Convention on the Rights of the Child (CRC).

*II.2.1.2. Towards a System of Human Rights Protection:* In order to create a system of human rights protection, the following order of steps was necessary: (a) the conceptualization of a programme; (b) the definition of human rights; (c) the creation of compulsory norms; and (d) a system for the implementation of human rights in political and legal terms. In the UN Charter, we find the programme as expressed in Article 1(3). This programme formulation increasingly resulted in the exclusion of the universal observance of human rights from "matters which are essentially within the domestic jurisdiction of any state".<sup>37</sup> Organs of the UN are allowed to discuss those issues. Moreover, actual human rights violations could be dealt with after the creation of the necessary instruments.

*II.2.1.3. The International Bill of Rights:* The Universal Declaration of Human Rights of 1948 contained a first, yet not comprehensive, attempt at defining human rights. It took almost 20 years of drafting the two International Covenants, which - together with the Universal Declaration - form the

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<sup>36.</sup> Klaus Hufner, "How to file a Complaint on Human Rights Violation? A Manual for Individuals and NGOs", in *German UN's Association and German Commission for UNESCO*, (1998). See also, Philip Alston, *The United Nations and Human Rights-A Critical Appraisal* (Clarendon Press, Oxford, 1992), p. 778.

<sup>37.</sup> *UN Charter*, Article 2, para 7.

International Bill of Rights. In 1966, the General Assembly adopted the documents which entered into force in 1976.

The two Covenants together with the Optional Protocol to the International Covenant on Civil and Political Rights (OPT1) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty (OPT2) also contain instructions for the implementation of human rights, which takes place through national and international procedures.<sup>38</sup> Many countries have included provisions from the basic instruments of the UN directly in their National Constitutions or have directly incorporated them in national law.<sup>39</sup> The UN itself developed a wide range of procedures for observing respect for the International Code of Human Rights. In this context, four<sup>40</sup> major methods can be identified:

1. the examination of reports from States Parties by Committees of Independent Experts, where issues such as respect for civil and political rights, economic, social and cultural rights, the elimination of racial discrimination, equality of women, and the prohibition of torture are discussed with representatives of governments - often at the ministerial level;
2. the consideration by the Commission on Human Rights, through special reporters or working groups, of individual reports of particularly serious violations of human rights, such as arbitrary or summary executions, torture, disappearances and arbitrary detention.
3. the study of the human rights situation in specific countries or territories by the Commission on Human Rights and the General Assembly.

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<sup>38.</sup> Nanda Kumar, "Human Rights and Mechanism for Protection", *PRP Journal of International Human Rights*, vol. 1, no. 3 (1997), pp. 35-36.

<sup>39.</sup> Rajkumar, n. 3. p. 227.

<sup>40.</sup> Ibid.

4. the consideration by human rights organs of petitions ("communications") from individuals and organizations (NGOs) which allege serious and systematic violations of human rights.

To sum up, it can be concluded that the UN in its efforts at standard-setting and international implementation of human rights had a significant impact on the improvement of the human rights situation in many parts around the world. Together with the preservation of international peace and security and economic and social development, the promotion of human rights constitutes one of the three principal objectives of the UN that has undergone a great expansion both in the mandates and activities.

Over the last two decades, we have witnessed a major expansion of UN activities in the field of human rights. This relates not only to the human rights treaty system but also to the UN human rights programme as a whole. These developments are generally recognized as most impressive achievements of the UN human rights programme. In its Resolution 43/115 the General Assembly of the UN stated that: "The effective implementation of instruments on human rights, involving periodic reporting by States Parties to the relevant treaty bodies and the efficient functioning of the treaty bodies themselves, not only enhances international accountability in relation to the protection and promotion of human rights but also provides States Parties with a valuable opportunity to review policies and programmes affecting the protection and promotion of human rights and to make any appropriate adjustments".<sup>41</sup>

**II.2.1.4. *The Vienna World Conference on Human Rights, 1993:*** The World Conference on Human Rights in June 1993, where representatives of over 170 States met for the first time in 25 years to reaffirm their commitment to protect human rights, was unequivocal in confirming the *universality, interdependence,*

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<sup>41</sup>. Ibid, 12. For more information see Janusz Symonides, *The Struggle Against Discrimination- A Collection of International Instruments adopted by the United Nations System* (Paris: UNESCO, 1996), p. 113.

*indivisibility and inter-relatedness* of all human rights and fundamental freedoms.<sup>42</sup> The Conference examined in detail the progress achieved in human rights, and obstacles to their full enjoyment, as well as the application of international instruments and the effectiveness of the methods and machinery established by the UN in the field of human rights.<sup>43</sup> Emphasis was placed on protecting the rights of the most vulnerable groups, including racial, religious and ethnic minorities, indigenous populations, women and children, casualties of war, the poor, and the disabled. Through the Vienna Declaration and Programme of Action adopted at the World Conference, the States declared their commitment to ensure that human rights remain a priority objective of the UN.<sup>44</sup>

**II.2.1.5. *The UN High Commissioner for Human Rights:*** The 48th Session of the General Assembly confirmed the Vienna Declaration and Programme of Action; in addition, the Assembly decided to create the post of a High Commissioner for Human Rights (Resolution 48/141 of 20 December 1993) and devoted three decades to human rights: the Third Decade against Racism and Racial Discrimination; a Decade for Indigenous People; and a Decade for Human Rights Education. In its resolution, the General Assembly listed the High Commissioner's specific responsibilities.<sup>45</sup> They include:

- to promote and protect the effective enjoyment by all of civil, cultural, economic, political and social rights, including the right to development;
- to provide advisory services, technical and financial assistance in the field of human rights to States that request them;
- to coordinate United Nations education and public information programmes in the field of human rights;
- to play an active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the world;

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<sup>42.</sup> Patil, n. 33, p. 10.

<sup>43.</sup> Ibid, p. 38.

<sup>44.</sup> Ibid. See also United Nations World Conference on Human Rights, *The Vienna Declaration and Programme of Action, 1993*. With the opening statement of United Nations Secretary-General Boutros Boutros-Gali (UN Department of Public Information, New York, August 1993), p. 71.

<sup>45.</sup> Ibid.

- to engage in a dialogue with governments in order to secure respect for human rights;
- to enhance international co-operation for the promotion and protection of human rights;
- to co-ordinate human rights promotion and protection activities throughout the UN system; and
- to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness.

*II.2.1.6. The 50th Anniversary of the Universal Declaration of Human Rights, 1998:* The UN human rights programme is now evolving from standard-setting activities to the implementation of the international standards of human rights. Its operational activities are moving towards creating the conditions necessary for the implementation process and for a universal culture of human rights, which will, hopefully, lead to a considerable reduction of world-wide human rights violations.<sup>46</sup> On the one hand, universal ratification of the various Human Rights Conventions should be pursued; on the other hand, a further strengthening of the efficiency of implementing human rights through the UNCHR, Human Rights Treaty Bodies, monitoring bodies of various Covenants, Preventive Diplomacy, and the participation of NGOs will be necessary, which also includes a better co-ordination within the UN system.<sup>47</sup>

## II.3. The Central UN Human Rights Bodies

### II.3.1. The UN Commission on Human Rights

Article 68 of the Charter requests the ECOSOC to set up specialized Commissions in a number of subject areas. Consequently, the UNCHR was established as a "functional commission" by ECOSOC at its first session in 1946.<sup>48</sup> Originally, the Commission consisted of nine core members acting in

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<sup>46.</sup> Dennis J. Michael, "The Fifty-third Session of the UN Commission on Human Rights", *American Journal of International Law*, vol. 92 (1998), p. 117.

<sup>47.</sup> Hufner, n. 37, pp. 82-83.

<sup>48.</sup> Michael, n. 47, p. 120.

their individual capacity; today, the Commission is composed of representatives of 53 Member States elected for three-year term by ECOSOC.

**II.3.1.1. Brief History:** In 1947, the Commission met for the first time; its sole function was to draft the Universal Declaration of Human Rights. For the first 20 years (1947-1966) the Commission concentrated its activities on standard setting.<sup>49</sup> Based upon the Universal Declaration, the Commission worked on the drafting of the two Human Rights Covenants, the ICESCR and the ICCPR, which were adopted by the General Assembly in 1966.<sup>50</sup>

The progress being made is best characterized by the fact that the Commission in 1947 "recognized that it had no competence to deal with any complaint about violations of human rights". 20 years later, the Commission was specifically authorized to start to deal with violations of human rights. Since then, the Commission has set up an elaborate machinery and procedures, country-orientated or thematic (operating through special reporters and working groups), to monitor compliance by States with international human rights law and to investigate alleged violations of human rights, *inter alia*, through fact-finding missions to countries in all parts of the world.<sup>51</sup> During the 1970s and 1980s, these implementation and fact-finding machinery and procedures became the focus of the Commission's attention.

In the 1990s, the Commission has also increasingly turned its attention to the provision of advisory services and technical assistance in order to overcome obstacles for securing the enjoyment of human rights by all. Also, more emphasis has been put on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living, as well as

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<sup>49.</sup> Rajkumar, n. 3. p. 223.

<sup>50.</sup> Ibid. For detailed discussion, see Elibe H Riedel, "Commission on Human Rights", in Wolfrum, Rudiger, and others, ed., *United Nations: Law, Policies and Practice*, vol. 1, (Martinus, Nijhoff, Munchen: Beck: Dordrecht, 1995), 116-118.

<sup>51.</sup> Pammi Mahotra, "Protection of Human Rights", *PRP Journal of Human Rights*, vol. 1, no. 2 (1997), p. 34.

on the protection of the rights of the vulnerable groups in society,<sup>52</sup> such as minorities and indigenous people, and of the rights of women and of the child.

**II.3.1.2. *Mandate and Activities:*** The Commission is the principal policy-making UN body responsible for the promotion and protection of human rights. Its terms of reference are extensive; it may deal with any matter relating to human rights. During recent years, the Commission has discussed, *inter alia*, such issues as the human rights situation in various countries, economic, social and cultural rights, self-determination, torture, "disappearances", capital punishment, detention for exercising the rights to freedom of expression, rights of the child, racial discrimination, apartheid, rights of minorities, the International Covenants on Human Rights.<sup>53</sup>

The Commission considers and adopts resolutions on a wide range of general human rights issues and some country-specific situations, makes studies, drafts international instruments setting human rights standards, and reviews recommendations and studies prepared by its subsidiary body, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. It also undertakes special tasks assigned to it by the General Assembly or the ECOSOC, including the investigation of allegations concerning violations of human rights and the handling of communications relating to such violations.<sup>54</sup> The Commission is a subsidiary body of ECOSOC to which it reports annually; the Council may issue instructions or guidelines to the Commission. The Commission co-operates closely with all other UN bodies having competence in the field of human rights.<sup>55</sup> In addition, it assists the ECOSOC in the rather complex co-ordination of human rights activities in the over-all UN system.

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<sup>52.</sup> Rajkumar, n. 3, p. 228.

<sup>53.</sup> See, n. 16. See also Howard Jr. Tolley, *The UN Commission on Human Rights* (Westview Press, Boulder and London, 1987), p. 300.

<sup>54.</sup> Jawahar Kaul L., *Human Rights Issues and Perspectives* (Regency Publications, New Delhi, 1995), pp. 67-69.

<sup>55.</sup> Patil, n. 33, p. 11.

II.3.1.3. *Working Groups of the UNCHR:* In 1998/99, thirteen working groups established by the Commission<sup>56</sup> dealt with the following issues:

- enforced or involuntary disappearances;
- crime of Apartheid;
- right to development;
- promotion of rights and freedom (human rights defenders);
- arbitrary detention;
- draft optional protocol to the Convention against Torture;
- human rights situations;
- draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts;
- draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- indigenous people;
- permanent forum for indigenous people;
- structural adjustment programmes; and
- review of mechanisms.

II.3.1.4. *Meetings and NGO Participation:* The Commission meets once a year in Geneva for six weeks, beginning early March. In general, its meetings are public, except when it meets for several days to discuss situations, which appear to reveal a consistent pattern of gross violations under the "1503 procedure".<sup>57</sup> During the public meetings, the Governments which are not members of the Commission and NGOs, which have been granted consultative status with ECOSOC, may attend and make written and oral statements concerning issues on the agenda. The input of the NGOs has had a significant impact on the Commission's work. Often, NGO investigations and reports provide the only useful information available to the Commission about human rights abuses in various parts of the world. In 1999, 211 international and national NGOs were

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<sup>56.</sup> Howard Jr. Tolly, n. 54, p. 302.

<sup>57.</sup> This procedure is based upon the UDHR relating to the ECOSOC Resolutions 728 F (XXVIII), 1235 (XLII) and 1503 (XLII) and the Resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.



registered at the annual session of the Human Rights Commission, of which 38 belonged to the general consultative status category and 138 to the specific status category.<sup>58</sup>

### II.3.2. The UN Sub-Commission on the Promotion and Protection of Human Rights

This Sub-Commission (the name was changed from the Sub-Commission on Prevention of Discrimination and Protection of Minorities by a decision of the ECOSOC of July 1999) was established by the Commission on Human Rights<sup>59</sup> to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and to the protection of *racial, national, religious and linguistic minorities*, and to carry out any other function entrusted to it by ECOSOC or the Commission on Human Rights.<sup>60</sup> It meets at least once a year.

## II.4. Bodies Created to Supervise the Implementation of Treaties: Treaty Bodies

### II.4.1. The Human Rights Committee

The Committee consists of 18 members serving in their personal capacity and elected for a term of four years. It is created by the ICCPR, in accordance with the provisions of Articles 28 to 32, in order to monitor the implementation by States Parties of the provisions of the ICCPR and its Optional Protocol. "States Parties" are those countries, whose governments have ratified or acceded to treaties; they are legally bound to follow the treaty provisions. The second Optional Protocol, aiming at the abolition of the death penalty, entered into force on 11 July 1991.<sup>61</sup>

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<sup>58.</sup> Rajkumar, n. 3. p. 232.

<sup>59.</sup> David Weissbrodt, *The UN Commission on Human Rights, Its Sub-Commission and Related Procedures: An Orientational Manual* (Geneva, 1993), p. 99.

<sup>60.</sup> Resolution E/1371 of 1949.

<sup>61.</sup> Hufner, n. 37. p. 87. For detailed discussion, see *UN Centre for Human Rights: Civil and Political Rights: The Human Rights Committee*, Human Rights Fact Sheet No. 15 (Geneva, 1991), p. 36.

The Committee is empowered to consider reports on measures adopted and progress made in achieving the observance of the rights enshrined in the ICCPR. The Committee normally meets three times a year for three weeks per session.

**II.4.1.1. *Individual Complaints:*** The Committee may consider individual complaints only concerning States Parties to the ICCPR and the Optional Protocol. The "communication" must be submitted by the alleged victim or by someone assigned by the victim to act on his/her behalf. The Committee is prohibited from considering a communication if "the same matter is being examined under another procedure of international investigation or settlement". Individual complaints are examined in closed meetings. The other conditions of admissibility are the following: (a) not anonymous; (b) no abuse of the right of submission of such communication; (c) compatibility with the provisions of the Covenant; and (d) exhaustion of all domestic remedies.<sup>62</sup>

In July 1990, the Committee created the mandate of a Special Reporter for the Follow-up on views. Since 1991, the follow-up information has systematically been requested in order to find out whether the States Parties concerned took appropriate steps to remedy the violation, such as providing adequate compensation for the violations suffered.

**II.4.1.2. *Inter-State Complaints:*** The Committee may review a complaint by one State Party that another State Party is not fulfilling its obligations under the Covenant, but only if both States have made a declaration pursuant to Article 41 of the Covenant recognizing the competence of the Committee to take such action.<sup>63</sup>

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<sup>62.</sup> Ibid.

<sup>63.</sup> Ibid. For more discussion see also Karl Josef Partsch, "Human Rights Interstate Disputes", in Wolfrum, Rudiger, and others, ed., *United Nations: Law, Policies and Practice*, vol. 1 (Martinus Nijhoff, 1995), p. 613.

**II.4.1.3. *State Reports on Implementation:*** The Human Rights Committee examines reports by States Parties about how they have implemented rights set forth in the Covenant. Such reports are to be submitted by a State within one year of becoming a State Party to the Covenant and thereafter every five years.

#### **II.4.2. The Committee on Economic, Social and Cultural Rights**

This Committee is charged with monitoring the implementation by States Parties of the ICESCR, which entered into force in 1976. It is composed of 18 members elected by the ECOSOC from a list of persons nominated by States Parties to the ICESCR.<sup>64</sup> They are elected to serve in their personal capacity as experts in the field of human rights.

**II.4.2.1. *Articles 16 and 17: Reports by States Parties:*** The Committee examines reports by States Parties concerning steps they have taken to implement human rights set forth in the ICESCR. States Parties are requested to submit a comprehensive report within two years of the entry into force of the Covenant for the State Party concerned, and thereafter at five-year intervals.<sup>65</sup> The Committee seeks to determine through constructive dialogue whether the norms contained in the Covenant are being adequately applied and how the State Party might improve its implementation of the Covenant.

**II.4.2.2. *NGO Participation:*** While only members of the Committee and representatives of the relevant State Party may take part in the discussion of the report, NGOs may present their concerns to the members of the Committee during the pre-sessional working group concerning States whose reports are due to be considered at the forthcoming session. NGOs in consultative status with the ECOSOC are also encouraged to submit to the Committee written information or reports that might contribute to the full and universal recognition and realization of the rights set forth in the ICESCR.<sup>66</sup>

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<sup>64.</sup> Ibid. For more information see Mani, n. 34, p. 65.

<sup>65.</sup> Hufner, n. 37. p. 38.

<sup>66.</sup> Hufner, n. 37. p. 94.

**II.4.2.3. Draft Optional Protocol to the ICESCR:** The elaboration of a draft Optional Protocol to the ICESCR granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant was recommended by the World Conference on Human Rights in 1993. The general principle of permitting complaints to be submitted under an international procedure in relation to economic, social and cultural rights is neither new nor innovative, given the precedents that exist in UNESCO and ILO as well as in the procedure established under the ECOSOC Resolution 1503 (XLVIII) of 27 May 1970. If the principle of indivisibility, inter-dependence and inter-relatedness of the civil and political, and economic, social and cultural rights is to be upheld in the work of the UN. It is essential that such a complaint procedure be established under the ICESCR in order to redress the imbalance that currently exists. The Committee concluded its work at the end of 1996; in 1997, the Commission on Human Rights started to discuss this draft Optional Protocol. In 1998, the Commission on Human Rights requested the High Commissioner to urge all States parties to the ICESCR to submit their comments on this draft.<sup>67</sup>

#### **II.4.3. The Committee on the Elimination of Racial Discrimination**

This Committee of 18 experts monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in 1965 and entered into force in 1969. The members of the Committee are elected by States Parties from amongst their nationals, "who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems". Under Article 8, para. 6, States Parties are responsible for the expenses of the members of the Committee.<sup>68</sup>

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<sup>67.</sup> UN General Assembly. *Report of the Human Rights Committee*, vol. 1 (New York, 1998), p. 107.

<sup>68.</sup> Hufner, n. 37. p. 98. See also, UN Centre for Human Rights, *The Committee on the Elimination of Racial Discrimination*, Fact Sheet No. 12 (Geneva, 1994), p. 31.

The Committee is exercising four functions: examinations of reports, preventive procedures, reviews in case of overdue reports, and the issuance of opinions on individual communications. The Committee must report annually to the General Assembly on its activities and may make suggestions and recommendations based on its examination of the reports provided by the State Parties, which are reviewed by the Committee at public meetings.<sup>69</sup>

#### II.4.4. Committee on the Elimination of Discrimination Against Women

This Committee, consisting of 23 experts elected for a four-year term, monitors the implementation of the International Convention on the Elimination of Discrimination against Women, which was adopted by the General Assembly in 1979 and entered into force in 1981. The experts are elected by the States Parties from among their nationals and serve in their personal capacity. Since 1997, the Committee meets twice a year for three weeks.<sup>70</sup>

**II.4.4.1. *Reservations to the Convention:*** The Committee has been concerned about both the number and the extent of the reservations of States Parties to some Articles of the Convention, in particular, to Articles 9, 15 and 16, which deal with nationality, legal capacity, and marriage and family relations. The Convention has more reservations of States Parties attached to it than any other UN treaty; there is a clear discrepancy between the promotion of women's rights and the maintenance of reservations to the Convention. It has been for that reason that the General Assembly urged in its Resolution 51/68 of 12 December 1996 the States to limit the extent of any reservation they lodged to ensure that no

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<sup>69.</sup> Rudiger Wolfrum, "The Implementation of International Standards on Prevention and Elimination of Racial Discrimination: Achievements and Challenges", in Symonides, Janusz, ed., *The Struggle Against Discrimination, A collection of International Instruments adopted by the UN System* (Paris: UNESCO, 1996), pp. 45-78.

<sup>70.</sup> International Women's Tribune Centre: *Right to Women, A Guide to the most important UN Treaties on Women's Human Rights* (International Women's Tribune Centre, New York, 1998), p. 1148.

reservations were incompatible with the object and purpose of the Convention and to review their reservations regularly, with a view to withdrawing them.<sup>71</sup>

#### II.4.4.b. *Article 18: Reporting System*

The Committee is charged with considering progress made in the implementation of the Convention; it reviews the reports submitted by States Parties within one year after ratification or accession and every four years thereafter at public meetings. CEDAW has to report annually to the General Assembly through ECOSOC. The Committee makes suggestions and general recommendations based on its examination of the reports and information received from States Parties. The Committee is confronted with serious working problems. On the one hand, steps must be taken to reduce the back-log of reports, on the other hand, States Parties should report in due time.<sup>72</sup> As on 1<sup>st</sup> August 1999, 53 initial reports and 47-second periodic reports, and 92 third periodic reports were overdue. Therefore, the Committee decided at its 16th session in 1997, on an exceptional basis and as a temporary measure, to invite States Parties to combine a maximum of two of the reports.<sup>73</sup>

II.4.4.3. *Individual Complaints Procedure*: The possibility of introducing a procedure for the examination of Individual complaints or Inter-State complaints by this Committee through the preparation of an optional protocol to the Convention was recommended in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 and at the Fourth World Conference on Women in 1995.<sup>74</sup>

An open-ended working group of the Commission on the Status of Women discussed the elements of such a protocol, which will considerably increase the strength of the Committee and its ability to have a direct impact on

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<sup>71</sup>. Ibid.

<sup>72</sup>. Katarina Tomasevski, *Women and Human Rights*, (Zed Books, London, 1995), p. 162.

<sup>73</sup>. Ibid, p. 164.

<sup>74</sup>. UN Centre for Human Rights, *Discrimination against Women-the Convention and the Committee*, Human Rights Fact Sheet No. 22 (Geneva 1994). p. 73.

the problem of gender-based discrimination. After only four negotiation sessions governments adopted such an Optional Protocol by consensus that opened for signature on 10 December 1999, the Human Rights Day. The Human Rights Committee may receive complaints of violations of the gender equality provisions of the Covenant - in particular Article 26 of the ICCPR.

#### II.4.5. The Committee Against Torture

The practice of torture was first prohibited in 1948 by the Universal Declaration of Human Rights and by the International Convention on the Prevention and Punishment of the Crime of Genocide. The concept was reaffirmed in 1966 by the ICCPR and in 1984 by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>75</sup>

According to the Convention each State Party shall take effective legislative, administrative or other measures to prevent acts of torture in any territory under its jurisdiction (Article 2, para 1.); no exceptional circumstances whatsoever (e.g., state of war, threat of war, internal political instability or any other public emergency) may be invoked as a justification of torture (Article 2, para 2.). Moreover, important to note is the provision in Article 3, para 1.: "No State Party shall expel, return or extradite a person to another State, where there are substantial grounds for believing that he would be in danger of being subjected to torture".<sup>76</sup>

**II.4.5.1. Structure of the Committee:** This Committee consists of ten experts. It monitors the implementation of the Convention, which was adopted by the General Assembly in 1984 and entered into force in 1987. The States Parties to this treaty elect the members of the Committee who serve in their personal capacity. The Committee holds two regular sessions each year and

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<sup>75</sup>. UN Centre for Human Rights, *Communication Procedures*, Human Rights Fact Sheet No. 7 (Geneva, 1989), p.23.

<sup>76</sup>. UN Centre for Human Rights, *The Committee against Torture*, Human Rights Fact Sheet No. 17, (Geneva, 1992), p. 38.

Special sessions may be convened by decision of the Committee itself at the request of a majority of its members or of a State Party to the Convention.<sup>77</sup>

**II.4.5.2. *Reports by the States Parties:*** The Committee examines reports by States Parties about the implementation of the provisions laid down in the Convention against Torture. In order to receive full information, the Committee has prepared general guidelines containing precise instructions on their form and content. Such reports are to be submitted within one year after the Convention enters into force for the State Party concerned, and thereafter every four years.<sup>78</sup>

**II.4.5.3. *Competence of Investigations:*** Under Article 20 of the Convention, the Committee may decide to conduct an inquiry if it receives reliable information about well-founded indications that torture is being systematically practiced in the territory of a State Party. This possibility of an inquiry applies to all States Parties except those which have declared, as permitted by Article 28 of the Convention, that they do not recognize the Committee's competence in this respect. The procedure set out in Article 20 of the Convention is marked by two features, namely its confidential character and the pursuit of co-operation with the States Parties concerned.<sup>79</sup>

**II.4.5.4. *Article 21: Inter-State Complaints:*** Under Article 21 of the Convention, a State Party may at any time declare that it recognizes the Committee's competence to receive and consider a complaint by one State Party that another State Party does not fulfill its obligations under the Convention against Torture. In practice, the Committee can only become active, if both States Parties have made a declaration pursuant to Article 21 recognizing the Committee's competence to take such action. The procedure consists of two stages. If a State Party to the Convention considers that another State Party has violated one of its provisions it may, first of all, communicate in written form

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<sup>77.</sup> Ibid. p. 39.

<sup>78.</sup> United Nations / General Assembly: *Report of the Committee against Torture* (New York, 1999), p. 138.

<sup>79.</sup> Ibid.



directly with that State Party. The State Party, which receives the Communication, must react in written form within three months. If the two States Parties concerned are unable to settle the matter between themselves, it may be referred by either State Party to the Committee which tries to arrive at a friendly solution in closed meetings.<sup>80</sup>

**II.4.5.5. *Article 22: Individual Complaints:*** Under Article 22 of the Convention, a State Party may at any time declare that it recognizes the Committee's competence to receive and consider complaints from, or on behalf of, individuals subject to its jurisdiction who claim to be the victims of a violation of the provision of the Convention by a State Party. In its consideration of the communication, the Committee's first concern is to ascertain its admissibility. These conditions for admissibility are specified in the Convention and in the rules of procedure of the Committee. For a communication to be declared admissible, it must not: -

- be anonymous or incompatible with the provisions of the Convention;
- constitute an abuse of the right to submit a communication under Article 22; and
- have been examined (or be under examination) under another procedure of international investigation or settlement.<sup>81</sup>

Furthermore, individuals who claim to be the victims of the rights protected by the Convention must have exhausted all domestic possibilities of recourse.

**II.4.5.6. *Voluntary Fund for Victims of Torture:*** In 1982, the General Assembly created the UN Voluntary Fund for Victims of Torture. The purpose of the Fund is to receive voluntary contributions from governments, organizations, foundations, private enterprises as well as individuals and to distribute them to NGOs and treatment centres for assisting victims of torture

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<sup>80</sup>. Ibid. p. 41.

<sup>81</sup>. Hufner, n.37, p. 43.

and their relatives, whose human rights have been severely violated as a result of torture. The Fund is administered by the UN Secretary-General with a Board of Trustees acting in an advisory capacity. It comprises of five members with wide experience in the field of human rights. Each May, the Board makes recommendations on grants to the Office of the High Commissioner for Human Rights.<sup>82</sup>

#### II.4.6. The Committee on the Rights of the Child

Children, their welfare and their rights have been a central concern of the UN since its creation in 1945. One of the first acts of the UN General Assembly was to establish, on 11 December 1946, the United Nations International Children's Emergency Fund (UNICEF) which remains today the main pillar of international assistance to children. Also, the provisions of the UDHR and those of the 1966 International Covenants on Human Rights recognize that Children's Rights must be protected.<sup>83</sup>

The first standard setting UN instrument exclusively devoted to the rights of children was the 1959 Declaration of the Rights of the Child. Affirming that "mankind owes to the child the best it has to give", the Declaration offered a solid moral framework for the rights of the child. 30 years later, the Convention on the Rights of the Child was adopted on 20 November 1989.<sup>84</sup> The Convention is the most complete statement of children's rights ever made; it goes further than the Declaration by making States, which accept the Convention legally accountable for their actions towards children.

Presently, the Commission on Human Rights discusses the adoption of two draft optional protocols to the Convention on the Rights of the Child: (a) on

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<sup>82.</sup> Ibid.

<sup>83.</sup> UN Centre for Human Rights, *The Rights of the Child*, Human Rights Fact Sheet No. 10 (Geneva, 1990), p.32.

<sup>84.</sup> Ibid.

the involvement of children in armed conflicts, and (b) on the sale of children, child prostitution and child pornography.

II.4.6.1. *Article 43: Structure of the Committee:* Article 43 of the Convention provides for the establishment of a Committee consisting of ten experts who serve in their individual capacity and are elected for a four-year term. All States Parties to the Convention may nominate candidates.<sup>85</sup>

II.4.6.2. *Article 44: Reporting System:* States Parties must submit to the Committee, through the Secretary-General, reports on the measures undertaken for the implementation of the rights recognized in the Convention and on the progress made on the enjoyment of those rights; the first report is to be submitted within two years of the entry into force of the Convention of the State Party concerned, and thereafter every five years.<sup>86</sup>

The reports shall indicate factors and difficulties, which affect the degree of fulfilment of the obligations under the convention; they shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned. Article 44 provides that States Parties shall make their reports widely available to the public in their own countries.<sup>87</sup>

All competent organizations may be invited to take part in the Committee's discussions, to submit their views and to be consulted. These bodies include ILO, WHO, UNESCO, UNICEF, UNHCR as well as a wide range of NGOs. Moreover, several steps have been taken towards a comprehensive approach to the rights of the child: "UNICEF now has taken on the Convention as a guide for its country programming. UNHCR has produced guidelines on the rights of the child for field offices; ILO has given more emphasis to the issue of child labour;

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<sup>85.</sup> Thomas Hammarberg, *The Convention on the Rights of the Child: New Attitudes to Children*, *Journal of SID* (1996), p. 27.

<sup>86.</sup> See, n. 84. 39.

<sup>87.</sup> Ibid.

WHO has programmes that relate to the Convention as has UNESCO, which also has produced some information materials on child rights".<sup>88</sup> Every two years, the Committee submits to the General Assembly a report on its activities.

## II.5. The increasing Role of Human Rights NGOs

Over the last 50 years an almost explosive growth of NGOs for the promotion and the defence of human rights has taken place. At the time of the drafting of the Universal Declaration of Human Rights, some 15 NGOs with consultative status were involved in this process. In 1993, some 1500 NGOs participated at the World Conference on Human Rights in Vienna. "The emergence of all these organizations at the international scene and their activities within many nations of all five continents, Africa, Asia, the Americas from North to South, Australia and Europe, is more than symbolic evidence of the universality of the human rights constituency. This development constitutes the backbone of the human rights movement."<sup>89</sup>

**II.5.1. Individual Complaints:** Today, there are three UN treaty bodies, namely;

- the Human Rights Committee;
- the Committee on the Elimination of Racial Discrimination;
- the Committee Against Torture;

which can receive individual communications provided the relevant State Party has ratified the relevant optional protocol.

The model form for communications should also be used for communications under the so-called extra-conventional mechanisms, addressed to Special Rapporteur on specific countries or themes. The activities of those mechanisms are based on communications received from various sources

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<sup>88</sup>. See, n. 86, p. 29.

<sup>89</sup>. *United Nations World Conference on Human Rights: The Vienna Declaration and Programme of Action, 1993* (UN Department of Public Information, New York, August 1993), p. 1.

containing allegations of human rights violations. Besides the victims or their relatives, local and / or international NGOs fulfil an important role.

**II.5.2. NGOs Participation in Geneva and New York:** NGOs with consultative status may attend all public meetings of Human Rights Commissions, Committees, and Working groups. Their main activities include;<sup>90</sup>

- lobbying on resolutions including suggested wording to be used;
- convening parallel informal meetings with experts, NGO and government representatives to consider action on specific countries or themes;
- submitting reports to special procedures, such as, the Special Rapporteur on the sale of children;
- meeting with Special Reporters on themes and countries.

NGOs are well advised to concentrate their efforts, to "speak with one voice". The more NGOs cooperate and intensify the dialogue among themselves, the stronger NGOs can present their issues orally and in written form vis-à-vis experts and government representatives.

## II.6. National Governments

The Right of a citizen will be best protected by his State itself. Violation of such rights must be questioned according to the municipal laws and not by the international law as individuals no *locus-standi* in International Court of Justice (ICJ) or other international adjudicatory bodies. An *individual* cannot be a *party* in cases before the ICJ.<sup>91</sup> So, it is difficult for an individual to question a violation of rights before the international community. International law sets standards, which the States accordingly incorporate, in its municipal laws. A State is well aware of its own culture and tradition, so a State is in a better position to make legislation to protect human rights within its limits.

Human rights involve relationships between individuals and between individuals and the State. As many States are becoming parties to International

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<sup>90.</sup> Eibe H Riedel, "Commission on Human Rights", in Rudiger, Wolfrum, and others, ed., *UN: Law, Policies and Practice*, vol. 1 (Martinus Nijhoff, 1995), p. 117.

<sup>91.</sup> Article 34 of the Statute of the ICJ.

Treaties on Human Rights, the States have a duty to comply with the treaties. For which States either incorporates the provisions of the treaties directly in their municipal laws or by any other way.

Sometimes the laws incorporated within the municipal legal systems are not enough for the effective realisation of human rights. To eradicate this problem States now-a-days are engaged in establishing National Institutions for Human Rights. As the culture and tradition differs from country to country, the functions of the institutions also differ, but they share a common purpose and for this reason they are collectively referred as NHRI.

Regional Human Rights system has a vital role to play. Regional system operating in Africa, the Americas and Europe played an important role in reinforcing international standards by providing the means by which the human rights concerns can be addressed within the particular social, historical and political context of the region concerned.<sup>92</sup>

## II.7. United Nations and National Institutions

The ECOSOC first discussed the question of NHRIs in 1946, two years before the General Assembly proclaimed the Universal Declaration of Human Rights as “a common standard of achievement for all peoples and all nations”. At its second session, in 1946, ECOSOC invited Member States “to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.<sup>93</sup> This matter was raised again in a resolution, which recognised the important role of national institutions in the promotion and protection of human rights, and which invited Governments to encourage the formation and contribution of such bodies as well as to communicate all relevant information on the subject to the Secretary General.<sup>94</sup>

### II.7.1. Suggested Guidelines for National Institutions

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<sup>92.</sup> *National Human Rights Institutions* (UN Publication, Sales No. E.95. XIV.2.), p. 3.

<sup>93.</sup> Economic and Social Council Resolution 2/9 of 21 June 1946, sect. 5.

<sup>94.</sup> See, n. 5

The Commission on Human Rights decided to organise a seminar in order, *inter alia*,<sup>95</sup> to draft guidelines for the structure and functioning of National Institutions. Accordingly, the seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva in September 1978.<sup>96</sup> Participating in the seminar, States drafted and approved a set of guidelines for the functioning of National Institutions. These guidelines are:

- i) To act as a source of human rights information for the government and the people of the country;
- ii) To assist in educating public opinion and promoting awareness of the respect for human rights;
- iii) To consider, deliberate upon and make recommendations regarding any particular state of affairs that may exist nationally and which the government may wish to refer to them;
- iv) To advise on any question regarding human rights matters referred to them by the governments;
- v) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- vi) To perform any other function, which the government may wish them to carry out in connection with the duties of the State under those international instruments in the field of human rights to which it is a party.

The structure of the National Institutions according to the guidelines should be:

- (i) Reflect in their composition wide cross sections of the nations, thereby bringing all parts of the population into the decision making process in regard to human rights;
- (ii) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- (iii) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

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<sup>95</sup>. S, n. 7, p. 4.

<sup>96</sup>. Ibid. See also ST/HR/SER. A/2 and Add. 1.

The Commission on Human Rights and the General Assembly endorsed the guidelines subsequently.<sup>97</sup> In the eighties, a considerable number of national institutions were established considering the call by the General Assembly to States to take appropriate steps for the establishment of national institutions for the promotion and protection of human rights. This period, which we can call as *revolution in the field of National Institutions for Human Rights*. In other words, there is a development in the establishment of national institutions for promotion and protection of human rights.

### II.7.2. Period after the First International Meeting 1991

The first international workshop on National Institutions for the promotion and protection of human rights was held at *Paris* in October 1991,<sup>98</sup> following the call given by Commission on Human Rights in 1990. The principles evolved from the meeting were endorsed by the Commission on Human Rights in March 1992. The principles were endorsed as the principles relating to the status of national institutions otherwise popularly known as “Paris Principles”.<sup>99</sup>

According to Paris Principles a National Institution shall have the following responsibilities<sup>100</sup>: -

- (i) To submit recommendations, proposals and reports on any matter relating to human rights (including legislative and administrative provisions and any situation of violation of human rights) to the government, parliament and any other competent body;
- (ii) To encourage ratification and implementation of international standards;
- (iii) To contribute to then reporting procedure under international instruments;

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<sup>97.</sup> UN/Economic and Social Council: Commission on Human Rights, E/1999/23; E/CN.4/1999/167.

<sup>98.</sup> See, n. 5. See also UN/Economic and Social Council: Commission on Human Rights, E/CN.4/1992/43.

<sup>99.</sup> Resolution 1992/54: See also General Assembly Resolution A/RES/48/134.

<sup>100.</sup> See, n. 7, p. 5.



- (iv) To assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education;
- (v) To co-operate with the UN's, Regional Institutions and National Institutions of the other countries.

The principles, which represent a refinement and extension of the 1978 guidelines. They stipulate that the functions of national institutions regarding individual complaints may be based on the following principles<sup>101</sup>: -

- (i) Seeking an amicable settlement of the matter through conciliation binding decisions or other means;
- (ii) Informing the complainant of his or her rights and of available means of address and promoting access to such address;
- (iii) Hearing complaints or referring them to a competent authority;
- (iv) Making recommendations to the competent authorities, including proposals for amendment of laws, regulations or administrative practices which obstruct the free exercise of rights.

A number of meetings followed the 1991 international meeting around the world including the Second UN Workshop for the Asian and Pacific Region on Human Rights issues, were held at *Jakarta* on January 1993.<sup>102</sup> The meeting of Representative of National Institutions and Organisations Promoting Tolerance and Harmony and Combating Racism and Racial Discrimination was held at *Sydney* on April 1993.<sup>103</sup>

The Second International Workshop on National Institutions for the Promotion and Protection of Human Rights was held at *Tunis* on December 1993.<sup>104</sup> The topics taken up for discussion during the workshop included: Relationship between National Institutions and similar bodies, the strengthening of relations between National Institutions and the Centre for Human Rights, and co-operation between National Institutions. As part of improving co-operative

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<sup>101</sup>. Ibid.

<sup>102</sup>. HR/PUB/93/1.

<sup>103</sup>. A/CONF.157/PC/92 Add. 5.

<sup>104</sup>. E/CN.4/1994/45 and Add. 1.

relationships, it established a co-ordinating committee. The 1993 meeting called upon the individual institutions to take measures to ensure that their activities are consistent with Paris Principle. Several international organisations such as Commonwealth Secretariat and the International Ombudsman Institute have been active in promoting the establishment and development of national institutions.<sup>105</sup>

The Third International Workshop on National Institutions for the Promotion and Protection of Human Rights was held at *Manila* on April 1995. In this meeting the discussions were included: evaluation of the implementation of the Principles relating to the status of national institutions, the establishment and strengthening of national institutions, national institutions and efforts to combat racism and racial distribution, and the contribution of national institutions to the Fourth World Conference on Women.<sup>106</sup>

### II.7.3. Human Rights Commissions and Ombudsmen

The National Institutions can be broadly classified into 3 categories. They are National Human Rights Commissions, the Ombudsmen and the Specialised National Institutions which function to protect special category of people such as Children, Refugees, Women etc.

Compared to the institution of the Ombudsmen, Human Rights Commissions is the effective one as they were effectively applying the laws and regulations to protect human rights. Human Rights Commissions are involved in functions related to the promotion and protection of human rights including an advisory function. But, the functions of Ombudsman are related with an emphasis on the impartial investigatory function.<sup>107</sup>

The functioning of the Human Rights Commission differs from State to State. This is understandable, because human rights issues and circumstances may differ from State to State. Commissions are primarily concerned with the protection of Civil and Political Rights and also protection of persons against all

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<sup>105.</sup> GA/50/452. pp. 2-3.

<sup>106.</sup> Ibid, pp. 3-4.

<sup>107.</sup> See, n. 7. p. 8.

forms of discrimination. The most common function of the National Human Rights Commission is to *receive* and *investigate* complaints from individuals alleging human rights violations. One of its functions is the *advisory* function; advises the government in its human rights policies and actions. The Commissions are also involved in improving community awareness of human rights by promoting and educating the public about human rights.<sup>108</sup>

The Government appoints the Ombudsman, and its primary function is of an administrative nature. Ombudsman is an entity operating exclusively within the sphere of public administration. The primary function of this institution is to over-see fairness and legality in public administration. Often the Ombudsman will have to act as a mediator between an aggrieved individual and the government. Access to the Ombudsman varies from country to country. He is not always restricted to acting on complaints and may be able to begin an investigation on his/her own initiative. In many respects the powers of the Ombudsman are quite similar to those of human rights commission with competence to receive and investigate complaints. The primary function of the Ombudsman is to ensure fairness and legality in public administration. But, Commissions are more generally concerned with violations of human rights. There are some differences in the functions of the two bodies, which reveal why some countries establish and simultaneously maintain both types of institutions.<sup>109</sup>

The major differences between Ombudsmen and NHRIs may be as follows:<sup>110</sup> First, historically Ombudsman is a Scandinavian contribution to efficient public administration, and is much older than NHRIs. Second, its aim is to provide a grievance-redressal mechanism and an investigative machinery. NHRI is a grievance-redressal mechanism in the field of human rights violations (depending as the statutory authority given to it). It also has investigative powers, often *suo motu*. Third, NHRI could work in tandem with judiciary. Fourth, Ombudsman is usually a single individual institution, whereas NHRI is usually a

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<sup>108.</sup> Ibid, p. 8.

<sup>109.</sup> Ibid.

<sup>110.</sup> Ibid. p. 8-9.

collegiate institution. Finally, NGOs have free access to NHRI, which may not be the case with Ombudsman.

## II.8. Elements required for a National Institution to Function Effectively

The Vienna Declaration of 1993<sup>111</sup> specifically recognises the right of the each State to choose the framework for a national human rights institution which is best suited to its needs. An inappropriate institution in terms of jurisdiction, powers or any other measures will be an ineffective one. Appropriateness is a pre-requisite for effectiveness. Thus, an appropriate institution can be an effective one. Therefore, elements which are required to make a National Institution appropriate and effective, is to be left to each State. The basic differences existing between States and between Institutions make it difficult to identify common elements. Though it is difficult, these are some factors, which are considered as 'effectiveness factors' as these are required to attain the common goal of the institutions. The elements required for a National Institution to function effectively are classified in to following heads.<sup>112</sup> They are: -

- a) Independence:
- b) Defined jurisdiction and adequate powers:
- c) Accessibility:
- d) Co-operation with UN and other Organisations:
- e) Operational Efficiency: and
- f) Accountability to the Government and Parliament.

We can see each of the above factors in detail; -

### II.8.1. Independence

An effective National Institution is one, which is capable of acting independently. Independence is one of the factors, which may affect the efficiency of the institutions. In order to discharge the responsibility mandated upon the national institutions they must be given a free hand to work effectively. A National Institution should be given independence to act without the

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<sup>111.</sup> *World Conference on Human Rights-the Vienna Declaration and Programme of Action June 1993* (UN Publication, 1995).

<sup>112.</sup> *Supra*, n. 7. p. 10.

interference of government,<sup>113</sup> of party politics and of all other entities and situations, which may be in a position to inhibit its work. A National Institution is to be established by law, so that its independence can be given statutory protection.

The independence of the National Institution from the State means that the State should not interfere with the ability of an institution to discharge its responsibility effectively. The independence should be through legal and operational autonomy, through financial autonomy and through its composition.

#### **II.8.1.1. *Independence through Legal and Operational Autonomy:***

The founding law of a National Institution will be critical in ensuring its legal independence, particularly its independence from the government. A National Institution should be given independent legal status by making the institution directly answerable to Parliament or to the head of the State.

Operational autonomy can be achieved by giving the National Institution to draft its own rules of procedure and these should not be subjected to modification by any external body nor should the decisions of the national institutions be subjected to review by another authority except on grounds on which judicial review is usually provided for. The founding legislation should be set in a way to give the national institutions full operational autonomy to achieve the purpose for which it is established.<sup>114</sup>

#### **II.8.1.2. *Independence through Financial Autonomy:***

The link between financial autonomy and functional independence is a strong one. The budget of the institution should be 'secured' so that no official decision or action of the institution will affect its budget allocation.<sup>115</sup> Where possible, the source and nature of funding for a national institution should be specified in its founding legislation so that to avoid any crisis in the future.

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<sup>113.</sup> Ibid, p. 10.

<sup>114.</sup> Ibid.

<sup>115.</sup> Ibid, p. 10.

### **II.8.1.3. *Independence through Composition of the Institution:***

True pluralism requires the widest diversity possible. The Paris Principles relating to the status of National Institutions emphasize the importance of pluralism in the composition of national institutions. The composition of the financial institution can be a further guarantee of its independence. The members should also be given privileges and immunities to enable them to work in the official capacity. The appointment and dismissal should be clearly given in the founding legislation itself in a way it would not affect the duties of the members in discharging their responsibilities as a member of the institution.

### **II.8.2. Defined Jurisdiction and Adequate Powers**

For an effective functioning, the jurisdiction of the institution should be clearly defined. An effective National Institution will possess clearly defined jurisdiction in terms of subject matter and access to individual. Such jurisdiction will usually be set out on its founding legislation. Precisely defined subject matter jurisdiction serves a number of concrete powers.

An Institution with a broad and vaguely defined subject matter jurisdiction will often be less strong and less effective than the one, which operates within identifiable limits. The possibility of straying from its central purpose or of being persuaded to take up less important tasks will always be greater for the institution which lacks a clearly defined mandate. A defined structure offers distinct benefits to those individuals and groups, which a national institution was established to assist and protect.

It may be that the subject matter jurisdiction of a national institution will at times overlap with the jurisdiction of another entity. It is necessary to ensure that such technical conflicts do not obstruct the effectiveness of either body. An increasing number of states are choosing to create two or more bodies, which may be considered NHRIs. A Human Rights Commission, for example, may be set up alongside an office of the Ombudsman. Co-operation between these may be encouraged by a provision in the founding legislation of an institution mandating

it to establish and maintain close contact with similar bodies in order to promote common policies and avoid conflict in cases of overlapping jurisdiction.<sup>116</sup>

A National Institution must be granted adequate powers to permit the effective discharge of its responsibilities. Power in this context, refers to the ability of a national institution to perform a certain act or to compel such performance by an individual or other entity. Also, it includes all powers in respect of investigation and compelling of witnesses. The powers of a National Institution should be established by law.<sup>117</sup>

In the first instance, an evaluation of the adequacy of a national institution's powers should be made with reference to the functions which it was established to perform. Provision should also be made for the imposition of legal or administrative sanctions when the free exercise of a national institution's power is obstructed.

### II.8.3. Accessibility

An effective National Institution will be one which is readily accessible to individuals and groups it is established to protect or whose interests it exists to promote. Individuals and groups must have an easy accessibility to the national institutions. So, accessibility is also an important element for a national institution to be function effectively. To improve accessibility there are some practical matters, which are to be considered. They are awareness of the institution, physical accessibility and accessibility through representative composition.

A National Institution cannot be accessible to a constituency, which is ignorant of or ill informed about its existence and functions. A National Institution must, therefore, be willing to develop creative means of ensuring its visibility among these particularly vulnerable groups and of gaining their trust. In addition to promoting wide spread knowledge of the institution itself, efforts

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<sup>116.</sup> Ibid, p. 12.

<sup>117.</sup> Ibid.

should be made to ensure that a national institution is physically accessible to its constituency, with flexible rules of *jus standi*.<sup>118</sup>

The composition of a national institution should be such as to maximise its accessibility as well as its independence.<sup>119</sup> In order to achieve this goal, composition must be representative of all components of civil society, including those whom the institution has been established to serve.

#### II.8.4. Co-operation with UN and Other Organisations

According to the Paris principles<sup>120</sup> relating to the status of the National Institutions, National Institutions should 'co-operate' with the UN and other organisations in the UN system, the Regional Institutions and National Institutions of the other countries that are competent in the areas of the promotion and protection of the human rights. Co-operation and collaboration will reinforce an institution's own initiatives, thereby enhancing its overall effectiveness.

A National Institution should establish and maintain close contact with the NGOs and community groups, which are directly or indirectly involved in the promotion and protection of human rights. Because of their greater operational flexibility, NGOs will often be able to provide a national institution with detailed information on the domestic human rights situations and on structural or legislative inadequacies, as well as alert it to social and other changes. This

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<sup>118</sup>. Ibid, p. 13.

<sup>119</sup>. Ibid.

<sup>120</sup>. The first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris from 7 to 9 October 1991. Its conclusions were endorsed by the Commission on Human Rights in Resolution 1992/54 as the principles relating to the status of national institutions.



information can be used to inform and guide the institution's own work in an effort to maximise relevance and effectiveness.<sup>121</sup>

The phenomenal growth of national institutions in recent years has led to a significant expansion in opportunities for inter-institutional cooperation. National institutions can increase their effectiveness by drawing on the resources and expertise available within inter-governmental organisations. They are often represented at many of the international meetings of the human rights bodies held each year. The opportunity presented by these meetings can be, and has been, utilised by national institutions to hold their own gatherings.

#### **II.8.5. Operational Efficiency**

Operational inefficiency may well have a serious impact on the capacity of the institution to discharge its responsibility adequately. A national institution like any other organisation must take care to ensure that its methods of work are as efficient and effective as possible. Sufficient human resources and adequate, and continuing funding are pre-requisites for operational efficiency. In addition to jeopardising efficiency, inadequate funding or insufficient personnel can also damage an institution's external credibility. The granting of comprehensive responsibilities to national institutions presupposes the availability of substantial financial and human resources.<sup>122</sup>

But, countries experiencing economical difficulties cannot provide sufficient resources. In order to obtain financial and technical support national institution will develop contact. Thus, institutions of developed countries are more influential than that of developing or under-developed countries.

#### **II.8.6. Accountability to the Government or Parliament**

A National Institution will invariably be legally and financially accountable to the Government or Parliament. Generally, the National Institutions submit detailed reports of their activities to the Parliament or a Legislative Body for

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<sup>121.</sup> See, n. 7. p. 14.

<sup>122.</sup> Ibid. p. 15.

consideration. A National Institution is not an end in itself and can only be as strong or as humble as its achievements. Institutional effectiveness requires the development of a system of accountability based on specific ascertainable goals.<sup>123</sup>

National Human Rights Institutions are relatively recent developments among the various mechanisms designed for the protection and promotion of Human Rights. The development of these institutions has resulted in the states now being better positioned to work effectively towards guaranteeing human rights within their own jurisdictions. As we conclude this chapter, it needs to be borne in mind that NHRIs do not replace the role of the already existing legal and administrative framework in the form of courts, legislative and executive bodies and many other institutions that are engaged in governance. Rather, they are unique and independent institutions that play an ideal supportive and supplementary role to the other institutions that are engaged in upholding the rule of law in a democratic society. But the distinctive role of these NHRCs in exclusively and specifically working for the enforcement of human rights within the country raises issues of mandate determination, functions, legitimacy, independence and institutional autonomy, accountability and performance appraisal in a direct manner that are fundamental for the very sustenance of these institutions.

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<sup>123</sup>. Ibid. p. 17.

**CHAPTER III**  
**ESTABLISHMENT OF THE NHRC IN INDIA:**  
**CONSTITUTION AND POWERS**

CHAPTER III  
ESTABLISHMENT OF THE NHRC IN INDIA:  
CONSTITUTION AND POWERS

III.1. Origin of the National Human Rights Commission in India

The status and prestige enjoyed by a democratic State is a function of its ability to successfully operate its own postulates. The State must provide its citizens the adequate arrangements for development of individual personalities and also widen and strengthen the democratic value structure including principles of *liberty, equality and justice*.

Towards the preservation of human rights<sup>1</sup>, the Indian State has not only a comprehensive Charter of Rights enshrined in its Constitution as Fundamental Rights and Directive Principles under parts III and IV respectively, but it is also a signatory to many of International Covenants on Human Rights. Moreover, the existence of a free press and judiciary helps in maintaining standards of human rights and through that tending a democratic base to legitimacy of democratic regime.<sup>2</sup>

The beginning of the human rights movements in India could be traced back to the period of pre-independence, when the national liberation or independence struggle was stirring up against the British tyranny. At that time the struggle was in protest against injustice committed by the English and was aimed against numerous repressive laws. The focus was mainly on indefinite detention without trial, which posed a serious threat to the human rights. Hence, the human rights movements got momentum as a part of national movement. As a result of that struggle for freedom under the leadership of Mahatma Gandhi and also

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1. Referring to the connotations of the term "Human Rights", A.S.Panneerselvan states, "The concept of human rights has two basic meanings. The first refers to the inherent and inalienable rights due to man simply by virtue of his being a man. There are moral rights and they aim at ensuring his dignity at human being. The second sense is that of legal rights, established through law creating process of societies both national and international". See also B.P.Singh Sehgal ed., *Human Rights in India*; p. 545.
  2. Shashi Kumar, "Human Rights Movements in India and National Human Rights Commission", in B.P.Singh Sehgal, ed., *ibid*, p. 539.

various revolutionary agitations manifested in the grand civil liberties movement, which brought out National Independence in 1947.<sup>3</sup>

Immediately after independence, adoption of Democracy and faith in Indian Constitution provided a hope of enlargement and development of 'civil liberties' are only one part of human rights. However, later on after independence, the civil and democratic rights were reduced mainly to their legal constitutional significance and lost their political moorings within the post-colonial democratic structure. But, the changing contours of civil liberties movements and with its nationwide experience of abrogation of civil liberties during the National Emergency was a major watershed in its history.<sup>4</sup>

The Emergency depicted the first public collapse of democratic institution, centralisation of State's authority and a large scale suppression of civil liberties. It was during this period that the *press* was totally censored, opposition silenced and draconian preventive detention laws enforced. This resulted in major human rights violations. But which brought out human rights awareness and consciousness among people, which crystallized into numerous civil liberties and democratic rights organisations across the country. Various civil liberty groups were organised to voice concern of ordinary citizens against the rise of anti-democratic tendencies as well as the violation of basic civil liberties.<sup>5</sup>

In 1978, the International Commission on Human Rights decided to organise a seminar on National and Local Institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved.<sup>6</sup>

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3. Gokulesh Sharma, *Human Rights and Social Justice* (Deep and Deep Publication, New Delhi, 1997), p. 16-23.

4. O.M.P. Goutam, *Human Rights in India* (Praeger Publications, New York, 1982), p. 192.

5. Kumar, n. 2. p. 540

6. Centre for Human Rights, *Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No. 4, (Geneva, 1995), p. 4. See also, Scott Davidson, *Human Rights* (Open University Press, Buckingham, Philadelphia, 1993), p. 48.

The guidelines were subsequently endorsed by the UN Commission on Human Rights and by the General Assembly.<sup>7</sup> The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the protection and promotion of human rights, and requested the Secretary General to submit a detailed report on existing institutions.<sup>8</sup> Globally, it is one phase of development in human rights consciousness. Consequently, this forced India, which is a member of the UN, to have a Commission on Human Rights.

Internally, in India, the emphasis of civil liberties movement witnessed a major change in 1980's when the Indian State witnessed the rise of terrorism; violence, criminalisation and militancy have been the hallmark of Indian politics for the past two decades. The crumbling democratic institutional structure failed ever since seventies. The de-institutionalisation ultimately led to widespread political violence. This was the product of feebleness of the Indian State, which was becoming increasingly ineffective so far as socio-economic demands of the emerging groups were concerned. With this suffered legal political institution, vacuum has been created between the civil society and the State. This political vacuum needs to be bridged and when the political parties and political pressure groups have become ineffective, the only alternative left is, faith in local grass-roots movements and have a concrete-human governance.<sup>9</sup>

From the outset, a certain authoritarian tendency was implicit in the democratic polity of India. The exercise of Preventive Detention Act in 1962 during Indo-China conflict on Communist groups and brittle police repression on Naxalites in several States in to is further flared up the civil liberties movement.<sup>10</sup> As such various NGOs emerged like the Association for the Protection of Democratic Rights (APDR) in Calcutta, Andhra Pradesh Civil Liberties

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7. Ibid, p. 4. See also ST/HR/SER.A/2 and Add. 1.

8. Ibid, p. 4, See also, n. 1. p.583-585

9. Arun Kumar, "Exemplifications of Human Rights", *PRP Journal of Human Rights*, vol. 1. no. 2 (1997), p. 39.

10. G.S.Bajwa, *Human Rights in India: Implementation and Violation* (Anmol Publications, New Delhi, 1987), p. 55.

Committee (APCLC) and somewhat later the Association For Democratic Rights (AFDR) in Punjab. Later on the emergence of People's Union for Civil Liberties (PUCL), People's Union for Democratic Rights (PUDR) during emergency placed a landmark in civil liberties movement.<sup>11</sup>

Till Emergency, the human rights movements followed a specific pattern, they usually campaigned for the release of political prisoners, exposed gross violations of democratic rights, called for adherence to constitutional norms on the part of the State and demanded a fair trial for prisoners. Later on, the emphasis was shifted to the investigation and documentation of incidents of violation of human rights primarily. By nearly the 1980's the protective and defensive endeavours had started, the human rights movement also adopted ameliorative measures manifested in public interest litigation<sup>12</sup>.

Another trend that appeared in human rights movements in India affected their dimension in 1980's was in context of terrorist violence in Punjab,<sup>13</sup> which has received considerable attention in the international press and other media. This is the State where the majority of the Sikhs live and the problems of the State are largely related to the religious and political demands of the Sikhs.<sup>14</sup> The assault in June 1984 on the Golden Temple where some terrorists had taken refuge, and on 31 October, 1984, five months after the assault on the Golden Temple, the then Prime Minister Mrs. Indira Gandhi's assassination was followed by widespread attacks on Sikhs in Delhi and other places, in which nearly 3,000 Sikhs were killed and 35,000 took refuge in Delhi alone. These attacks were described as the worst communal holocaust since Independence.<sup>15</sup> Various independent groups made reports on the attacks on the Sikhs in Delhi and surrounding parts. In April 1985, the Government under Prime Minister Rajiv Gandhi announced a judicial investigation into the anti-Sikh violence in Delhi in

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11. Ibid, p. 59.

12. Paramjit S. Jaswal and Nishta Jaswal, *Human Rights and the Law* (APH Publishing House, New Delhi, 1996), pp. 11-12.

13. Kumar, n. 2, pp. 540-541.

14. *The Review*, no. 36, (June 1996), p. 7

15. Ibid, pp. 9-10

November 1984. However, the violent activities of the militants' against the Sikhs continued. For example, on 10-11 May a number of bombs left concealed in transistor radios exploded in Delhi and nearby towns killing ten and injuring 200 persons. Following this, Parliament adopted Terrorist And Disruptive Activities (prevention) Act on 1985.<sup>16</sup> The draconian law again worsely affected the civil liberties. As such various domestic human rights groups started condemning the Government for its anti-terrorist laws.

Further, the insurgency movements in Kashmir and North East played a crucial factor in raising its momentum. In Kashmir, Pakistan trained militants committed barbaric hostilities, destroyed lives and properties, and with counter response by the State using para-military forces and police forces for confronting terrorist attacks, also making people's life miserable and they were forced to be migrated to other safe places. It is in this context of Kashmir imbroglio that human rights groups have contributed inviting international attention on it.<sup>17</sup>

So, this was the one phase of the human rights violations severely in India, by the *militancy* and *terrorism*. On the other hand, human rights violations by the State authorities, like the police authorities, military personnel, physicians etc. The police are undoubtedly an important agency of the criminal justice administration and the one with which the average person comes into contact. The primary duty of the police is to preserve order and prevent crime.<sup>18</sup> But presently what we could see is contrary, the number of people who die in the police custody is higher when compared to the number of deaths resulting from homicide, suicide, traffic and industrial accidents.

Offences committed on women and children are increasingly coming to height day by day. An alarming increase in the Child Labour and Child Prostitution is also awaiting attention.<sup>19</sup> Thus, the ordinary or traditional set up of courts and administration of justice, we could say, appears to have failed to

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<sup>16.</sup> Ibid, pp. 10-11.

<sup>17.</sup> See, n. 2. pp. 541-42.

<sup>18.</sup> *Legal News and Views*, vol. 11, no. 2 (Feb. 97), p. 11.

<sup>19.</sup> Pammi Mahotra, "Protection of Human Rights", *The PRP Journal of Human Rights*, vol. 1. no. 2 (1997), pp. 34-35.



the incidence of such violations that has entitled a kind of pressure for preservation of human rights.<sup>23</sup>

The internationalisation of human rights issue and its propaganda in context of Kashmir insurgency as well as the denouncement of Indian human rights record by foreign Non-Governmental Organisations (NGOs) like Amnesty International, Asia Watch etc., further intensified the pressure in this direction. Therefore, need for self-regulating human rights body become more apparent thereafter. The Indian government started with an idea to constitute a self-vigilance body for monitoring the human rights situation in India.<sup>24</sup> In fact, the Government had already intended to establish an internal body to counter the National and International pressure.<sup>25</sup>

Before the establishment of NHRC, a series of seminars and workshops were held to identify the method and manner in which it was to be established, its powers and functions, and other legal and constitutional questions relating to NHRC. Addressing an all Jurists Seminar on National Commission on Human Rights, held at Delhi on July 1992, speaking of the need of Human Rights Commission, Justice Y.V.Chandrachud said:

“In India fortunately we have a codified Bill of Rights and the Indian Constitution in part III confers Fundamental Rights and in part IV it enunciates Directive Principles of State Policy which are very important in the governance of the country. Human Rights Commission has, therefore, the necessary raw material and data with which to make a promising start. The Indian Constitution strikes the happy balance between the rights of the individuals and the needs of the society, but there are certain preparatory modalities to which serious attention must be paid. First and foremost the Human Rights Commission ought not to be just another wing of the government, just other department of the government for the simple reasons that the largest number of allegations in regard to the violations of human rights is made

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<sup>23</sup>. Bajwa, n. 10, p. 68.

<sup>24</sup>. See, n. 2, p. 542.

<sup>25</sup>. In Lok Sabha, Home Minister S.B.Chavan said that with setting up of Human Rights Commission, India would silence the countries which sought to internalise the issue of alleged rights violations at the UN and other; reported in Indian Express, 19 December 1993.

against the government itself. The government cannot be a judge in its own cause by combining in itself the role of an adjudicator and an accused. That raises the question of status of the Human Rights Commission. The creation of a Human Rights Commission by a Constitutional amendment will only accord with the general manner in which things are conducted or done in our country. The Constitutional amendment is lengthy, laborious and tardy process and if you are going to have a Human Rights Commission by amending the Constitution, probably you will not see the Human Rights Commission for another 3 years. Personally, I think that the Human Rights Commission should be set up under a simple statute as they have done in Australia or Canada".<sup>26</sup>

Justice J. Kochu Thommen observed:

"The legislators have not failed to pass the laws, but the laws are not enforced except in favour of those, who have the resources to command the attention of the law enforcing authority. The judiciary is indeed free and independent. It has the power to annul any law made by the legislature or any order made by howsoever high an authority. Yet, the judiciary has become ineffective in many ways by reason of ever accumulating arrears. It has become far too expensive for the common man for more reason than one".<sup>27</sup> Further, he has stated, "The NHRC which is proposed to be set up is intended to safeguard the guaranteed rights under our Constitution and thereby protect and promote human rights of all sections of the society. This Commission is not a duplication of the judicial system. The Supreme Court of India, like the Supreme Court of the United States, is intended to be a Constitutional Court upholding human rights, but the Supreme Court of India, as it now functions, has become so overloaded with all kinds of cases that it is no longer in a position to effectively function as a constitutional court. Time has, therefore, come for a thorough study of the functioning and manning of the Supreme Court with a view to restructuring it in order that ways and means are found for setting up a Court of Human Rights".<sup>28</sup>

Justice V.R.Krishna Iyer, reacting to the establishment of NHRC based on the criticisms from other countries, observed:

"It is a reaction in panic, a shame that we should think in terms of a Commission on Human Rights only because Sweden or the

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<sup>26</sup>. *Indian Bar Review*, vol. 20, no. 1 (1993), p. 12.

<sup>27</sup>. *Ibid*, pp. 18-20.

<sup>28</sup>. T.K. Thommen, "Human Rights Commission" *Cochin University Law Review*, vol. XVII, no's. 1 and 2 (1993), p. 4, cited in *ibid*, p. 21.

United States Congress or some other country tells (us)... You are not respecting human rights. Therefore, have a Commission if you really want help from us. The mendicancy to which this nation is reduced not merely financially but even in regard to human rights ideology is a matter for pity. We may be proud of our Judiciary, we may be proud of our Press, but I am not proud of international mendicancy, which originates from Delhi”.

Again describing the proposed NHRC as a “paper tiger”, he went on to describe the NHRC as “an optical illusion, cosmetic coloration, opium for the people at home and brown sugar for countries abroad, a legislative camouflage, a verbal wonder which conceals more than it reveals. An ineffectual angel which beats its golden wings in the void in vain”. But he has also remarkably opined, “we should have the Human Rights Division of the Supreme Court of India. It will be useful. Similarly, we may have at the High Court level and then they can operate with infrastructure which is provided.... We really want, therefore, a Commission which is vitalized, a Commission which has an independent investigating staff not deputed from the police”.<sup>29</sup>

Thus, the debates questioning the utility of Commission, the strategies, functioning and credibility of such Commission were specifically under doubt, at various seminars organised by the Bar Council of India. Later, the Union Government thought it fit enough to promulgate an Ordinance to establish the NHRC. The President, under Article 123 of the Constitution, promulgated the Protection of Human Rights Ordinance in 1993. Subsequently, the Protection of Human Rights Bill, 1993 was passed by both Houses of Parliament and received assent from the President on 8 January 1994. The Act came into force with retrospective effect from 28 September 1993.<sup>30</sup>

The Statute of 1993, the Protection of Human Rights Act (hereinafter called the Act), has incorporated almost all the basic standards recommended by the Amnesty International.<sup>31</sup> The Act, (see Annexure 1) is a comprehensive piece

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<sup>29</sup>. Ibid. p. 23-24. See also, V. Vijayakumar, “The Working of the National Human Rights Commission: A Perspective”, in C.J.Nirmal, ed., *Human Rights in India* (Oxford University Press, New Delhi, 1999), p. 216.

<sup>30</sup>. Ibid. 217.

<sup>31</sup>. See, n. 28. pp. 175-9.

of legislation consisting of 43 Sections arranged under eight different chapters. Section 1 speaks about the applicability of the Act to the whole of India with the usual proviso for its limited application to the State of Jammu and Kashmir.

Section 2, has defined some important terms like “armed forces”, “human rights”, “international covenants” and other terms used in this Act. It is interesting to note that the NHRC has suggested for some amendments to the definition of human rights as provided under section 2(1) (d). The suggestion is to reunite section 2 (1) (d) as follows:

“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants, Conventions and Treaties to which India is a party”. To make it relevant the NHRC has also suggested the deletion of section 2(1) (f) which defines “International Covenants”.

Now let us examine the Constitution, Functions, and Powers of NHRC provided under the Act.

### III.2.1. Constitution of NHRC

Chapter II of the Act speaks about the Constitution of the NHRC, the method of appointment of Chairperson and other members, their removal, term of office and conditions of service, the power to regulate its own procedure and about the officers and other staff of the commission,

Section 3 provides that the NHRC shall consist of a Chairperson and 4 other members. The Chairperson who has been a Chief Justice of the Supreme Court, one member who is or has been a Judge of the Supreme Court, one member who is, or has been a Chief Justice of a High Court and two other members to be appointed by the Central Government from amongst the persons having knowledge of, or practical experience in matters relating to human rights. Apart from this, the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be members of NHRC (ex-officio) for the discharge of functions specified in clauses (b) to (j) of section 12 of

the Act.<sup>32</sup> The implication behind recognising the Chairpersons of above said Commissions is to introduce NHRC that it stood for the protection of all sections of people and each individual of every section could participate with it. The Chief Executive of the NHRC is the Secretary General, who shall exercise such powers and discharge such functions of the Commission as it may delegate to him. The headquarters of NHRC shall be at Delhi and it may with the previous approval of the Central Government, establish offices at other places in India. As the NHRC consists of three members including the Chairperson from the Judiciary and Chairpersons of three other Commissions, it can be expected to function independently and impartially.

But the method by which the chairperson and members of the NHRC are appointed raises some doubts as the President can appoint such persons only after obtaining the recommendations of a committee consisting of the Prime Minister as the Chairperson, Speaker of Lok Sabha, Home Minister, Leaders of Opposition in both Rajya Sabha and Lok Sabha and the Deputy Chairman of Rajya Sabha. Excepting the leaders of the opposition in both the Houses of Parliament, the rest would definitely have the final say as to the choice of the Chairperson and other members of NHRC. Since the Constitution of NHRC is for the protection of rights of all sections of people of India, without any discrimination on any ground, the inclusion of a discriminatory provision in the protection of Human Rights Act, 1993, by not allowing the leaders of the opposition in both the houses of Parliament, to have a final say in the appointment of persons in NHRC, is not a healthy sign. If the sitting judge of the Supreme Court or the Chief Justice of a High Court is to be appointed, then it can be done only after the consultation with the Chief Justice of India.<sup>33</sup>

The Chairperson and members are appointed for a term of 5 years, but cannot hold office after he or she has attained the age of seventy years. Subject to

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<sup>32</sup>. See The Protection of Human Rights Act, 1993. For detailed discussion see B.V. Somasekhar, "Programmes and Perspectives of NHRC towards Protection of Human Rights in India – An Appraisal", in B.P.Singh Sehgal, ed., n. 1, p. 549.

<sup>33</sup>. Vijay Kumar. n. 29, pp. 222.

this, a member may be appointed for a second term also. After their tenure, they become ineligible for further employment under the Government of India or under the Government of any State (section 6). The grounds on which the chairperson<sup>34</sup> and other members may be removed including the method have been provided in section 5 of the Act. Section 8 provides the terms and conditions of service of members which cannot be varied to their disadvantage after appointment. All these provisions, to a large extent, give the NHRC the elements of autonomy, independence and impartiality. Section 10 of the Act empowers the NHRC to regulate its own procedure. Accordingly, through No. A-11031/1/94-NHRC dated February 1994, the NHRC made the “National Human Rights Commission (Procedure) Regulation” consisting of 19 paragraphs (See Annexure II). Important among such regulations being the preparation of the Agenda by the Secretary-General in consultation with the Chairperson (para 7), procedure for dealing with complaints (para 8), recording of minutes of the meetings (para 9 and 10), Report of action taken (para 11), Authentication of orders and decision (para 13), Annual and special reports (para 14 to 17) and the constitution of investigation team (para 18). Section 11 of the Act provides for the appointment of Secretary-General, Police and other Investigative Staff of the NHRC.

### III.2.2. Functions and Powers of the Commission

While section 12 provides for various functions of the Commission. Section 13 provides for its powers relating to inquiries, and section 14 speaks about the method and manner in which the investigations can be carried out.

There are wide range of functions envisaged for the Commission under section 12 of the Act, “all or any” of which to be performed by it. These functions are as follows: -

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<sup>34</sup>. The first Chairperson, Justice Ranganath Misra, retired on 25 November 1996, upon attaining the age of seventy years, as envisaged in Section 6(2) of the Statute of the Commission. He was succeeded by Justice M.N.Venkatachaliah. After his retirement the Commission was privileged to continue to have Justice J.S.Verma as its Chairperson.

- a) Inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaints of -
  - i. Violation of human rights or abetment there of; or
  - ii. Negligence in the prevention of such violation, by a public servant;
- b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- c) Visit, under intimation to the state government, any jail or any other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the conditions of the inmates and make recommendations there on;
- d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- f) Study treaties and other international instruments on human rights and make recommendations for their effective implementations;
- g) Undertake and promote research in the field of human rights;
- h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars, and other available means;
- i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and
- j) Such other functions as it may consider necessary for the promotion of human rights.

The Commission has all the powers of a Civil Court trying a suit under Civil Procedure Code, 1908 (5 of 1908) and the other powers to summon and enforce the presence of witnesses and examine them on oath, discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any court of office, issuing commission for the examination of witnesses or documents etc.<sup>35</sup> For the purpose of inquiry and investigation into the complaints, the Commission can call for information or report from the Central or State Government or any other authority or

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<sup>35</sup>. See the Protection of Human Rights Act 1993, section 13(1).

organisation subordinate thereto<sup>36</sup> and for conducting any investigation, the Commission would utilize the service of any officer or investigation agency of the Central or State Government with the concurrence of said government, as the case may be.<sup>37</sup> Where the Commission after inquiry finds violation of such human rights by a public servant it recommend to the concerned government or authority for the prosecution or such other action deemed fit against the concerned person or persons.<sup>38</sup> It can also recommend to the concerned Government or authority for the grant of any interim relief to the victim or his family, as the Commission deems necessary.<sup>39</sup> The concerned Government or authority is bound to forward its comment including the action taken or proposed within one month or such other time as allowed by the Commission.<sup>40</sup>

But, while dealing with complaints of human rights violation by members of armed forces the Commission has to follow the procedure as prescribed under section 19 of the Act, which lays down that the Commission may on its own motion or receipt of complaint seek report from the Central Government;<sup>41</sup> and after the receipt of the report from the Central Government, it may, either not proceed with the complaint or as the case may be, make its recommendations to that Government.<sup>42</sup>

In the light of the extraordinary range of the functions assigned to the Commission and the scope of the powers conferred on it, it is evident that the Commission must act, and be seen to act at all times, with autonomy, impartiality and transparency.<sup>43</sup>

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<sup>36.</sup> Ibid, section 17(i).

<sup>37.</sup> Ibid, section 14(1).

<sup>38.</sup> Ibid, section 18(1).

<sup>39.</sup> Ibid, section 18(3).

<sup>40.</sup> Ibid, section 18(5).

<sup>41.</sup> Ibid, section 19(1)(a).

<sup>42.</sup> Ibid, section 19(1)(b).

<sup>43.</sup> Arun Kumar Palai, *National Human Rights Commission of India: Formation, Functioning and Future Prospects*, (Khama Publication, New Delhi, 1998), p. 84.



1. The most important function being that the Commission can inquire *suo motu*,<sup>44</sup> violation of human rights or abetment there of or negligence in the prevention of such violation by a public servant. This is an important function because it enables the NHRC on its own accord initiate actions against people or authorities responsible for human rights violations.

The Commission<sup>45</sup> indicated that it had, *suo motu*, taken cognisance of the death of Madan Lal, 22 years of age, in police custody (for the details see jurisprudence part). The Commission made recommendations to the Administration of the NCTD, asking it to take departmental action against the ASI,<sup>46</sup> the investigation in the instant case should be handed over to the CBI at the earliest and make payment of interim compensation<sup>47</sup> of Rs. 50,000 to the dependants of the deceased.

Similarly, on the basis of a *press report* appearing in The Statesman of 9<sup>th</sup> March 1994, alleging that a Kuki rebel had died in the custody of the armed forces,<sup>48</sup> the Commission called for a report from the Ministry of Defence. After a thorough examination of the report the Commission observed that, it was the obligation of the security forces, who held Allen in custody, to take steps for his immediate treatment and that the obligation arose the moment Allen came into their custody in an injured condition.

Quoting from the Supreme Court's observations in the case of *Pandit Paramanand Katia Vs. Union of India and others (1989)*,<sup>49</sup> the Commission's order pointed out "there can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the *status quo ante* cannot be restored. Whether he be an innocent person or a criminal liable to punishment under the laws of society, it is the obligation of those who are in charge of the patient to preserve life, so that the innocent may be protected

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44. The Protection of Human Rights Act, 1993, section 12(a).

45. *Annual Report of NHRC, 1993-94, 1994-95*, p. 33.

46. Section 18(1).

47. *Ibid*, 18(3).

48. *Annual Report of NHRC, 1994-95*, p. 36.

49. AIR 1989 SC 2039.

and the guilty may be punished. Social laws do not contemplate death by negligence to be tantamount to legal punishment”.<sup>50</sup>

The Commission was of the view that what the Apex Court held in the aforesaid decision, applied equally to the situation where a public authority had physical custody of an injured person. It observed, “there is no material in the report to indicate the nature of injuries he had received by jumping into the nullah. We have, in the circumstances, to assume that if timely treatment had been provided to Allen, his life could have been saved and the captors have failed to conform to their obligation under the law”. Thus the Commission recommends that a compensation of Rs. 50,000 to Rs.1, 00,000 is payable to the next to kin of Allen.

Similarly, the Commission can also *act on a complaint presented to it*. Various examples could be cited here. The Commission received a complaint from the Kalahandi Consumers Welfare Organisation<sup>51</sup> alleging that, in a misuse of power by public servants, a social worker, Radhanath Pradhan, had been chained to a hospital bed. The complaint was accompanied by photographs of the incident. The Commission accordingly called for a report from the Collector and District Magistrate, Kalahandi. On pursuing that report, it was found that, Pradhan had been prosecuted for offences committed under sections 448/294/353 of the IPC and Chief Judicial Magistrate had found him guilty and sentenced him to imprisonment of one year and a fine of Rs. 1000. It was also noted that Pradhan had filed an appeal in the Court of the Session Judge. Without taking a position on Pradhan’s arrest, as that issue was before the Sessions Judge, the Commission expressed grave displeasure over the chaining of Pradhan to his hospital bed. The Commission added that, unless there were special reasons and a judicial order in support of such action, patients under treatment in hospitals must not be chained.

In another instance, the Commission took *cognizance of a complaint* filed by an advocate, A.C.Pradhan, alleging that some 400 children had died in Phulbani

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<sup>50.</sup> Ibid, n. 49.

<sup>51.</sup> *Annual Report of NHRC, 1994-95.*

district as a result of acute malnutrition, accompanied by repeated attacks of malaria, chicken pox and various water-borne diseases.<sup>52</sup> It asked for a full report from the State Government. The report admitted that, “in Daringbadi block, 125 children below 10 years of age died in August and September 1993”. The Commission, in its directions of 25<sup>th</sup> October 1994, commented that adequate and satisfactory arrangements had not been made to prevent the calamity. It, therefore, recommended that the State Government may, within a month, a sum of Rs. 6,52,000 to the 125 tribal families, whose children had died.

Again, the People’s Union for Civil Liberties, Singbhum Unit, Bihar brought to the attention of the Commission six cases of serious violations of human rights which included, among others, an incident of *torture and sexual abuse of a minor tribal girl*<sup>53</sup> “Baby” by the relatives of an influential officer of the Bihar Police. The girl was working as domestic help in Bombay at the house of the sister and brother-in-law of the Police Officer, where she was allegedly tortured by the couple and was also sexually assaulted. There were reports in the press on the hushing up of this matter by the Adityapar Police (Bihar) in connivance with the said police officer. The Commission initially issued notice to the Bihar Government calling for a report. Upon perusing the inquiry report, the Commission termed the whole episode “shocking” and resulting from “depraved human conduct”. As a result of steps taken by the Commission, a case of torture and rape was registered in Raigarh, Maharashtra, which was the place of the incident. The Commission noted that Baby, an orphan, who is now living with her grand mother in Jamshedpur, would not be in a position to go to Raigad, the place of trial. It further noted that Jamshedpur would also be inappropriate to serve as the venue for a trial as the brother-in-law of the accused was a senior police officer in Bihar.

Under these circumstances, the Commission felt that the trial should be transferred to a venue such as Delhi and it moved the Supreme Court in this respect. The Supreme Court entertained the petition and stayed further

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<sup>52.</sup> Ibid.

<sup>53.</sup> *Annual Report of NHRC, 1995-96.*

proceedings of the trial pending disposal of the transfer petition. Having regard to the trauma of the minor Adivasi girl, the Commission also provided some interim financial assistance through an NGO in Ranchi that was agreed to look after her interests.<sup>54</sup>

2. The Commission can also *intervene in any proceedings involving any allegation of violation of human rights pending before a Court*,<sup>55</sup> in case there is immediate necessity of providing justice or remedy to the party concerned, with the prior approval of such Court. This could be done by the Commission either at the *request* of the parties concerned or *suo-motu* by the Commission but with the approval of the Court, before which the proceeding is pending. The more related example could be given here, the Killing of a human rights activist, Jalil Ahmed Andrabi.<sup>56</sup>

In this case, the Commission took *suo motu* cognizance of the killing of a human rights activist Jalil Ahmed Andrabi in Jammu and Kashmir and issued notice to the Chief Secretary of the Jammu and Kashmir Government calling for a detailed report. In its directions of 15<sup>th</sup> April 1996, the Commission noted that a writ petition was filed in the Jammu and Kashmir High Court and that the Court had set up a special investigation team for investigating the matter. Observing that the writ petition involved a serious allegation of violation of human rights, the Commission decided to intervene in the pending proceeding with the approval of the High Court. The Commission also decided to make its record of investigation available to the Court for its consideration. The Commission observed that it had a statutory investigation team, whose services it would like to offer to the Court and to participate in the investigation along with the special investigation team. The Commission also directed the State Government to provide security to the family of the deceased as well as the other witnesses of the case.<sup>57</sup>

3. The Commission has power, under intimation to the State concerned, *visit any jail or any other institution* under the control of the State Government, where

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<sup>54.</sup> Ibid. See also, *Human Rights News Letter*, vol. 3, no. 6 (June 1996), p. 3.

<sup>55.</sup> The Protection of Human Rights Act, 1993, section 12(b).

<sup>56.</sup> *Human Rights News Letter*, vol. 3, n. 55, no. 5 (May 1996), p. 1.

<sup>57.</sup> Ibid.

persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and can make recommendations thereon.<sup>58</sup>

On realisation of an urgent need to restructure prison administration, a National Conference on Human Rights in Prisons was convened by the Commission on 14<sup>th</sup> November 1995. As a follow-up of the recommendation of the conference, a core group of leading prison administrators was formed, to examine in-depth the prevailing prison practices and to prepare a blue print for prison reforms. The core group held two meetings in January and February 1996 to discuss formulation of a model Indian Prisons Bill, 1996. The intention of the Commission has been two-fold: first, to study the factors responsible for over-crowding in jail and the steps needed, to reduce the over-crowding; and second, to encourage such measures as may be necessary to develop or improve the skills of inmates, with a view to enable their re-orientation and facilitating their re-integration into society upon release from jail.<sup>59</sup>

Speaking on the occasion of the Commission's meeting with NGOs in New Delhi on 19<sup>th</sup> March 1996, the Chairperson stressed the need for collective and coordinated efforts to improve and standardise the living conditions in prisons. Recalling the Commission's visit to Patna jail, the Chairperson of the NHRC stated that the Commission had noticed lack of medical facilities, poor sanitary conditions and clubbing of many boys with hardened convicts. In regard to Uttar Pradesh, he said that there was no provision in that State Jail Manual for review of cases of those who have been sentenced to life imprisonment even after 20 years, while in certain other States those were reviewed after 14 years.<sup>60</sup> The Commission has called for the revision of the Indian Prison Act, 1894 and for the setting up a high level committee in each State to review the cases of prisoners to ensure that they are not detained unlawfully. The Commission has also suggested

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<sup>58.</sup> The Protection of Human Rights Act, 1993, section 12 (c).

<sup>59.</sup> B.P.Singh, n. 1, p. 557.

<sup>60.</sup> *Human Rights News Letter*, vol. 3, no. 4 (April 1996), p. 1.

that appropriate corrective actions be taken to improve conditions in 'lock-ups' and sub-jails.<sup>61</sup>

The Commission could also through its investigation staff visit and study the prevailing conditions of certain hospitals, especially the government hospitals and can suggest the measures for the improvement of conditions in hospitals.

4. As part of its mandate to spread awareness of human rights among the masses the Commission has undertaken to advise them about the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights. For this the Commission felt that programmes of awareness creation have to be taken up in areas, which show conspicuous incidence of human rights violations. And it is unanimous in its view that basic to the solution of the problem of human rights violations was the spread of education, more essentially primary education, and later at colleges and Universities. Instead, the Commission could recommend measures for the effective implementation of the existing rights.<sup>62</sup>

5. The Commission also engages in the study of treaties and other international instruments on human rights and make recommendations for their effective implementation. As regards treaties, India is a party to the International Covenant on Civil and Political rights, and Economic, Social and Cultural rights of 1966.<sup>63</sup> Further it is a party to the Conventions on the Elimination of All Forms of Racial Discrimination of 1965,<sup>64</sup> on the Suppression and Punishment of the Crime of Apartheid of 1973, on the Elimination of All Forms of Discrimination Against Women of 1979<sup>65</sup> and on the Rights of the Child of 1989. Ratification of these instruments brought with in the obligation that Government of India submits periodic reports to the treaty bodies concerned. But the Commission has

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<sup>61.</sup> Ibid, vol. 2, no. 9 (September 1995), p. 1.

<sup>62.</sup> *Annual Report of NHRC, 1997-98*, pp. 35-37.

<sup>63.</sup> General Assembly Resolution 2200 C (XXI), of 16<sup>th</sup> Dec., 1966.

<sup>64.</sup> UN Centre for Human Rights, *The Committee on the Elimination of Racial Discrimination*, Fact Sheet No. 12 (Geneva, 1994), p. 31.

<sup>65.</sup> "International Women's Tribune Centre: Right to the Women", *A guide to the most important UN treaties on Women's Human Rights* (New York, 1998), p. 1148.

not as yet in respect of individual instruments, exercised its possibilities under section 12(f) of its statute, to make specific recommendations “for effective implementation”. It was however, India’s obligations under the International Covenant on Civil and Political Rights that, *inter alia*, weighed heavily on the Commission’s mind when it conducted its study and made known its views on the Terrorist and Disruptive Activities (Prevention) Act, 1985, its implementation and alteration in its application:

6. The Commission has very much emphasised to undertake and promote research in the field of Human Rights, by spreading human rights literacy among various sections of society and promoting awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.<sup>66</sup>

The basic approach of the Commission, namely its determination to come to grips, as early as possible, with the gravest areas of human rights violations has encouraged people to protect their rights through the Commission. In the course of NHRC’s functioning, it has described its own priorities as including custodial death and rape, disappearances from custody, torture and other ill treatment.<sup>67</sup> It also states that priority is given to gender related violence and other abuses against women, children and the disabled and those belonging to Scheduled Castes and Scheduled Tribes. The NHRC has a fast track complaints procedure for the most vulnerable sections of the society, including children, women, and people with disabilities. This procedure also applies to certain categories of complaints, including bonded labour, child labour, child prostitution and allegations involving safety of the detained people. It would be useful to evaluate the working of the NHRC with reference to its foundational objectives, national and international standards in the protection and enforcement of human rights and also the potential impact it has on institutionalisation and sensitisation of human rights.

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<sup>66</sup>. *Annual Report of NHRC, 1997-98*, pp. 34-42.

<sup>67</sup>. *Annual Reports of NHRC, 1993- 2000*.

### III.3. Measures Undertaken to Strengthen Human Rights Protection

“The central objective of the Commission is to protect human rights and also promote a culture of human rights in the country. The ultimate guarantee of security to the observance of human rights is the conduct of every one in the community at large and this would depend upon the level of prevailing culture”.

- Justice Ranganath Misra.<sup>68</sup>

Far-reaching recommendations for the protection of civil liberties and for the elimination of various kinds of social evils like child labour, bonded labour etc., have been undertaken by the NHRC. Various measures have also been taken by the Commission to create an enhanced level of awareness of human rights and to develop a culture of human rights over the length and breadth of the country. The Commission today moving towards the strong commitment to protect and promote the human rights of its nationals. The following are some of the important measures adopted and reforms made by the NHRC to strengthen the human rights protection.

#### III.3.1. Systematic Reforms of Police and Prisons Administration

Deaths in Custody as a result of the use of torture and force by the police to extract confessions from suspected criminals has attracted attention from the public, the media, the judiciary and the human rights groups all over India. The police are undoubtedly an important agency of the criminal justice administration and the one with which the average person first comes into contact. The primary duty of the police is to preserve order and prevent crimes. When a crime is reported it is the duty of the police to apprehend the offender and produce him before the Courts according to the procedure established by law. To enable them to discharge their role effectively and efficiently the police are vested with wide powers and authority. In a democratic society the police have a prominent role, a duty to protect the rights of citizens as enshrined in the constitution.

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<sup>68</sup>. Human Rights News Letter, vol. 2, no. 1(April, 95), p. 2.



But the situation is, the number of people who die in police custody is high when compared to the number of deaths resulting from homicide, suicide, traffic and industrial accidents. The significance of the problem is due to the fact that the crime was committed by a person whose duty is to protect the rights of citizens and not to violate them. Such breaches of duty not only alienate public sympathy and support but also cause people to lose confidence in the police machinery.<sup>69</sup> And the cases of human rights violations are included more of custodial deaths.

The NHRC has thereby underlined the need for urgent action on police and prison reforms for the protection of civil liberties and for curbing violation of human rights. Stating that an efficient and honest police force is the 'principle bull work' of the nation against violation of human rights, the Commission said that it was strongly in favour of improving the quality of the police and restoring its prestige and lustre in the eyes of the nation.<sup>70</sup>

The Commission, since its inception has been receiving a large number of petitions portraying abject conditions and mal-administration of jails in the Country. Apart from institutions investigation in individual cases, the Commission visited many jails in several States for a first hand assessment. On realisation of an urgent need to restructure prison administration, the Commission on 14 November 1995 convened a National Conference on Human Rights in Prisons. As a follow up of the recommendation of the conference, a core group of leading prison administrators was formed, to examine in depth the prevailing prison practices and to prepare a blueprint for prison reforms. The core group has so far held two meetings in January and February 1996 to discuss formulation of a model Indian Prisons Bill 1996.<sup>71</sup>

Referring the clear and increasing need to reform the police, the Commission has called for an improvement in the quality of training of police,

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<sup>69.</sup> P. Krishna Deva Rao, "Taking Police Seriously: A Critical Enquiry into the Law, Procedure and Practice of Custodial Deaths in India", in *Legal News and Views*, vol. 11, n. 2 (Feb. 97), p. 11.

<sup>70.</sup> *Legal News and Views*, vol. 10, no. 11 (Nov., 96), p. 28.

<sup>71.</sup> *Human Rights News Letter*, vol. 3, no. 4 (April, 96), p. 1.

military personnel and the taking of special measures to ensure respect for the human rights of people particularly in areas of insurgency. The Commission has urged that where violations of human rights occur as a result of the conduct of armed forces personnel, prompt and effective action be taken under the law to prosecute those accused of wrong doing. The Commission has called for the revision of the Indian Prisons Act, 1984 and for the setting up a high level committee in each State to review the cases of prisoners to ensure that they are not detained unlawfully (especially those detained under TADA). The Commission has also suggested that appropriate corrective actions be taken to improve conditions in lock up and sub jails,<sup>72</sup> particularly for reducing over crowding and for special arrangements for women and juveniles.

On 14 December 1993, the Commission had requested Chief Secretaries of all States and Union Territories to give suitable instructions to District Magistrates and Superintendent of Police to ensure prompt inquiry of incidents of custodial deaths, and custodial rapes. States have also requested to see that deaths in judicial custody are also reported to the Commission within 24 hours of the occurrence of such incidents.<sup>73</sup>

While addressing Director General of Police and Inspector General of police in New Delhi on 16 November 1995, the Chairperson of the Commission emphasised the need for intensive pre-recruitment and in service training. Expressing serious concern over continuing complaints of torture, custodial death and rape received by the Commission, the Chairperson underlined the need for proper training and the generation of a culture of human rights.<sup>74</sup> Again, speaking on the occasion of the Commissions meeting with NGOs in New Delhi on 19 March 1996, the Chairperson of the Commission stressed the need for coordinated efforts to improve and to standardise the living conditions in prisons. Recalling the Commission visit to Patna Jail, the Chairperson stated that the Commission had noticed lack of medical facilities, poor sanitary conditions and

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<sup>72.</sup> Ibid, vol. 2. no. 9 (September, 95), p. 1.

<sup>73.</sup> *Annual Report of NHRC, 1993-94.*

<sup>74.</sup> *Human Rights News Letter*, vol. 2. no. 12 (Dec., 95), p. 2.

clubbing of many boys with hardened convicts. In regard to Uttar Pradesh, he said that there was no provision in that State's jail manual for review of cases of those who have been sentenced to life imprisonment even after 20 years while in certain other States those were received after 14 years. Where the NGOs had suggested various reforms like; proper care of under trials and their children in jail; proper constitution of a board of visitors for overseeing prisons and for making this body accountable; gender perspective of prison reform; taking sexual abuse of women in prison; presence of large number of women under trials who are held for minor offences; separation of young offenders and their protection etc.<sup>75</sup> Like this the Commission has taken various steps and measures with the assistance of NGOs to bring reforms in the police and prisons, in order to reduce the offences in prisons by the police.

### III.3.2. Elimination of Child Labour and Child Prostitution

In its continuing effort to tackle two grave problems like Child labour and Child prostitution the Commission has urged the need to take preventive steps. Deeply concerned by the growing incidence of child prostitution and the inadequate response of authorities to prevent it, the NHRC has constituted a core group to examine this issue in depth and to suggest an action plan. Besides the NHRC, the National Commission for Women, the Department of Women and Child Development, UNICEF and some prominent NGOs working in this field are members of this core group.<sup>76</sup>

The first meeting of this group held in the office of the Commission on 1 May 1996. In this meeting the prevalence of child prostitution in the country, governmental responsibility to deal with the problem, level of awareness among the public and the initiatives taken by various authorities and NGOs were discussed. The meeting also noted the existence of certain social practices which encourage child prostitution.<sup>77</sup>

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<sup>75.</sup> Ibid, vol. 3, no. 4 (April, 1960), pp. 1-2.

<sup>76.</sup> *Annual Report of the NHRC, 1995-96*, p. 26-31.

<sup>77.</sup> Ibid, 1996-97, pp. 37-41.

The Commission has decided to have a great bearing on the abolition of child prostitution, by addressing on the following aspects: -

- i. The general feeling was that the enforcement machinery showed a conspicuous degree of indifference and often displayed nexus with 'underworld gangs and people in power'. The meeting recognised the urgent need to motivate and to impart the required sense of purpose and direction to the enforcement agencies.
- ii. The National Commission for Women will include complaints of this type in the public hearings held by them in order create awareness about the evils of child prostitution.
- iii. It was felt that programmes of awareness creation have to be taken up in areas which show conspicuous incidence of child prostitution. Specific programmes could be taken up targeting clearly identifiable geographical areas/segments of the society.
- iv. The meeting was unanimous in its view that basic to the solution of the problem was the spread of education, more essentially primary education. It was felt that support should be given to making primary education compulsory. As a reflection of its involvement, the NHRC would consider taking up a programme of encouraging enrolment of children in schools after selecting nearly 50 districts which have a low level of literacy. There would be an effective follow-up to curb drop out of children at the primary level.
- v. To check International trafficking in children into India, it was decided to take up the issue with the Ministry of External Affairs for forging bilateral agreements with Bangladesh and Nepal.
- vi. The meeting felt that areas which sort out children to work as prostitute could be put under greater surveillance; so also places like railway stations, bus terminals etc., to keep a check on traffickers. A joint effort could be made to identify these areas and thereafter the State agencies could be brought into the picture for evolving and implementing effective preventive measures.<sup>78</sup>

The Commission has decided to regularly review the progress in this regard. As separate meetings in New Delhi on 25 July 1996 with concerned governmental and non-governmental agencies, the Commission stressed that priority should be accorded to measures that would stop the supply of children into the labour market and prostitution has stressed most fundamentally, the provision of free and compulsory education up to the age of 14, as envisaged in

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<sup>78</sup>. *Human Rights News Letter*, vol. 3, no. 6 (June, 96), pp. 1-2.

the Constitution of the Republic. In this connection, the Commission emphasised the importance of motivating representatives of political parties, law enforcement agencies, and NGOs.<sup>79</sup>

Another meeting of the Commission was held on 30 January 1997 at New Delhi viewed that, the child prostitution can be removed by stricter and careful action by the police, the setting up of a statutory board for prevention of trafficking and a sustained media campaign. The need for free and compulsory education for children was again stressed in this meeting.<sup>80</sup>

Justice Venkatachalaiah expressed his deep concern over the problem and termed it a “failure of humanity”. He called for co-ordinated efforts by the Police, NGOs, the Centre and State Government and the Commission for urgent and conscientious interventions. A number of measures were stressed during the meeting. They included preventing the procurement of children at the source; catching the ringleaders involved in this organised racket; the abolition of child marriage; and sensitising the judiciary. Attention was also drawn to the menace of ‘sex tourism’ and the need to deal with this growing problem on a global basis.<sup>81</sup> So various measures have been recommended by the Commission, and if the Government carefully implemented this recommendation, then the evils like child labour and prostitution can effectively curbed.

### III.3.3. Human Rights in the Curriculum of Educational Institutions

Section 12(h) of the Protection of Human Rights Act, 1993 sets before the Commission the responsibility to “spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means”. This undertaking requires no less than the creation of a culture of human rights entire the country and amongst all of its people.<sup>82</sup>

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<sup>79.</sup> Ibid.

<sup>80.</sup> Ibid.

<sup>81.</sup> *Human Rights News letter*, vol. 4, no. 2 (Feb. 97), p. 1.

<sup>82.</sup> *Annual Report of NHRC, 1994-95.*

The Commission's efforts to introduce human rights education in schools, colleges and Universities have made a significant headway. In July 1995 a meeting was convened by the Commission to review the progress made in regard to the inclusion of human rights in the curriculum of educational institutions.<sup>83</sup> In this meeting the Director of the National Council for Educational Research and Training (NCERT) has handed over a compiled draft source book on human rights to the Commission for the comments and suggestions. The following picture emerged at the end of the meeting:

- i) The National Council for Teachers Education (NCTE) evolved specialised training materials regarding the human rights for teachers at primary, secondary and senior secondary.
- ii) The Department of Education shall issue instructions to all educational institutions in the country for observing the Human Rights Day on 10 December in an appropriate manner.
- iii) University Grants Commission (UGC) arranged an inter-disciplinary group, which would advise it on a foundation course in human rights at the undergraduate level in Universities.
- iv) UGC to organise seminars on human rights in different parts of the country.

In this meeting the Commission also proposed that the States and Union territories must come forward for evolving a co-ordinated approach between the NHRC, the department of education in the Ministry of Human Resource Development and the State Government agencies.<sup>84</sup>

Inaugurating a three-day UNESCO sponsored workshop at the Indian Institute of Advanced Study (IIAS) in Shimla on 29 September 1995, Justice Misra said that, the Commission had already told various States to introduce human rights education as a general as well as a special subject. A beginning has been made in this direction with five universities agreeing to introduce the subject at the post-graduate level. The Commission is keen that his subject be introduced in other universities as well. In this connection, the Chairperson addressed letters in October 1995 to Vice Chancellors of eleven universities asking them to take

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<sup>83</sup>. Ibid, 1995-96. pp. 31-33.

<sup>84</sup>. *Human Rights News Letter*, vol. 2, no. 8 (August, 95), p. 1.

urgent steps to introduce human rights as a subject in post-graduate and under graduate classes.<sup>85</sup>

Further, the Commission has urged the leaders of political parties to ensure free and compulsory education for all children until they complete the age of 14 years, as envisaged in the directive principles, under the Indian Constitution.<sup>86</sup> It also discussed of, definite steps to give comprehensive legislative backing to this directive principle so that the country is no longer weakened by illiteracy and its citizens, particularly the young, handicapped and their rights violated for reasons of lack of education.

### III.3.4. NHRC- As a Party to the case Before the Supreme Court

The National Human Rights Commission has not only by *suo motu*, or by complaint received, and investigated various human rights violations, but also stood as a party to the particular case before the Supreme Court with the sole object of protecting *Chakma refugees*<sup>87</sup> in Arunachal Pradesh.

On a public interest petition filed by the NHRC,<sup>88</sup> the Supreme Court of India has directed the Arunachal Pradesh State Government to ensure that the life and personal liberty of each and every Chakma residing within that State are protected. The Court has further ordered the State Government to repel any attempt to forcibly evict or drive Chakmas out of the State by organised groups such as the All Arunachal Pradesh Students Union (AAPSU), if necessary by requisitioning the review of para-military or police force. The State government has been directed to request the Centre to provide such additional force as was necessary to protect the lives and liberty of the Chakmas.

The Apex Court has further held that, except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein. While granting necessarily the Court has said:

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<sup>85.</sup> Ibid, vol. 2, n. 11 (Nov. 95), p. 4.

<sup>86.</sup> Article 45 of the Indian Constitution.

<sup>87.</sup> *Annual Report of NHRC*, 1994-95, p. 40; 1995-96, pp. 61-62.

<sup>88.</sup> NHRC Vs. Arunachal Pradesh, AIR 1996, SC 1274.

“We are a country governed by the rule of law. Our Constitution confers certain rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by the law. Thus the State is bound to protect the life and liberty of every human being, he be a citizen or otherwise and it cannot permit any body or group of persons. Example; the AAPSU to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State government worth the name can tolerate such threats by one group of persons to another group of persons, it is the duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt within accordance with law. The State government must act impartially and carry out its legal obligations to safeguard the life, health and well being inhibited by local policies”.<sup>89</sup>

Thus, here the effort of the NHRC, for the first time staying as a party to the case, took fruit out of it. Through its effort the remedies were made provided to the Chakma refugees, and Supreme Court have asked the Arunachal Government except in accordance law, Chakmas shall not be evicted from their homes.

Thus, the implementation of human rights had come to be acknowledged nationally and internationally as a major concern and essential in the development of not only the individual but also the nation and ultimately the world.

#### III.4. Co-ordination between the Government and Non-Governmental Organisations

The realisation of human rights can be success through the enactment/development of protective law and the establishment of mechanisms to implement that law. Relating to the status of national institutions, according to Paris Principle<sup>90</sup> a national human rights institution should “co-operate with the United Nations and other organisations in the United Nations system, the regional institutions and the national institutions of other countries that are competent in

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<sup>89</sup>. Ibid.

<sup>90</sup>. Commission on Human Rights Resolution 1992/54 of 3 March 1992, annex (Official Records of the Economic and Social Council, 1992 Supplement No. 2 (E/1992/22), chap II, sect. A); General Assembly Resolution 48/134 of 20 December 1993.



the areas of the promotion and protection of human rights". National Human Rights Institutions, along with Inter-Governmental and NGOs, can play an important role in promoting human rights at the domestic level. NHRC developed co-operative relation between number of institutions in order to achieve its objective as mentioned in the Protection of Human Rights Act, 1993.

#### III.4.1. State Human Rights Commissions

The NHRC had urged all States and Union territories to constitute State Human Rights Commission as envisaged by section 21 of the Act. Under a federal system, it is evident that a concrete responsibility must rest with individual States to promote and protect human rights and to redress grievances. The phenomenal increase in the number of complaints received by the Commission, as also the number of requests from NGOs, academic institutions and others seeking the presence and participation of the Commission in different programmes have emphasised the need for setting up, at the earliest, of State Human Rights Commissions. The State level Commission would accord quicker access to a decentralised complaints-redressal mechanism and would also help aggrieved parties save expenses which would otherwise be incurred from having to approach a single authority, located in Delhi. As India is a federal nation there is every necessity for authorising the States to participate in the well being of the people. Thus, the decentralisation of the complaint disposal mechanism becomes a necessity, not least so as to provide a redressal mechanism that is readily accessible and inexpensive in terms of time and cost.<sup>91</sup>

Section 21 of the Act provides that, the State Commission shall consist of a Chairperson who has been a Chief Justice of a High Court, one member who is, or has been, judge of High Court, one member has been a district judge in that State and two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. It also provides that, there shall be a secretary who shall be the Chief Executive Officer of the State Commission. The appointment of the Chairperson and other members shall

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<sup>91</sup>. *Annual Report of NHRC, 1993-94, 94-95, 95-96, 96-97.*

be made by the Governor, after obtaining the recommendation of a committee consisting of a Chief Minister, Speaker of the Legislative Assembly, Home Minister of State, leaders of the Opposition in the legislative assembly and the legislative council.

Under Section 28 of the Protection of Human Rights Act, the Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion is of urgency or importance that it should not be deferred till submission of the annual report. Again the Act by Section 29 provides that with certain modifications the same functions and powers has been assigned to the National Human Rights Commission shall be followed by the State Commissions.

Following appeals by National Human Rights Commission, a number of States have decided to set up State Human Rights Commissions. The NHRC, for its part has, therefore, continued to encourage this process and it may be noted that, the State Human Rights Commissions had come into existence in Assam, Chhatisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu and West Bengal.<sup>92</sup> Some other States have indicated that the question of setting up of State level Commission is under active consideration. Further, Human Rights Cells had been established in the States of Uttar Pradesh, Andhra Pradesh and Kerala, and in the Union Territories of Daman and Diu, and Dadar and Nagar Haveli, and the National Capital Territory of Delhi.<sup>93</sup>

#### III.4.2. Human Rights Courts and District Committees

The Protection of Human Rights Act, 1993, provides that for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human

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<sup>92</sup>. Ibid. See also, [www.shrc.htm](http://www.shrc.htm).

<sup>93</sup>. Ibid. See also, Arun Kumar Palai, n. 43, p. 162.

Rights Courts to try the human rights cases.<sup>94</sup> The State 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 special Public Prosecutor for the purpose of conducting cases in the Court.<sup>95</sup>

The Tamil Nadu Government has notified 22 Courts to function in as many districts of the State as Human Rights Courts. A notification to the effect was issued by the State Government on December 1995 and these Courts will try offences arising out of human rights violations.<sup>96</sup> The Uttar Pradesh State Government has issued a notification on September 1995, and it mentioned 63 Courts to function in as many districts of that State as Human Rights Courts.<sup>97</sup>

The Government of Andhra Pradesh has notified the Courts of Chief Judicial Magistrates in all districts and the Courts of Chief Metropolitan Magistrates in the Metropolitan Sessions Division of Hyderabad, Visakhapatnam and Vijayawada, to be Human Rights Courts for providing speedy trial of Offences arising out of violations of human rights.<sup>98</sup>

In addition to the provisions contained in the statute, the Government of Kerala has taken the initiative to set up a mechanism for the speedy disposal of complaints relating to human rights violations at the district level. The commendable step, taken by the State Government, will help to further decentralise the grievance redressal machinery. The district level review committee is to be headed by the district and sessions judges, and will comprise, in addition, the chief judicial magistrate, the superintendent of police and the revenue divisional officers as members. Though the committee is purely official, the Commission is of the view that it can serve a most positive purpose. The Commission has accordingly recommended the setting-up of such committees in other states as well. The Commission expects that such committees should fit,

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<sup>94.</sup> Section 30 of Protection of Human Rights Act, 1993.

<sup>95.</sup> Section 31 of Protection of Human Rights Act, 1993.

<sup>96.</sup> *Human Rights News Letter*, vol. 3, no. 2 (Feb., 96), p. 4.

<sup>97.</sup> *Ibid*, vol. 2, no. 12 (Dec., 95), p. 3.

<sup>98.</sup> *Ibid*, vol. 3, no. 4 (April, 96), p. 4.

without difficulty, into what will ultimately constitute a three-tier system for the disposal of complaints relating to human rights violations.

The Parliament of India, thus seem to be taken a vital step by making provision for the setting-up of human rights courts in States and also the Human Rights Courts and District Committees, in the Protection of Human Rights Act. If we analyse the above situation, the decentralising the task of curbing of human rights violations, would promisingly moving towards strengthening human rights protection in India, to the utmost.

### III.4.3. Co-ordination among NGOs

Section 12(i) of the Act envisaged that the Commission shall “encourage the efforts of non-governmental organisations and institutions working in the field of human rights”. This is a responsibility which the Commission readily assumes, for the cause has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship.<sup>99</sup> There are three areas in which NGOs can be of particular assistance to the Commission. Firstly, because of their grass-root contacts, they can most effectively identify human rights violations, articulate them and seek redress. Secondly, given the rapport that they have established with the public at large, the assistance and cooperation of the NGOs can be of great value in the investigation of the more serious cases that come to be looked into by the Commission through its investigative staff – a group that will be put together with great care as to their sensitivity to human rights considerations. Thirdly, the high level of expertise of individual NGOs in specific areas of human rights work can be a source of great benefit to the Commission as it studies and makes recommendations on specific issues and problems.

The Commission also continues to have contact with the foreign NGOs like, Amnesty International, Human Rights Watch (Asia), the International Committee of the Jurists, etc. The Commission is of the view that its participation in meeting of human rights groups and activists can be of great value

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<sup>99</sup>. *Annual Report of NHRC, 1994-95*, p. 11.

to the country and to those who wish to learn of the situation in India, and indeed to all those engaged in furthering the cause of human rights world-wide.

NHRC's co-ordination with a number of Governmental and Non-Governmental Organisations have practically enhanced its status and prestige, both at home and abroad. The concerted and continued effort of government officials, parliamentarian, human rights activists etc., in terms of commitment, criticisms and suggestions can strengthening the organisation in a most positive and constructive way, so that the Commission can be a more reliable and accessible one, bridging the gap between Governments and the NGOs.

**CHAPTER IV**  
**JURISPRUDENCE OF NHRC:**  
**A SURVEY OF SELECTED CASES**

## CHAPTER IV

### JURISPRUDENCE OF NHRC: A SURVEY OF SELECTED CASES

Jurisprudence is the knowledge of law or, more widely expanded, it is the systematised knowledge of any branch of law. The science of law is what is loosely known as Jurisprudence. It has three facets, namely legal exposition, legal history, and the science of legislation. This is a tentative trinity good enough for practical purposes. The anatomy of the legal system as existing at any given time is the purposes of the first study. Secondly, it is to set forth the historical process whereby any legal system came to be what it is or was. The purpose of the third is to set forth the law, not as it is or has been, but as it ought to be. It deals not only with the past or present of any legal system, but with its ideal future and with the purposes for which it exists. The complete scientific treatment of any body of law involves the adoption of each of these three methods.<sup>1</sup>

The Jurisprudence also covers the theory or philosophy of law. Any student of human rights law, in its growth from time to time, will have to dwell upon the philosophical, historical and aspirational aspects of that branch of jurisprudence. To make our studies of the evolution of human justice and human rights on a global scale meaningful, we have to trace the escalating emergence of human rights jurisprudence.<sup>2</sup> By the jurisprudence of the NHRC we generally mean the contribution of the NHRC to the development of human rights law through its work while interpreting and applying the law to specific cases that come before it.

#### IV.1. Survey of the Cases

For the convenience of analysis, the cases surveyed here have been grouped into 9 categories, namely, Police Firing on Civilians; Custodial Death; Custodial Torture; Police Excesses; Fake Police Encounters; Immunity for Armed Forces; The

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<sup>1.</sup> Krishna Iyer V.R., *The Dialectics and Dynamics of Human Rights in India* (Eastern Law House, New Delhi, 1999), p. 89.

<sup>2.</sup> *Ibid*, p. 90.

Case of Genocide; Overlapping Judicial Intervention; and States Duty to Compensate for Public Transport Accidents.

#### IV.1.1. Police Firing on Civilians

##### IV.1.1.1. *Bijbehera Case*:<sup>3</sup>

In this case the NHRC has given a wider ambit for the preambular provision of “better protection of human rights”. The brief facts of the case is as follows; On 1<sup>st</sup> November 1993, NHRC exercising its powers under section 12(a) of the Protection of Human Rights Act 1993 took *suo motu* cognizance of press reports about the death of 60 persons in and around Brijbehera in Jammu and Kashmir as a result of firing by security forces. As the supposed act was committed by armed forces, the Commission under section 19(a) of the 1993 Act called for reports from the Central Government (Ministry of Defence and Home Affairs). Ministry of Defence clarified that the army was not involved, while the Ministry of Home send a report on the basis of Magisterial inquiry ordered by the Jammu and Kashmir Government and the Staff Court of inquiry ordered by Border Security Force (BSF) authorities. After examining some of the witnesses the Commission recommended disciplinary proceedings against 14 members of the security force, prosecution after a magisterial inquiry, payment of compensation, and a review of circumstances and conditions of deployment of security forces.

The three recommendations reflect entirely three ingredients of the better protection of Human Rights. As far as the first recommendation concerned the NHRC prescribes the procedure to identify and proceed against the offender effectively. It also monitors whether the State implements it or not.

The second recommendation mainly deals with the social aspects of life i.e., *victim's rights*. By awarding interim compensation the NHRC tries to give some relief to the victims or their near relatives, of the tragedy that has befallen on them.

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<sup>3</sup>. *Annual Report of NHRC, 1993-94*, p. 9. See also *Indian Journal of International Law*, vol. 34 (1994).



Thirdly, by recommending to review the conditions of BSF units deployed in civilian population, NHRC tries to prevent further recurrence of such human rights violations.

#### IV.1.2. Custodial Death

##### IV.1.2.1. *Alleged Custodial Death of Shanskhem Kharsaiot:*<sup>4</sup>

Two persons had died in police firing in front of Sohra Police station in Meghalaya State on 5<sup>th</sup> Nov. 1993. It was reported that people had gathered outside the police station to protest against the alleged Custodial death of Shanskhem Kharsaiot. The Commission exercising its power under section 12(a) of 1993 Human Rights Act<sup>5</sup> took *suo motu* cognizance of this case and called for a report about the incident from the Government of Meghalaya. The State Government sent a detailed report on 15<sup>th</sup> January 1994 stating that with regard to the custodial death the concerned police officer had been proceeded against as indicated by the magisterial inquiry that Rs. 50,000/- had been awarded to the victim as *ex-gratia* assistance and that also a near relative of the deceased had been given an appointment on compassionate grounds. And with regard to the police firing an inquiry had been instituted by a retired High Court Judge as stated in the interim report.

The Commission observed that as several effective steps were taken by the State Government, there appeared to be no necessity of the Commission pursuing the matter any further.

##### IV.1.2.2. *Alleged Custodial Death of Madanlal in Delhi:*<sup>6</sup>

The Commission *suo motu* took cognizance of the death of 22-year-old Madanlal in police custody. Upon receipt of the report from the Government of Delhi, the Commission decided to have an investigation undertaken in terms of

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4. *Annual Report of NHRC, 1993-94, pp. 12-13.*

5. "... inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of - (i) violation of human rights or abetment thereof or (ii) negligence in the prevention of such violation, by a public servant..."

6. *Annual Report of NHRC, 1993-94, p. 13. See also the Annual Report, 1994-95, p. 33.*

section 14(1) of the Protection of Human Rights act 1993,<sup>7</sup> and R.C.Chopra a member of the higher judicial service appointed as to investigate the matter.

Chopra's report showed that Madanlal had died as a result of a physical assault in police custody and made an Assistant Sub Inspector, three constables *prima facie* accountable for the death. Upon the recommendation of the investigating officer, the Commission recommended that, the case should be handed over to Central Bureau of Investigation (CBI), departmental actions should be taken against the Assistant Sub-Inspector, protection should be given to the family members of the deceased, and interim compensation should be paid to the dependence of the deceased. The Government of Delhi accepted the recommendations.

By recommending to hand over the case to an outside agencies i.e., CBI, NHRC concluded that the State Government is not effective in investigating the matter, and that the case should be investigated impartially by the central agency. Section 14(1) gives greater autonomy to NHRC in respect of appointing investigators on its own with the concurrence of the respective government.

#### IV.1.2.3. *Abdul Gafar Khan Case:*<sup>8</sup>

One Abdul Gafar Khan was arrested by the Margao Town Police, Goa at 12'O clock midnight and subsequently he died at around 2'O clock on the same day. This incident was reported by the District Magistrate and the Superintendent of Police of South Goa District to the NHRC. On receiving the report the Commission issued a notice to the Chief Secretary of Goa calling for a detailed report on the incident. The State Government reported to the Commission in October 1994 stating that the magisterial inquiry revealed that Abdul Gafar Khans death was caused

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7. "...the Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officers or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be".

8. *Annual Report of NHRC, 1995-96, pp. 46-47.*

by brutal beating by four police personnel. The State Government reported that it decided the following;

1. The Inspector-General of Police would register a case under section 302 of the Indian Penal Code<sup>9</sup> for murder and take all necessary consequential action against the accused police personnel involved in the incident.
2. The Inspector-General of Police would start an investigation through the Crime Branch and also move the Government of India for a take over of the case by the Central Bureau of Investigation (CBI).
3. The Inspector-General of Police would take concrete steps to prevent recurrence of such incidents, which constituted serious violation of human rights violation in addition to the criminal offences.

Accordingly all the police officials involved in the case were suspended and proceeded against for murder. The Commission appreciated the steps taken by the Government.

#### IV.1.2.4. *Custodial Death of Jasveer Singh:*<sup>10</sup>

The Human Rights Court, Kanpur Nagar referred this case to NHRC because unfortunately the Human Rights Court does not have the power to award compensation to the victim in addition to or apart from any provisions under the Criminal Procedure Code or the punishment of the guilty under the Indian Penal Code or any other relevant law. The *Human Rights Courts* are set up under section 30 of the Protection of Human Rights Act, 1993<sup>11</sup>, for speedy trial of offences arising out of violations of human rights. The State Government may with the concurrence of the Chief Justice of the High Court, by notification specify for each district a

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<sup>9</sup>. Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

<sup>10</sup>. Petition No. 21 of 1999, in the Court of the Human Rights, Kanpur.

<sup>11</sup>. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. Provided that nothing in this section shall apply if - (a) a Court session is already specified as a special court; or (b) a special court is already constituted, for such offences under any other law for the time being in force.

Court of Session to be a Human Rights Court. The function of a Human Rights Court is, therefore, to try criminal offences involving human rights violations.

The facts of the case are as follows; One Jasveer Singh was taken into custody by the police in Crime no. 88/99 and while he was in under trial denied proper and timely medical attention for the ailment from which he was suffered acute intestinal obstruction and died while in judicial Custody. The Human Rights Court came to the conclusion that the death was the result of *gross negligence and carelessness* of the public servant in whose custody the deceased was at that time. An amount of Rs. 2,70,000/- was determined by the Human Rights Court as the appropriate compensation to be paid to the dependents of the deceased.

The Human Rights Court referred the matter to the National Human Rights Commission for the purpose of consideration of award of compensation on the basis of its findings. Accordingly, a strong *prima facie* case was made out on the basis of available material and the facts beyond controversy to justify the grant of immediate interim relief under Section 18(3) of the Protection of Human Rights Act, 1993. Article 18(3) provides, “the Commission may recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary”. The Commission considered the amount of Rs. 2,70,000/- determined by the Human Rights Court as the appropriate amount of immediate interim relief under this section. The Commission also found this an appropriate case for recommendation under Section 18(1) of the Act,<sup>12</sup> and accordingly, the Commission recommended the above findings to the Government of Uttar Pradesh.

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<sup>12</sup>. “... where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned 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”

#### IV.1.2.5. *Kodaikanal Custodial Death Case*:<sup>13</sup>

M.Abbas, All India President for Consumer and Human Rights Movement Trust, Kodaikanal, made a complaint alleged that the personnel of Kodaikanal Police Station had arrested four persons in a case of theft. One of the persons arrested, namely Thiru Marimuthu, died in police custody. The complainant requested that full and appropriate action be taken against the guilty police personnel and compensation accorded to the next of kin of the deceased.

Taking cognizance of the complaint, the Commission called for a report from the Secretary, Public (Law and Order) Department, Government of Tamil Nadu.

The Secretary indicated in his report, that the Collector had ordered an inquiry into the incident by the Revenue Divisional Officer, Kodaikanal. The full text of the inquiry and all supporting documents were enclosed with the reply. He concluded that though Marimuthu had died as a result of poisoning, it could not be denied that certain taxi drivers and police personnel of Kodaikanal police station had driven him to take this extreme step.

The report of the Secretary to the State added that, having examined the inquiry report carefully, the State Government accepted the findings of the inquiry officer. Accordingly, the Government ordered the launching of criminal prosecutions and departmental actions against five delinquent police personnel, and criminal prosecution against four taxi /jeep drivers who were held responsible for the crime.

The Commission noted that appropriate measures had been initiated to bring to book those involved in the death of Marimuthu. It trusts that the processes set in motion will be pursued to their logical conclusion and it would like to receive a progress report in this respect within two months.

However, no mention in the report received from the State Government that any compensation awarded to the next-of-kin of the deceased. The Commission

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<sup>13</sup>. *National Human Rights Commission, case No. 742/22/1999-2000.*

tentatively of the view that this appear to be a fit case for the award of immediate interim relief under Sec 18(3) of the Protection of Human Rights Act, 1993 and that Rs. Two Lakhs be paid to the next-of-kin of the deceased Marimuthu by the State Government.

#### IV.1.2.6. *Manoj Kumar Case:*<sup>14</sup>

There were two petitions submitted to the Commission, which relates to the death of Manoj Kumar aged 19 years in police custody. According to the allegations Manoj Kumar was involved in a false case for the offence under Section 307 of the Indian Penal Code<sup>15</sup> by some miscreants and was taken to the Police Custody where he was tortured by the police, and he expired on 8-8-1996. The doctors also did not properly treat him in the hospital. The Petitioner approached the Commission for seeking punishment to the police officers and the doctors for the murder of Manoj.

The Commission took cognizance of the case and issued notice to the Chief Secretary, Government of Uttar Pradesh (UP) and to the Director-General of Police UP. A report was received revealing that an inquiry was conducted in the matter, and found that the death of Manoj Kumar took place in Police Custody. It appears that even orders of the concerned Court in this case for providing medical treatment to Manoj Kumar were not complied with. It was a clear case of *custodial death* when the police snuffed the life of young man, Manoj Kumar.

Section 18(3) of the Protection of Human Rights Act 1993 makes a provision of immediate interim relief in such type of cases, where proof beyond reasonable doubt is not required but only on the basis of preponderance of probabilities, immediate compensation is awarded, irrespective of the fact whether civil or criminal

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<sup>14.</sup> *National Human Rights Commission, Case No. 7955/96-97.*

<sup>15.</sup> Attempt to murder - "whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned".

liability is found established or not. The very nature of the concept of immediate interim relief and the purpose for which it is intended would be defeated if this remedy is inextricably inter-wined with the fortunes of a criminal trial or even those of a civil litigation for that matter. Immediate interim relief is to be considered at the time when there is yet no final decision of the Courts either on the question of guilt or quantum of compensation.

In view of the material available in the record, the Commission recommended immediate interim relief of Rs.2 Lakhs to the next of kin of the deceased Manoj Kumar to be paid by the State of Uttar Pradesh, identify the delinquent police officers and to prosecute them for the offences as well as punish them under the *Service Rules* and to recover the amount of compensation paid by the Stat Government from them.

Again, the Commission very well established that recovering the compensation amount from the delinquent police officer was an issue not linked to the payment of interim compensation to the victim, under section 18(3) of Protection of Human Rights Act, 1993. Violation of a right and identifying the person responsible for violation are entirely different and both are not conditional upon each other, which makes the State responsible for the Human Rights Violation.

#### IV.1.3. Custodial Torture

##### IV.1.3.1. *Virender Singh Case*:<sup>16</sup>

The Commission received a complaint from Surendra Singh, resident of District Saran, Bihar alleging that police tried to kill one Virender Singh at Police Station Mekari District, Saran. The complainant had alleged that the police tried to kill Virender Singh by pouring kerosene oil and set him on fire and the police registered a false case against him for attempt to commit suicide.

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<sup>16</sup>. *National Human Rights Commission, Case No. 3439/4/1999-2000.*

Taking cognizance of the case under Section 12(a) of the protection of Human Rights Act, 1993, the Commission called for and received a report from the DIG (Human Rights) State of Bihar. On a consideration of the Police report, the Commission found that the victim was alleged to have tried to commit suicide and a FIR had been registered in this regard which is pending in the Court. The Commission also came out with the following findings: -

- i) By keeping Virender Singh in the room of police station, instead of the lock-up room, police staff had acted in a negligent manner and it showed their lack of sincerity.
- ii) That the DIG had ordered disciplinary action against the Chowkidar, Sub-Inspector and Police personnel which itself proved for their negligent behaviour.
- iii) Also the police report clearly said that some goods were kept in the lock-up, which is illegal.

Hence the Commission found guilty on the part of the Police personnel by giving a chance to Virender Singh to set fire on himself and creating the entire incident. It directed the State to pay Rs. 25,000/- as the interim compensation to the victim under Section 18(3) of the Protection of Human Rights Act.

#### *IV.1.3.2. Perimuthoo Subbaramaiah Case:<sup>17</sup>*

This is one of the very few cases in which NHRC has dealt with the sociology of law, to be more precise the implementations of these rulings. The brief facts of the case are as follows; -

One Perimuthoo Subbaramaiah was found dead in a railway track near Pedapriya Nayudupet, Andhra Pradesh. Pursuant to the directions of the Commission, the Government of Andhra Pradesh conducted an inquest, post mortem and magisterial inquiry, which revealed that Perimuthoo was taken to Police Custody in connection with an alleged theft of motor starter. Police stated that he was released on the same day, as he was not found guilty. But magisterial inquiry on the basis of

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<sup>17</sup>. *National Human Rights Commission, Case No. 406/1/97-98/CD.*



five independent eye-witnesses found that the deceased was seen in the Police Station, and next day his body was found with head severed in a railway track as mentioned above.

The magisterial inquiry had not fixed the responsibility for the death of Perimuthoo upon the Police Officers. The evidence on record showed death due to being run over by train after Police Custody had ended. However, the ante-mortem injuries though not the cause of death were indicative of police beating and *custodial torture*. This in the light of the fact that he was not found guilty of the alleged theft and the fact that he was a young, innocent girijan, with unblemished record called for conscious condemnation of police interrogation methods even in insignificant matters.

In the circumstances, the Commission was of the view that this was a serious matter of *police beating* and *torture in custody*. Therefore, it recommended, to pay an interim relief of Rs. 50,000 (Fifty Thousand only) to the dependents of the deceased and to recover the money from delinquent police officers responsible for beating and torture to the deceased, and to initiate departmental action and criminal proceedings against the delinquent police officers responsible for the acts.

The actual problem started when the Government of Andhra Pradesh refused to pay the interim relief stating that magisterial inquiry had not fixed the responsibility of the police officers for the death of Perimuthoo. The Commission had considered the matter and said, "here in this case even though the Commission recommended to pay interim relief under Section 18(3) of the Act and to recover the same from the guilty officials, it does not mean that the State can escape from the payment of interim relief if the responsibility is not fixed on a particular police official. If it is so, State would get chance to escape from paying compensation by not fixing responsibility on any particular official which could be easily done by weakening the prosecution side which will ultimately result in vitiating the ends of justice because no interim relief will be given to the victims/legal heirs and also the offenders would be

left free and is detrimental to the interest of Welfare State. The intention of the Commission asking the State to pay the interim relief and recover it from the guilty officials because;

“Firstly, victim/legal heirs need not wait for interim relief till responsibility is fixed and guilt is established, which is our legal system may take even a generation time.

Secondly, recovering the money from offenders serves as an additional punishment to them and also deterrence to prospective offenders.

Thirdly, the State will have a sigh of relief to pay interim relief on its own for the acts of its servants.

Fourthly, the expectation of recovering the money from guilty officials would make the State to speed up prosecution”.

#### IV.1.4. Police Excesses

##### IV.1.4.1. *The Hafta Case*:<sup>18</sup>

This is one of the classic examples in which the State is made vicariously liable to compensate the victim for the *acts of violation of human rights committed by the police*. The brief facts of the case are as follows; -

The Commission took cognizance of the case on receipt of a report from the Sub-Divisional Magistrate, Shahdara, Delhi intimating the Commission about the death of one Matloob Hussain, an innocent fruit vendor aged about 33 years, as a result of the severe beating given by the two policemen because the deceased failed to oblige the policemen with the ‘Hafta’ (the illegal weekly collection made by the police for permitting the petty vendors and others to carry on their trade activities).

The Commission called for a detailed report from the Chief secretary, Government of Delhi and the Commissioner of Police. It later received the report of the inquiry conducted by the Sub-Divisional Magistrate, Shahdara and that of the Deputy Commissioner of Police through the Home Department of the Government of Delhi.

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<sup>18</sup>. *National Human Rights Commission, Case No. 951/96-97.*

The report of the Sub-Divisional Magistrate and post-mortem confirmed the death of Matloob because of the police torture. The report of the Deputy Commissioner of Police on the contrary gave out a different version. According to it, the deceased had lodged a complaint at Police Station of Geeta colony, alleging that he was assaulted by Constable Rakesh Kumar and Arvind Kumar, and also alleged that police excesses upon him. On this base ACP (Public Grievances) Sharma, was asked to look into his grievances. Sharma started inquiry and in the meanwhile instructed the persons accompanying Matloob Hussain for his Medical treatment. His condition was started deteriorating, and he was referred to GTB Hospital where he was declared as dead. Immediately on the same day Constable Arvind Kumar and Constable Rakesh were placed under suspension as a *prima facie* case indicating excess on their part was established. Besides, a case was registered under sections 304<sup>19</sup> and 34<sup>20</sup> of IPC and transferred to Crime Branch of Police, Delhi.

The Commission based on the reports submitted above came to the following conclusions: - Matloob Hussain was subjected to physical violence by Constable Arun Kumar and Rakesh and beatings were so severe that it ultimately proved fatal as opined by the board of doctors who conducted the post mortem examination on the body of the deceased. The higher police authorities and the executive authorities had done well in taking action against the delinquent police officials by putting them under suspension and prosecuting them after due investigation, though all this was done only after the death of Matloob. The Commission was observed the lack of sensitivity on the part of senior Police officers in not rising to the occasion and taking the desired and timely action, which would perhaps have averted the death of

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19. Punishment for culpable homicide not amounting to murder - "Who ever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;..."
20. Acts done by several persons in furtherance of common intention - "When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if were done by him alone."

Matloob Hussain. The Commission, therefore, accepted the recommendations of the Sub Divisional Magistrate in regard into a probe in the conduct of SHO in this episode.

The Commission also took notice of the widow and 6 children of the deceased in the age group of six months to 13 years in a hapless state. It was of the view that these dependents of the deceased were entitled to some monetary compensation by way of "immediate interim relief". Because they were the victims of violation of their rights by public servants. Hence, the state had the duty to afford relief to its citizens in distress. The very fact that as per the Magisterial inquiry and later on investigation conducted by the Crime Branch of Delhi Police, it had been duly established that atrocities and physical violence committed by to public servants leading to the death of Matloob Hussain, the state was *vicariously liable* to compensate the victim for the said acts of violation of human rights committed by its servants. The Commission, was therefore, entitled to invoke its jurisdiction for providing the immediate interim relief to the next of kin of the deceased as per section 18(3) of the Act.

Based upon the findings, the Commission recommended to the Delhi State that, ensure effective and expeditious trial of the accused so that these errant officials are punished in accordance with the law and do not go scot-free due to weak prosecution, pay a sum of Rs. 2.5 lakhs to the next of kin of the deceased Matloob Hussain, ensure the implementation of the scheme framed by the Municipal Corporation, Delhi in regard to the hawkers/petty vendors at the earliest, constitute a high powered committee in order to go into this menace of the collection of 'Hafta' by the police and other civic functionaries from the petty vendors and other similarly placed persons and to suggest ways and means to come this menace to an end so that this vulnerable section of the society live in peace and harmony.

In this case the Commission was vehement in punishing the culprits and also the persons incidentally connected to the episode. It awarded interim compensation

to give some relief to the legal heirs of the deceased. Also by recommending to frame a scheme by the Municipal Corporation of Delhi with regard to the hawkers, the Commission emphasised that fundamental rights such as Freedom of Trade and Commerce i.e., Article 19(1)(g) of the Constitution should be available even to the lower strata of the Society. By recommending to constitute a high power committee to look into the menace of collection of 'Hafta' by the police, the Commission emphasised the right to good governance as an essential right of the Indian society. Thus, by this case the Commission proves itself to be a guardian of Human Rights.

#### IV.1.5. Fake Police Encounters

##### IV.1.5.1. *Parasuram Nut Case*:<sup>21</sup>

This is one of the cases in which NHRC had come down heavily on *police excesses* and exposed *fake encounters* to the outside world. The brief facts of the case are as follows: -

The case arose when one Parasuram Nut was killed in a police encounter in the state of Bihar. As per police version, the deceased Parasuram Nut was a dreaded criminal and was wanted in connection with 10-12 criminal cases. The complainant Manavi Devi, w/o victim Parasuram mentioned in her complaint on 14.12.98 that the ASI Surender Paswan came to her residence and asked her husband for cutting of woods. Her husband agreed to do the work on the next morning, as he was not then feeling well. But the ASI dragged him away and shot him dead. The Station House Officer (SHO), Rivil Ganj, did not register her complaint. The FIR was lodged on the directions of Judicial Magistrate, Saran. Moreover, she alleged that the police personnel trying to hush up the matter.

As there contradictions between various stages of the case, the Commission exercised its power under section 17(ii)<sup>22</sup> initiated an inquiry into the said incident. The Commission after examining all the reports came to the conclusion that the

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<sup>21</sup>. *National Human Rights Commission, Case No. 3879/4/98-99.*

<sup>22</sup>. "Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry."

police had made a deliberate attempt to hush up the matter and give a false report indicating that it was a case of *mistake of facts*. *Prima facie*, the acts reveal that the victim Parasuram Nut, a poor labourer, was taken from his hut and shot dead by the ASI and the incident was shown as encounter death. Moreover the investigating officer has also tried to save the ASI which was highly condemnable. Hence the investigation should be handed over to a senior Superintendent of the Police belonging to the CID for independent inquiry. Also, *prima facie* the incident was proved to be a *fake encounter*, and the State is vicariously liable for the acts of its agents and hence directed to pay rupees one lakh as interim compensation under section 18(3) of the Act.

Apart from awarding interim compensation to the legal heirs of victim, the Commission did a highly commendable job in this case. It brought into limelight the killing of even innocent persons in the name of encounters by the State agency for some petty reasons and then taking shelter under the cover of law unlawfully, which had become a well-established practice. The Police is considered to be the immediate sanctuary of normal man from the atrocities of a culprit and if the same police person be the culprit, using the power given by the law against innocence, then how would the system of justice work?

#### IV.1.6. Immunity for Armed Forces

##### IV.1.6.1. *Army Men on rampage in Hyderabad*:<sup>23</sup>

This case is one of the classic examples of the inadequacy of the procedure prescribed in section 19<sup>24</sup> of the Protection of Human Rights Act, 1993 for inquiry into the violation of human rights by members of the Armed forces even in an area

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<sup>23</sup>. *National Human Rights Commission, Case No. 67/1/1999-2000.*

<sup>24</sup>. "Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely: - (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government; (b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government."

unaffected by insurgency, which does not require exercise of some extraordinary powers by the Armed Forces.

The brief facts of the case are as follows; On the midnight of 12/05/1999 about 300 army men went on rampage in Mehdipatnam area of Andhra Pradesh and attacked the farmers, demolished the sheds built by the Government, and caused damages to the property. All the leading newspapers highlighted this incident and the NHRC took *suo motu* cognizance of the press report that appeared in "The Hindustan Times" on 13<sup>th</sup> May 1999 under the caption 'Army men go on the rampage in Andhra Pradesh'.

The Commission called for reports from the Secretary, Ministry of Defence, Government of India and the Chief Secretary, Government of Andhra Pradesh. The Deputy Secretary, Defence stated that the factual position of the bone of contention between the State Government and Defence personnel with regard to the Rythu Bazaar area measuring one acre and fourteen guntas. According to Defence Secretary's version, this area belonged to the Army and it was permitted be used for Rythu Bazaar peoples on condition i.e., land should be used by the farmers for few hours in the morning, no permanent structures were to be erected in the site, and the land should be vacated immediately without any delay upon demand by the Army.

Accordingly, Army demanded the land back, and a number of meetings took place between the Civil and Defence Administrations on this matter, but no action was taken. Hence, Local Military Authority exercised the option of physical eviction.

The District Collector reported to the NHRC that the human rights violations were involved in the incident. On consideration of the Report, the Commission observed that; -

"The two reports, one from the Collector of the State Administration and the other from the Dy. Secretary, Ministry of Defence highlight the piquant situation where the versions of two responsible and highly placed functionaries of Governments could have such wide variance. The Collector's report is an eyewitness account supported

by photographs. The question is not whether the Government of Andhra Pradesh did not implement their earlier promise to vacate the piece of land. The question really is whether high-handed acts were committed by the army personnel of which the Collector's report gives a graphic account. To deny the entire event and to say that the allegation regarding manhandling of farmers and destruction of property to which officer of the rank of a District Collector is an eye witness as 'malicious, unfounded and levied to tarnish the image of the army' that 'till the time the troops left the site, not a single case of injury to any individual was reported' seems to be a statement made with greater sense of courage than a care for accuracy born out of unbiased verification of facts. The Commission desires to mention that such sweeping denials will not either protect or improve the image of the Army nor advance the interests of justice".

The Ministry of Defence in its letter mentioned that, the Army's version of the incident is different in substance from the version submitted by the Chief Secretary of the State. Hence it is submitted for consideration of the Commission that the concerned Army officers and State Government officials may be called and a view taken in the matter.

The Commission considered the above letter of the Ministry of Defence and observed that, this is a classic illustration of the inadequacy of the procedure prescribed in section 19 of the Act, for inquiry into the allegation of violation of human rights by the members of the Armed forces, even in an area unaffected by insurgency which does not require exercise of some extraordinary powers by the Armed forces.

Here, we have to distinguish between the inquiry into complaints against armed forces and the others i.e., Section 19 and Section 17 respectively of Protection of Human Rights Act, 1993.

Section 17 of 1993 Act states as follows: -

"The Commission while inquiring into the complaints of violations of human rights may;



- i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that –

- a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint of its own.
  - b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

Under the above provision, if the Commission feels it necessary, it can conduct an inquiry on its own even without a report from the respective Government.

While Section 19 states that,

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely: -

- a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
- b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under subsection (3) to the petitioner or his representatives.

Under this Section the Commission can proceed only after getting the report from the Central Government, and it cannot go on to inquire the matter on its own.

This provision has been added mainly to give adequate protection to the Armed forces acting in insurgent areas without the fear of being prosecuted unnecessarily so that they can discharge their duties effectively. But the Section does not make any distinction between activities done by Armed forces in respect of disturbed areas and in respect of other areas. This blanket protection given to Armed forces restricts the Commission from acting against them even if their act is illegal in general sense. The Hyderabad case clearly bring out how Section 19 can be abused to immunise armed forces from action by the NHRC or other civil authorities in respect of violations of human rights committed by them in areas other than disturbed areas.

#### IV.1.7. The Case of Genocide

##### IV.1.7.1. *Kashmiri Pandit's Case*:<sup>25</sup>

Human rights are the basic rights, which are available against the State which not only have the duty not to violate human rights but also have a duty to protect its subjects from the human rights violations committed by the others ('others' include both its citizens and foreigners). If the State or its agencies were not able to protect its citizens against human rights violations committed by the others, then the whole concept of Welfare State would be of no use. The tale of Kashmir Pandits case is one in which the Principal Human Rights Protection agency failed in its duty to assess the Human Rights violations committed against Kashmiri Pandits by the Militants. In this case the NHRC assumed the jurisdiction over the matter after a long debate as the matter falls within the jurisdiction of Jammu and Kashmir but fell short of fulfilling its duty.

The analysis of this case consists of four parts. Part- I deals with the facts narrated by the complainants (i.e., Panun Kashmir Movement & All India Kashmiri Samaj). Part- II deals with facts as adduced by the respective Governments. Part- III

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<sup>25</sup>. *National Human Rights commission, Case No. 938/94-95: 1181/94-95: 802/94/95: 782/96-97. See also Indian Journal of International Law, vol. 40 (2000), pp. 867-886.*

contains the analysis given by the NHRC on the basis of the two reports. Finally Part-IV is a Critical Analysis of the case.

#### IV.1.7.1.1. *Part-I. Claims made by Complainants:*

On its second memorandum dated 7<sup>th</sup> June 1994 the Panun Kashmir movement requested the Commission to investigate the violations of human rights of the Hindu minority of Kashmir, the negligence in the prevention of such violation by public servants and institutions of the Government, and the acts of terrorism that inhibited and vitiated the enjoyment of human rights by this community. It further asserted that, “terrorism in Jammu and Kashmir is a process of political violence, which has specific political commitments aimed to separate Jammu and Kashmir from India and annex it to Pakistan”. It added that, “terrorist violence in Kashmir is a religious crusade to force a second partition on India” and to “Islamize the State” in order to separate the State from secular political and social organisation of India and integrate it with the Islamic State of Pakistan.

Moreover, the terrorist organisations in the State and those operating in Pakistan have unleashed an organised campaign to exterminate Hindus in Kashmir. The terrorist killing have been accompanied by torture and more than 800 innocent Hindus had been murdered in cold blood between January 1990 and August 1990. The ethnic cleansing of Hindus has been carried out in accordance with a well-designed plan including the preparation of ‘hit-lists’ which were even published in newspaper or displayed as wall posters. Rumours were also spread regarding the “deep involvement of Hindus in espionage for the Government of India”. In these circumstances, Hindus had no option but to leave their homes.

The memorandum further state that more than 16,000 houses belonging to the Hindus had been burnt down and 102 temples demolished and their lands and buildings usurped. But the Union of India and the State of Jammu and Kashmir failed in its duty to provide security. Approximately 3 Lakh Hindus were displaced

during 1989-90 and equal number of the community were forced to leave earlier from 1947 to 1989, making a total of 7 lakh member of the community scattered. Hindu employees and students were not allowed to work thus making them jobless. All these were aimed at eliminating Hindus from the valley, thus making the Valley an Islamic Society. Hence their activities amounted to 'Genocide' as per the Genocide Convention 1948 and should be investigated and dealt with.

The complaint from the All India Kashmiri Samaj contain the similar facts: It stated that the percentage of Hindus in the valley declined from 15% in 1941 to 5% in 1981 and 0.1% in 1991. It refer to "assassination of Hindus and some patriotic Muslims too". It also gave the names of 17 prominent Kashmiri Pandits who had been killed, including advocates, judges, scientists, journalists, government officials, intellectuals and poets, teachers and social activists. The Commission clubbed both the complaints and issued notice to the Chief Secretary of the Government of Jammu & Kashmir calling for detailed reports on 29 September 1994.

#### *IV.1.7.1.2. Part-II. Response of State and Union Governments:*

The response of the State Government of Jammu and Kashmir acknowledged the fact of rape, arson, kidnapping and mass murder of Hindus. The Government report further stated that Hindus were not the only targets but Muslims too were. The militants sought to suppress political dissent and create fear and terror, and that they sought the liquidation of civilian population, which extend help to security forces in their operations against terrorists. Between 1990 and 1994 it stated that 93 Temples, 27 Mosques, 2 Gurudwaras had been destroyed and 508 Hindus, 2849 Muslims and 42 Sikhs were killed. The State expressed the view that the Hindu Community had been targeted as part of design to communalise the State, but that the militants had shown no regard for any community, all having suffered in their hands. As regarding migration 43,363 Hindu families went to Jammu until 1991 and 28,713 families went to Delhi, 5000-7000 Muslim families had also migrated. Between 1992-94 a further 49 Kashmiri families had left the valley.

The Government of India filed a detailed response on 20<sup>th</sup> October 1997. It acknowledged that, “due to targeted attacks by the militants against innocent civilians in the early years of the ongoing terrorist violence in Jammu and Kashmir coupled with calls by fundamentalist terrorist groups to Kashmir Pandits to leave the valley, the vast majority of the Kashmir Pandits and other minority communities were forced to migrate”. With regard to the number of persons who had left the valley, the response of Union Of India stated that 49,000 Hindu and Sikh families had been registered, as 1468 Muslim families had been registered, with “a significant number of other Muslim families not having registered themselves due to fear of militant reprisals against their relatives in the valley.” The government categorically denied that, “failed in its duties to secure the life, liberty and property of the citizens” referring *inter alia*, to the “multifaceted” fight against terrorism and sacrifices made by the security forces in addition to civilians. It referred, in addition to the holding of elections and relief schemes. It forwarded certain details of the relief and other measures taken to help the Kashmiri Pandits in matters relating to the employment and education and the *ex-gratia* payments made for those who had been killed as a result of the activities of militants. Government of India report states that 719 Hindus, 6219 Muslims, 45 Sikhs and 267 others in addition to 7687 militants, 1416 security personnel were killed. Also Union of India stated that the 1993 Protection of Human Rights defined “human rights” in Sec.2 (1)(d)<sup>26</sup> of the Act.

Does Protection of Human Rights Act 1993 include “Genocide”? Section 2(1)(f) of the Act further stated that “International Covenants” means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966. The response added that the Genocide Convention was not mentioned in Sec. 2(1)(d) or (f) of the Act “and, therefore, no application can be entertained on the basis of the 1948 Convention by

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<sup>26</sup>. “... ‘human rights’ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”

this honourable Commission”. It was further argued that the Genocide Convention dealt with the prevention and punishment of the crime of Genocide and that it specifically required under article V.<sup>27</sup>

In its rejoinder, the Panun Kashmir Movement traced the history of the Genocide Convention observing, *inter alia*, that the Government of India, among others, had inscribed the question of Genocide on the agenda of the General Assembly on 2 November 1946 and that on 11 December 1946 the General Assembly had unanimously adopted resolution 96 which affirmed that Genocide is a crime under international law, and requested the Economic and Social Council to undertake studies that would lead to the drafting of a Convention on the subject of Genocide. After recalling that the Genocide Convention had been unanimously adopted as part of resolution 260 (III) on 9 December 1948, the rejoinder noted that India had signed the Convention on 29<sup>th</sup> November 1949 and ratified it on 29<sup>th</sup> August 1959. Pakistan had, for its part, signed it on 11<sup>th</sup> December 1948 and ratified the Convention on 12<sup>th</sup> October 1957. The prohibition of Genocide was now “well and truly” considered part of the principles of customary international law, that the Convention had clearly stated that Genocide was a crime “whether committed in time of peace or in time of war”. The rejoinder proceeded to refer to the definition of Genocide in the Convention, as contained in Article II of the Convention and the acts that would be punishable under Article III of that Convention.

It added that the systematic killings of Kashmiri Pandits, the causing of mental and physical disorders to these, the imposing of condition to prevent their birth rate and the organized terrorism unleashed to exterminate them, threatened to destroy and render extinct the Kashmiri Pandits as an ethnic-religious group.

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27. “...the Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of Genocide or of any of the other acts enumerated in article III”.

#### IV.1.7.1.3. *Part-III. Opinion of the Commission on the Complaint and on the Crime of Genocide:*

The Commission analysed Article II & III of the Genocide Convention, 1948 and also various instances of Genocide took place in various parts of the world to find out whether the killings which took place in Kashmir amounts to Genocide or not.

##### *Definition and acts punishable under the Convention:*

##### Article II;

“In the present Convention, Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national (Indians) ethnical, racial or religious group, as such:

- “(a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (b) Deliberately inflicting on the group conditions of life calculated to bring about the physical destruction in whole or in part;
- (c) Imposing measures intended to prevent births within the group;
- (d) Forcibly transferring children of the one group to another group”.

##### Article III;

“The following acts shall be punishable:

- (a) Genocide
- (b) Conspiracy to commit Genocide.
- (c) Direct and public incitement to commit Genocide;
- (d) Attempt to commit Genocide;
- (e) Complicity in Genocide.”

The Commission also took instances of the mass killings of six million Jews by Hitler and also Tutsi massacres of Hutu in Burundi in 1965 and 1972, the Paraguayan massacre of Ache Indians prior to 1974 and the Khmer Rouge killings in Kampuchea between 1975 and 1978, in which reportedly up to some 1 million persons were killed. On studying these illustrations it clearly established that ‘*intention*’ is necessary

to constitute Genocide. 'Intention' here means 'intent' to eliminate the whole class. Also the word 'to destroy' means it must involve, or be conducive to direct or indirect physical destruction of a group or a substantial part of it, by the acts described in Art.II of the Convention. It is also important to note that the reference in the Convention to "imposing measures intended to prevent birth within the group", specifically had in mind the savage eugenics practiced by the Nazis to sterilize or through what has been called "delayed Genocide", destroy the capacity of their victims to reproduce. It had little to do with inadequate housing, or a lack of privacy in the camps-factors, which have been mentioned in the present complaints as preventing births within the group.

The complainants themselves referred to the terrorism in Jammu & Kashmir as "a process of political violence" which had "a specific political commitment aimed to separate Jammu and Kashmir from India and annex it to Pakistan". They added that purpose of "terrorist violence" was to "separate the State from secular, political and social organization of India and integrate it with the Islamic State of Pakistan". The complaint of the All India Kashmiri Samaj, on its part, noted "assassination of Hindus and some patriotic Muslims too". The figures provided by the Union Government showed that both the groups suffered grievous killings, with many more thousand killed by the militants of the latter group.

Summarily, the attacks had not been directed against a particular community i.e., either Hindus or Muslims and there is no intent to eliminate the Hindus in the valley. Hence, their killings could not be considered as the ultimate crime: *Genocide*. Even then the Commission took steps to provide relief to the victims.

The Commission nevertheless urged both the State and Union Governments to enhance their efforts to provide the Pandits with the understanding and assistance that they required in these difficult days. The Commission had itself suggested a number of measures to this end, including the establishment of a High-Level Committee, which includes a nominee of the Commission, to go into the full range of



the practical problems faced by the Pandits. It expects and trusts that the Committee will function with a high sense of responsibility and expeditiousness in the tasks envisaged for it. The Commission looked forward to receiving periodic reports on the work of this Committee, as it propose to continue to monitor developments in regard to the Pandits on a regular basis, not least in relation to the proper listing and protection of the properties they left behind, the restoration of those properties and the statutory nullification of coerced alienations and dispossessions and illegal occupations. The Commission understood the reasons in the prayer of the complainants that an enquiry be held into the causes and circumstances leading to their present suffering. The Commission would like to observe, in this connection, that it always ready and willing to examine and take action upon complaints relating to specific matters, as and when these brought before the Commission.

#### *IV.1.7.1.4. Part-IV. Critical Analysis of the Case:*

In the instant case the NHRC analysed in detail whether the killing of Kashmir Pandits amount to Genocide or not. After going through various factors, it came to the conclusion that there was no specific intention to kill 'Hindus' alone as there was ample proof for the massacre of Muslims too, hence this act did not amount to Genocide. But the Commission failed in its assessment because it assessed the intention of the killers on the basis of number of persons killed (i.e., both Hindus and Muslims) not on the basis of motive and subjective satisfaction of the murderers. To analyse the intention, the Commission should have taken into consideration of history of the problems, motive of the offenders, nature and purpose of the support from across the borders. When we study the history, one could easily find out that the partition of India into India and Pakistan as took place in 1947 because of Pakistan's insistence on the two-nation theory on the basis of two religions; right from the day one Pakistan has been waging a Proxy War against India. The NHRC even endorsed the view of the Government of India that, " the main aim of killings is to secede Kashmir from India and annex it to Islamic State of Pakistan" and in that

process some Hindus and some patriotic Muslims too were killed. The words, “to make it an Islamic State,” means that as long as Hindus are there in Kashmir the State could not be converted into an Islamic State. Hence, either they should be killed or driven off and in that process the terrorists also killed some “patriotic Muslims” who came in way of killing the Hindus. Hence, the main ‘intention’ was to eliminate the ‘Hindus’ from the valley. This aspect was not noticed by the Commission. It would appear that the Commission failed to distinguish between the pro-Pakistani terrorists who believe in ethnic cleansing of Kashmir off Hindus, and the pro-independence terrorists.

Also the Commission failed to take cognisance of another type of Genocide i.e., *Genocide of a national*. Article II of Genocide Convention 1948 reads as follows:

“In the present Convention, Genocide means any of the following acts committed with intent to destroy in whole or in part, a national, ethnical, racial or religious group”.

The statement of the Government of India clearly states that “Hindus and some Patriotic Muslims too” were killed. In other words, persons who were loyal to the Indian nation were killed which clearly amounted to Genocide. Further, the Commission rejected evidence of ‘cultural genocide’ on the ground that that concept is not recognised in the Convention. But the evidence so rejected could have strengthen a finding of intention to destroy a national or religious group.

Secondly, with regard to the number of Hindus and Muslims killed by the terrorists, there was a substantial difference in figures given by the complainants and both the Governments. Even then the Commission recognized the official figures produced by both the Governments. What the Commission should have done was to have gone into independent inquiry under Section 17 (ii)<sup>28</sup> of Protection of Human Rights Act 1993. It is astonishing that while the Commission initiated independent

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<sup>28</sup>. “... without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry”.

inquiry on its own for other relatively less grave offences like custodial death, rape etc., but failed to initiate an independent inquiry into the allegation of Genocide, “the crime of crimes”.

Thirdly, even after having the knowledge of such grave human rights violations through various forms of media, the Commission did not feel the need to take up the matter '*suo motu*'. It had to wait till the complainants come before it which means that if there were no complainants, these gross human rights violations would have gone largely unnoticed.

Last but not the least, no proper relief measures were implemented, no proper compensation was awarded to the victims, no guidelines were given to the Government, no proper recommendations were given to the government. The Commission should have recommended to take up this issue on the international plane, so that Pakistan could be made accountable for its acts, as it is also a party to the Geneva Convention 1948. 'Pandits' are still in a peculiar state of life, which can be very well described as “Refugees in their own homeland”.

#### IV.1.7.2. *The Gujarat Riots; 2002:*

On 1<sup>st</sup> March 2002, the National Human Rights Commission, *suo motu* took cognisance of the media reports both print and electronic about the Godhra Train incident and aftermath communal violence in the State of Gujarat.<sup>29</sup> The Brief facts of the case are as follows: -

Indian Government officials have acknowledged that since 27<sup>th</sup> February 2002, more than 850 people have been killed in communal violence in the State of Gujarat. The violence in Gujarat began after a Muslim mob in the town of Godhra attacked and set fire to two-passenger coach at a railway station at Godhra and burnt alive some 58 human lives a large numbers of whom were women and children and the chain of savage revenge killings and vandalism that spread in many parts of the

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<sup>29</sup>. *National Human Rights Commission case No. 1150/6/2001-2002.*

State for about two months since the Godhra incident.<sup>30</sup> It appears to qualify as acts of *Genocide* under the Convention on the Prevention and Punishment of the Crime of Genocide 1948 ('the Genocide Convention'). The Gujarat government chose to characterize the violence as a "spontaneous reaction" to the incidents in Godhra.<sup>31</sup>

The State Government has failed to provide adequate and timely humanitarian assistance to internally displaced persons in Gujarat. Government authorities are also reported to be absent from many Muslim camps. The relief camps visited by the Human Rights Watch were desperately lacking in the governmental and international assistance. Both the Godhra incident and the attacks that ensued throughout Gujarat have been documented in meticulous detail by the Indian Human Rights and Civil Liberties groups and by the Indian Press. The violence in Gujarat has triggered widespread outrage in India. Responding to growing international scrutiny into the violence, however, the Indian government has stated that it "does not appreciate interference in [its] internal affairs".<sup>32</sup> National Commission for Minorities (NCM) and National Commission for Women (NCW) have also been severely criticized the Gujarat government's response to the violence and its aftermath.<sup>33</sup>

The term 'human rights' is defined to mean the Right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India<sup>34</sup> and the International Covenants are defined as the "International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966".<sup>35</sup>

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<sup>30</sup>. V.S.Mani, "Wanted urgently a National Law on Genocide", *The Hindu*, 10<sup>th</sup> April 2002, p. 7.

<sup>31</sup>. [www.hrw.org/organisation/reports/2002/india](http://www.hrw.org/organisation/reports/2002/india).

<sup>32</sup>. Ibid. see also *India warns against criticism over Gujarat* (Agence France-Presse), April 22, 2002.

<sup>33</sup>. *The Hindu* (New Delhi), 7<sup>th</sup> April 2002, p. 1.

<sup>34</sup>. Section 2(1) (d) of Protection of Human Rights Act, 1993.

<sup>35</sup>. Section 2(1) (f).

It is, therefore, in the light of this Statute that the Commission must examine whether violations of human rights were committed, or were abetted, or resulted from negligence in the prevention of such violation. It must also examine whether the acts that occurred and infringed the rights guaranteed by the Constitution or those that were embodied in the two great International Covenants cited above.

On April 3, the NHRC released the preliminary findings<sup>36</sup> of its report on the violence, a strong indictment of the failure of the Gujarat Government to control the violence. They are as follows: -

- i) The Commission found that it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-state players acting within its jurisdiction. The first question that arises, therefore, is whether the State has discharged its responsibilities appropriately in accordance with the above.
- ii) The Commission is constrained to observe that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred.
- iii) An ancillary question that arises is whether there was adequate anticipation in regard to the measures to be taken, and whether these measures were indeed taken, to ensure that the tragic events in Godhra would not occur and would not lead to serious repercussions elsewhere.
- iv) The Commission has noted that while the Report<sup>37</sup> states that the Godhra incident was “premeditated”, the Report does not clarify as to who, precisely, was responsible for this incident. Considering its gruesome nature and catastrophic consequences, the team of the Commission that visited Godhra on 22<sup>nd</sup> March 2002 was concerned

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<sup>36</sup>. See Proceedings of the NHRC in this case.

<sup>37</sup>. Gujarat Governments Report on the incidents in Gujarat after the burning of the Sabarmati express Train on 27<sup>th</sup> February 2002. p. 5.

to note from the comments of the Special IGP, CID Crime that while two cases had been registered, they were being investigated by an SDPO of the Western Railway and that no major progress had been made until then. In the light of fact that numerous allegations have been made both in the media and to the team of the Commission to the effect that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to 'influence' the working of police stations by their presence within them, the Commission is constrained to observe that there is a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations.

- v) The Commission has, however, taken note of the views of the State Government in respect of the media. The Commission firmly believes that it is essential to uphold the Right to Freedom of Speech and Expression articulated in Article 19(1)(a) of the Constitution, which finds comparable provision in Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966. It is, therefore, clearly in favour of a courageous and investigative role for the media. It has to be noted that the right under Article 19(1)(a) is subject to reasonable restrictions under Article 19(2) of the Constitution.
- vi) On the question of compensation, the Commission has noted from the Report that Rs. 1 lakh will be paid in all instances, "thus establishing parity." The Commission has also noted the contents of the report which state that "no guidelines were given by the Home Department regarding the type of cases in which Prevention Of Terrorism Ordinance (POTO) should or should not be used" and that, subsequent to the initial decision to apply POTO in respect of individual cases in Godhra, the Government received legal advice to defer "the applicability of POTO till the investigation is completed" (pp. 66-67). The Commission intends to monitor this matter further, POTO having since been enacted as a law.
- vii) The Commission has taken good note of the "Rescue, Relief and Rehabilitation Measures" undertaken by the State Government. Unfortunately, too, numerous complaints were received by the team of the Commission regarding the lack of facilities in the camps. The Commission, however, considers it essential to monitor the on-going implementation of the decisions taken since a great deal still needs to be done.

In the light of the above findings, the Commission is duty bound to continue to follow developments in Gujarat consequent to the tragic incidents that occurred in Godhra and elsewhere. Under its Statute, it is required to monitor the compliance of the State with the rule of law and its human rights obligations. This will be a continuing duty of the Commission, which must be fulfilled. Parliament having established the Commission with the objective of ensuring the “better protection” of human rights in the country, expects thereby that the efforts of the Commission would be additional to those of the existing agencies and institutions.

### **Recommendations**

The Commission made the first set of recommendations for the immediate consideration of the Central and State Governments in this Case. The Recommendations include Law and Order; Relief Camps; Rehabilitation and Police Reforms. The brief of the recommendations is as follows:

#### *1. Regarding the Law and Order*

- i) Some of the cases should be entrusted to the CBI, i.e., Godhra Incident, Chamanpura (Gulbarga Society) incident, Naroda Patiya incident, Best Bakery case in Vadodara and the Sadarpura case in Mehsana district.
- ii) Special Courts should try these cases on a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat. Special Prosecutors should be appointed as needed.
- iii) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI.
- iv) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.
- v) Action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter.

## *2. Relief Camps:*

- i) Visits to camps by the senior Political leaders, NGOs and Officers should be organized in a systematic way in order to restore confidence among those who have been victimized.
- ii) Senior officers of the rank of Secretary and above should be given specific responsibility in respect of the groups of camps.
- iii) Special facilities/camps should be set-up for the processing of insurance and compensation claims.

## *3. Rehabilitation:*

- i) The Commission recommends that places of worship that have been destroyed be repaired expeditiously.
- ii) Adequate compensation should be provided to those who have suffered. Efforts should be made to involve HUDCO, HDFC and International Financial and other agencies and programmes in this process.
- iii) The role of the NGOs should be encouraged and be an intrinsic part of the overall effort to restore normalcy.
- iv) The pharmaceutical industry should also be requested to participate in the relief.
- v) Special efforts will need to be made to identify and assist destitute women and orphans, and those subjected to rape. The Women and Child Development Department, Government of India and concerned International agencies should be requested to help.

## *4. Police Reform*

The Commission would like to draw attention to the deeper question of police reform, on which recommendations of the National Police Commission and of the National Human Rights Commission have been pending despite repeated efforts to have them acted upon.

The NHRC's team visited the violence area between 19-22<sup>nd</sup> March 2002, and collected the opinion from the spot. On the base of that visit, the NHRC submitted a Confidential Report to the State of Gujarat and Central Government for their



comments within a specific period. On 30<sup>th</sup> June 2002, the Commission received by fax a reply from the Government of Gujarat to the Commission's Proceedings of 31<sup>st</sup> May 2002. On 1<sup>st</sup> July 2002, the Commission also received a response from the Ministry of Home Affairs, Government of India. The Commission has carefully considered that reply. In accordance with paragraph 7(B) of its Proceedings of 31<sup>st</sup> May 2002 the reply is being made public, together with the Chief Secretary's letter dated 30<sup>th</sup> May 2002.

The Commission indicated that it intended to continue to monitor the situation with care and it called upon the Government of Gujarat to report to it again, on all of the matters covered in the Comments and Recommendations contained in those Proceedings, including the Confidential Report of 1<sup>st</sup> April 2002 transmitted to it earlier.

#### **IV.1.8. Overlapping Judicial Intervention**

##### **IV.1.8.1. *BSF Employment Case*:<sup>38</sup>**

The Commission received a complaint from Rajeev Kumar Singh, resident of Aligarh District, Andhra Pradesh. The complainant stated in his complaint that he was appointed as a constable with the Commandant 40<sup>th</sup> Battalion BSF Tek, Headquarters, Bidda (Jammu) with effect from 04/04/1986. On 06/08/1996 complainant fell ill and was admitted to battalion hospital from where he was shifted to the Jammu Security Force hospital. After treatment he was discharged on 22/08/1996 and was given movement order No.181/MCD/96/2145-46 and on same day he reported for the duty in his unit at Niasi Bidda (Jammu), but he was not allowed to join. After eight days he was paid salary for the month of August 1996. He returned to his home and made correspondence with the concerned authorities, but to no avail. He served a notice through his legal counsel on 28/02/1998 to various higher authorities also of the said unit but unfortunately no response was received. Hence, the complainant sought intervention of the Commission and also

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<sup>38</sup>. *National Human Rights Commission, Case No. 175/9/98-99.*

necessary direction to the concerned authorities to take the complainant back in the Unit. The Commission asked a report from the Under Secretary, Ministry of Home, Government of India regarding this case. In response to the Commission's direction, a report dated 28/07/1999 was received from the Under Secretary. After considering the report, the Commission observed that as the Complainant had already approached the Court for redressal of his grievances the matter was *sub judice* and hence the Commission would not like to interfere in this matter.

In this case even though the Commission has the power to intervene in any proceeding pending before a Court as per section 12(b)<sup>39</sup> of the Act, the Commission refused to do so because the matter is under the Writ Jurisdiction of the High Court. As a Writ can lie only against violation of Fundamental Rights there is no need for the Commission to host parallel proceedings.

#### IV.1.8.2. *Women's cell Case:*<sup>40</sup>

In this case, the NHRC refused to interfere, as the matter was '*sub judice*' i.e., the judicial process was set in motion on a particular issue, the Commission had the duty to refrain from entertain the case.

The brief of the case are as follows: The petitioner, Dr. (Smt.) Ansom Sebastian was a scientist in the Centre for Earth Science Studies, Thiruvananthapuram. According to her she was being harassed by her colleagues and superiors because of professional jealousy and rivalry. On 16.10.1999 the management of the said institute received two cross complaints, one from Dr. K. Soman, Head, RAD against Dr. Ansom Sebastian that she had used filthy language against him. The cross complaint was filed by Dr. Ansom Sebastian against Dr. K. Soman after two days alleging that Dr. Soman has manhandled her on that date. Preliminary inquiry was ordered on both these cross complaints. The complainant did

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<sup>39</sup>. "... intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;"

not participate in the inquiry. She filed a police complaint on 18.10.99 with regard to the alleged incident of 16.10.99.

In this case Dr. Ansom Sebastian filed many writ petitions in the different stages of the case asking for an impartial inquiry. Hence, the High Court of Kerala established a Committee for an impartial inquiry of this case. In view of the fact that the petitioner has already approached the Kerala High Court and one of the several petitions filed by her was still pending in the Court. Hence the NHRC closed the case under section 36(2) of the Act.<sup>41</sup>

#### IV.1.9. State's Duty to Compensate for Public Transport Accidents

##### IV.1.9.1. *Boat Tragedy Case*<sup>42</sup>

The complaint related to a boat tragedy which happened at 3 A.M. in the night of 19-20 October, 1996 near Bela village, Bihar, in which 30 persons died by drowning including one daughter and two sons of the complainant. He demanded investigation of the boat tragedy as no adequate precautionary steps were taken by the administration, no articles of the deceased were given to the heirs of the victims nor any record was maintained. Moreover this tragedy was deliberately done by some bad elements in order to loot the article of the boat passengers.

The Commission called for a report from the Police, which stated that an FIR under Section 304-A<sup>43</sup> of IPC had been registered with respect to the incident. Even though the tragedy was admitted, the legal heirs of the deceased were not given any compensation, fixed by the court. On the basis of that the Commission directed the State to pay Rs. 1,00,000/- for each victim's legal heirs.

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<sup>40.</sup> *National Human Rights Commission, Case No. 274/11/2000-01*

<sup>41.</sup> Article 36(2) says that, "the Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force."

<sup>42.</sup> *National Human Rights Commission, Case No. 18447/96-97.*

<sup>43.</sup> Causing death by negligence— "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

The State of Bihar filed a review petition to review the order of the NHRC stating that what happened was a tragedy and that the administration was not responsible for the payment of compensation. The Commission rejected the review petition stating that, the right to life included the right to receive compensation in the particular facts and circumstances of the case. The victims of this boat tragedy were required to be rehabilitated.

In this case even though the State was not directly responsible for the tragedy, the NHRC fixed the responsibility on the State because it was the responsibility of the State to ensure security of public transport services. The State had the duty to protect citizens from the inhuman or illegal acts of other citizens also.

#### IV.2. Conclusion

Human rights are considered to be the basic Fundamental Rights available against the State, which is reflected in the Part III of our Constitution. This is very much evident from the primary function of the NHRC i.e., to inquire not only alleged violation or abatement of human rights but also negligence by a public servant in the prevention of such violation.<sup>44</sup> Even though this right is considered to be the most basics of any right, Criminal law system in India does not provide for an institutionalized payment of compensation to a victim of a Crime/ Human Rights violation for any 'loss' or 'injury' physical, mental or psychological-caused to him by the offender. Thus, Criminal law system in India, which rightly shows its deep concern for an offender and zeal to bring him back to the social mainstream. However, it does not, unfortunately, exhibit its sensitivity to a victim of the crime.<sup>45</sup> Moreover, there is neither a comprehensive statute nor a statutory scheme providing for compensation to a victim and for his rehabilitation.

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<sup>44.</sup> Section 12 (a) of Protection of Human Rights Act 1993.

<sup>45.</sup> K.I.Vibhute, "Compensating victims of crime in India: An Appraisal", *Journal of Indian Law Institute*, vol. 32, 1990, p.60.

However, the Criminal Procedure Code (Cr.P.C.) provides for compensation to the victims of crime and their dependents only in a limited manner. Sections 357, 421 and 431 of Cr. P.C., which are inter-linked, constitute such a compensatory scheme. It can be used by a competent Court to compensate the victims of a crime.

Further, the Courts in India, for reasons known best to them, unfortunately, have hardly invoked their statutory (discretionary) powers to compensate the victims of crime. The Fifth Law Commission between 1969 and 1971, indicating the fact that Courts in India are 'not particularly liberal' in utilizing these provisions<sup>46</sup>, observed that 'it is regrettable that our Courts do not exercise their statutory powers under this section as freely and liberally as could be desired.'<sup>47</sup>

Two decades after the Fifth Law Commission's observations, in 1988, none other than the Supreme Court, recalling the judicial apathy and appealing to all Courts to use their Statutory (compensatory) power liberally, had to be observed.

Section 357 (3) is an important provision but Courts have *seldom* invoked it perhaps due to ignorance of the object of it. It empowers the Court to award the compensation to the victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to the crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to the crimes. It is indeed a step forward in our criminal justice system.<sup>48</sup>

In 1996, the Fourteenth, Law Commission also expressed its displeasure over the compensatory scheme outlined in the Cr.P.C. and opinion that it deserves a positive review. The compensation, according to the Law Commission, should not

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<sup>46.</sup> Law Commission of India, 41<sup>st</sup> report, *the Code of Criminal Procedure*, Vol. 1 (Government of India, 1969), p.356.

<sup>47.</sup> Law Commission of India, 42<sup>nd</sup> report, *Indian Penal Code*, See also *Supra*, n. 4, p.52.

<sup>48.</sup> *Harikishan and State of Haryana Vs. Sukhbir Singh*, AIR 1988 SC 2127.

be limited only to fines, penalties and forfeitures realized. The Law Commission has added that the State should also share the responsibility of compensating the victims of the crime from its own funds: (i) in case of acquittals, or (ii) or where the offender is not traceable but the victim is identified, or (iii) and also in cases when the offence is proved.

This aspect of its jurisprudence was clearly made out by the Human Rights Commission. In all the cases discussed above, the Commission has primarily awarded the compensation of interim nature to the victim. In Manoj Kumar case,<sup>49</sup> the Commission ruled that payment of compensation is irrespective of fixing the responsibility i.e., it imposed a duty on the State to compensate the victim for human rights violation by its agents even if the persons responsible for human rights violations are not identified. Thus, instilling confidence in the minds of the victims, the same was reiterated in a number of cases including Perimuthoo Subbaramiah Case.<sup>50</sup> The Commission also has initiated independent inquiry in some of the cases. When judiciary has actively involved in the case, the Commission has committed itself not to be involved in the same<sup>51</sup>.

#### *Compensatory Writ Jurisdiction:*

Recently, the State High Courts and the Supreme Court of India, exercising their writ jurisdictions, have also evolved a compensatory writ jurisdiction to enforce rigorously Article 21 of the Constitution.<sup>52</sup> The Supreme Court, in the recent past, in consonance with its liberal interpretation of Article 21<sup>53</sup> held that a victim of Human Rights violation like any other person has the right to live with dignity.

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<sup>49.</sup> *National Human Rights Commission Case No. 7955/96-97*

<sup>50.</sup> *National Human Rights Commission Case No. 406/1/97-98/CD*

<sup>51.</sup> *BSF Employment Case, National Human Rights Commission Case No. 175/9/98-99*

<sup>52.</sup> *Rudul Shah Vs. State of Bihar*, AIR 1983, SC 1086, *Sebastian M. Hongery Vs. Union of India*, AIR 1984 SC 1026.

<sup>53.</sup> Article 21 guarantees the right to life and personal liberty to an individual and mandates the State not to, except according to the procedure established by law, deprive a person of his life or personal liberty.

However, both the schemes-outlined in the Cr. P.C. and evolved by the higher judiciary by using its writ jurisdiction are neither comprehensive in nature nor effective in practice. The former, as stated earlier, is unbelievably under-used rather un-used, by the Courts in India. While the compensatory writ jurisdiction, due to some inherent weakness associated with the Public Interest Litigation and the implementation by the Executive of the orders issued there under, has not been effective in wiping out the tears of the helpless and unfortunate victims.

At this juncture steps in the NHRC with its parent legislation, Protection of Human Rights Act, 1993, was drafted in such a way that, the Commission not only recommends for punishing the offender but also for awarding immediate interim relief to the victim so that he/she may be in a better position to survive. In that respect, the Provision to be frequently invoked by the Commission under the Section 18(3) of the Act.<sup>54</sup>

On the above analysis of various cases decided by the Commission, one could easily come to the following functions of the commission:

- It immediately recommends for awarding the interim relief to the victims irrespective of conviction.
- It recommends for appropriate action against the offender and monitors the same.
- It recommends for taking steps to prevent further human rights violations.

In some of the cases the Commission has recommended the state to award the compensation to the victims and to recover the said amount from the culprit. It is also emphasized that failure on the part of the prosecution to fix responsibility should not relieve the State from awarding the compensation. In other words, awarding the compensation to the victim is irrespective of the conviction, thus, safeguarding the right of the victim. Also, by inquiring a matter *suo motu*, the

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<sup>54</sup>. Section 18(3) of Protection of Human Rights Act 1993 says that “..... recommend to the concerned Government or authority for grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary”.

Commission ensures that even the voices of the suppressed class of people are being made to be heard at appropriate level without fear of anybody thus instilling confidence in the mind of the people that the rights are protected.

To sum up from the above cases it is clear that the Commission is doing a pretty good job, which our criminal justice system and our justice system in general failed to do. Thus, the Commission's activities certainly reassure the victims that they are treated with respect and are allowed to live with human dignity in India in consonance with the constitutional spirit and mandate.



**CHAPTER V  
CONCLUSION AND  
SUGGESTIONS FOR IMPROVEMENTS**

## CHAPTER V

### CONCLUSION AND SUGGESTIONS FOR IMPROVEMENTS

Every one has the right in all circumstances to be treated with humanity and with respect for the inherent dignity of the human person. Man has the rights to bodily integrity and the means necessary for the proper development of his life. Human rights are based on mankind's increasing demand for a decent civilised life in which the inherent dignity of each human being will be respected and protected. Human rights are fundamental to our nature, without them we cannot live as human beings. The notion of human rights falls within the framework of International law and Constitutional law, the purpose of which is to safeguard by institutionalised means the rights of human beings against violations committed by the organs of the State and to promote the establishment of humane living conditions and all-round development of the human personality.

The recognition first at national and later at International level of human rights is one of the most remarkable manifestations of achieving the object of protection of human rights. The human rights situation found its significance and recognition internationally that is after the Second World War. During the war shocking crimes were committed against humanity. Under this shadow of hatred and fear, it was natural for the United Nations (UN), which was established in 1945 to give priority to the recognition and protection of human rights.

The Economic and Social Council, a principal organ to the UN concerned with promotion and protection of human rights formed in 1946, the Commission on Human Rights, with power to deal with any matter concerning human rights. The Commission drafted the Universal Declaration of Human Rights, which was soon adopted by the General Assembly on 10<sup>th</sup> December 1948. Another achievement of the Commission on Human Rights was the drafting of the International Covenant on Civil and Political Rights; The Economic, Social and Cultural Rights; and Optional Protocol to the Covenant on Civil and Political Rights, both of which were adopted by the General Assembly in 1966 and came

into force in 1976. Both the Covenants principally deal with rights which were to be enjoyed by individuals.

However, the two Covenants differ in respect of the machinery set up under them for the implementation of the rights enshrined therein. In the case of the International Covenant on Civil and Political Rights it is the Human Rights Committee or the organ established by the States Parties to this Covenant. In the case of the International Covenant on Economic, Social and Cultural Rights the implementational machinery is a special committee appointed by the Economic and Social Council assisted by the Commission on Human Rights and the specialized agencies. The Human Rights Committee consists of persons serving in their individual capacity and thus work independently, whereas the Commission on Human Rights consists of the representatives of Governments. The importance of the Commission on Human Rights can be assessed by the fact that it is the only Commission specially referred to in the Charter. The Commission makes studies and recommendations either on its own initiative or at the request of General Assembly or Economic and Social Council. Similarly under what conditions individual petitions complaining of Human Rights violations are to be allowed and how they are to be treated, has been much discussed by the Commission on Human Rights.

Towards the preservation of human rights, the Indian State has adopted for itself a comprehensive charter of rights enshrined in its Constitution as Fundamental Rights and Directive Principles under parts III and IV respectively. It is also a party to many of International Conventions on Human Rights. In addition, a free press and independent judiciary help in maintaining standards of human rights. If we analyse the history of the realisation of human rights in India, it shifts back us to the pre-independence period when the national liberation struggle was stirred up against the British tyranny. And, after independence, India evolved its own normative and institutional welfare. However, the Emergency of 1975-1977 gave a shock treatment to the Indian institutions and constituted a wake up call for the protection of civil liberties. Thus the NGOs, Media and

Judiciary began to play a pro-active role in this regard. But terrorism in Punjab, Kashmir and the North-East led to the introduction of the draconian preventive detention laws. The TADA was adopted to suppress terrorism and militancy especially in the States of Punjab and Kashmir, and came to be largely misused by the police. Various incidents of atrocities committed on Women, Child Labour and Prostitution, increase in slums, and above all human rights violations by the Police authorities and Military personnel came to light. This led to the denouncement of Indian human rights record by Foreign Non-Governmental Organisations like Amnesty International, Asia Watch etc., which ultimately compelled India to have a strong remedy to build human rights awareness and protection in India. In response to international pressure, Indian Government established the NHRC in 1993, through passing of the Protection of Human Rights Act, 1993.

In order to achieve the object for which the NHRC has been established, it is vested with wide range of powers and functions. And if we analyse the extraordinary range of the functions assigned to the Commission and the scope of powers conferred on it, the Act desires that the Commission must act, and be seen to act all times, with autonomy impartiality and transparency. The Commission is empowered to enquire *suo motu* or in a petition presented to it by a victim. It relates to police mistreatment, bad jail conditions, child labour and prostitution, alleged rape cases, kidnapping, militancy and terrorism and above all a scale of cases relating to custodial deaths. After investigating into the matter, the Commission in most of the cases recommends to the Government to enquire upon the case and give suitable remedy to the persons whose human rights are violated, either by paying compensation or by taking future courses to restrain human rights violations. Further, the Commission has not only either *suo motu* or by complaint received, investigated and recommended the remedy, instead it also stood as a party, to a particular case before the Supreme Court of India. In order to provide remedy to the Chakma Refugees in Arunachal Pradesh, for the first time since its birth, the Commission took the case to the Supreme Court as a party to this case.

The Commission has all the powers of Civil Court trying a suit under Civil Procedure Code. A large amount of recommendations and measures for the protection of civil liberties and for the elimination of various kinds of social evils like, child labour, bonded labour etc., have been undertaken by the NHRC. Measures were taken to create an enhanced level of human rights and to develop a culture of human rights over the length and breadth of the country. In order to curb the custodial deaths and police ill treatment the systematic reforms of police and prisons were started. Constant visits to jails and prisons and various seminars conducted on this regard. Intensive pre-recruitment and in-service training were emphasised. In order to eliminate Child Labour and Child Prostitution, meetings were held with other human rights protective agencies and together suggested the various remedies to curb this evil. Constant visits to State of Jammu and Kashmir were made in order to study the situation and steps were taken to maintain peace in the State. Discussions with various political parties were conducted, asking co-operation in solving major issues relating to human rights violation. And as an important study measure, the Commission undertook to introduce human rights in the curriculum of educational institutions. For this, the Commission recommended free and compulsory education for all children below the age of 14 years, literacy to the illiterate, particularly those young and handicapped. In order to teach on human rights, trained teachers on human rights were specified. All these attempts by the NHRC resemble that the object for which it has been established, is almost fulfilling.

The whole of the process of the NHRC on Human Rights situation in India is very encouraging. Although the traditional set up of ordinary Courts are tried to their fullest extent by their creative role, it was not possible to safeguard the human rights to the utmost. And if we analyse the whole situation of human rights protection in India, we could see nowhere the overlap of functioning of the NHRC and ordinary courts. And it is even not possible find such overlapping because since the NHRC almost reserves its field trying to nip in the bud itself of human rights violations or before the matter comes before the ordinary Court. The existence of NHRC has seen to have lowered very much the burden of trying

the causes of individuals by the traditional Courts. Thus, every measure adopted by the Commission is to make every individual “a soldier of human rights” and create harmony in the environment through minimising violence and preserving the dignity of the common man.

### **SUGGESTIONS:**

As a watchdog body the NHRC has so far done a creditable job in not only promoting human rights in the country, but also raising the image of the nation in the community of States. As the Commission successfully maintains its image of objectivity, impartiality and integrity and has in fact assumed the role of a catalyst in keeping the executive and legislative wings of the Government to stick to its task. Indeed, NHRC has become a focal point for enforcement of all human rights while protecting the basic social order, in a given threat perception, the integrity and security of the State. However, there are certain other drawbacks in the Protection of Human Rights Act, 1993, and certain requisites or atmosphere that have to be provided to the NHRC for its effective function, which need to be re-examined for a better role of the Commission in achieving its objective. They are: -

1. The procedure with respect to armed forces, the dominant role of the Government in the investigation of actions by armed forces constitutes a major hurdle in NHRC pursuing the matter directly and independently. So this hurdle is to be eliminated.
2. As the complaints of human rights violations before the NHRC are increasing steadily, it is imperative that the Commission’s investigative machinery needs to be strengthened. Similarly, the research staff must also be inducted to undertake and promote research in the field of human rights.
3. Regional offices of the NHRC to act as eyes and ears of the Commission at zonal level have to be established throughout the country, to facilitate, immediate action and more direct supervision.

4. More specifically, administrative and law enforcement personnel of the State whose duties are of a nature that involves interacting with the public should be provided with mandatory courses on human rights. This task shall be taken over by special wing to be created under NHRC for dissemination of human rights law.
5. As the Protection of Human Rights Act, 1993 fixes one-year period, as the duration for limitation is somewhat problematic. Because, there may be some socio-cultural factors impeding the immediate filing of complaints, or there may be reasonable and purposeful delay in making the complaint. So the Act has to provide the sufficient leeway for filing the complaint.
6. It is desirable that at the Central and State levels, a separate department for the implementation of human rights should be created. The department would help the Government discharge its various duties relating to human rights more effectively.
7. It should be made imperative for all States to establish a State Commission of human rights and supports its work.
8. The regular feature of NHRC, that is Human Rights Newsletter, presently published in Hindi and English needs to be published in all major regional languages, if the objective of human rights literacy is to reach the various sections of the society.

To conclude, it may be in the fitness of things to state that, in spite of its structural and procedural imperfections, the initial dynamism and zeal that has been displayed by the Commission, has certainly been a progressive step in the right direction. The immediate assumption of jurisdiction by the Commission coupled with the more responsible attitude of the press in giving wide coverage to human rights enforcement aspects have undoubtedly raised the legitimate expectations of the masses to look up to NHRC to play an active role in prevention of human rights violations.

ANNEX I  
THE PROTECTION OF  
HUMAN RIGHTS ACT, 1993



## Annexure I

# THE PROTECTION OF HUMAN RIGHTS ACT, 1993 (10 OF 1994)

*[8<sup>th</sup> January 1994]*

An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows: -

### Chapter I Preliminary

#### 1. Short title, extent and commencement

(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relating to any of the entries enumerated in List I or III in the seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28<sup>th</sup> day of September 1993.

#### 2. Definitions

(1) In this Act, unless the context otherwise requires.

(a) "armed forces" means the naval, military and air force and includes any other armed forces of the Union.

(b) "Chairperson" means the Chairperson of the Commission or the State Commission, as the case may be;

(c) "Commission" means the National Human Rights Commission constituted under section 3;

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or

embodied in the International Covenants and enforceable by courts in India;

- (e) "Human Rights Court" means the Human Rights Court specified under section 30;
- (f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December, 1996;
- (g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;
- (h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992. 19 OF 1992;
- (i) "National Commission for the Scheduled Castes and Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;
- (j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990. 20 OF 1990;
- (k) "Notification" means a notification published in the official Gazette;
- (l) "Prescribed" means prescribed by rules made under this Act;
- (m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;
- (n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

## Chapter II

### The National Human Rights Commission

#### 3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one member who is or has been, a Judge of the Supreme Court;
- (c) one member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

#### 4. Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of

- |   |              |
|---|--------------|
| (a) the Prime Minister  | Chairperson; |
| (b) Speaker of the House of the People  | Member;      |
| (c) Minister in-charge of the Ministry of Home Affairs in the Government of India | Member;      |
| (d) Leader of the Opposition in the House of the People                           | Member;      |
| (e) Leader of the Opposition in the Council of States                             | Member;      |
| (f) Deputy Chairman of the Council of States                                      | Member;      |

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

#### **5. Removal of a Member of the Commission**

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be-

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or

- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

## **6. Term of office of Members**

(1) A person appointed as Chairperson shall hold office for a term of five years the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

## **7. Member to act as Chairperson or to discharge his functions in certain circumstances**

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such Vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

## **8. Terms and Conditions of service of Members**

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

## 9. Vacancies, etc., not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

## 10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own Procedure

(3) All orders decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

## 11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission: -

(a) an officer of the rank of Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

## CHAPTER III Functions and Powers of the Commission

### 12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely: -

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of -

- i. violation of human rights or abetment thereof or
  - ii. negligence in the prevention of such violation, by a public servant;
- (b) intervention in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- (d) review the safeguards provided by or under the Constituion or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the promotion of human rights.

### 13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) 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 or documents;
- (f) any other matter which may be prescribed.

(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 deemed to be legally bound to furnish such information such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other 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 document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it 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 Indian Penal Code 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, 1973, 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 has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.



## 14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission.

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and
- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report subbed to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

## 15. 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 the question which he is required by the Commission to answer

(b) is relevant to the subject matter of the inquiry.

## 16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission-

- (a) considers it necessary to inquire into the conduct of any person;  
or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

## Chapter IV

### PROCEDURE

## 17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it;

Provided that -

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire re into the complaint on its own;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

## 18. Steps after inquiry

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely :

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned 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;

(2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(4) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(6) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

## 19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

## **20. Annual and special reports of the Commission**

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned 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 Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

## **Chapter V**

### **STATE HUMAN RIGHTS COMMISSIONS**

#### **21. Constitution of State Human Rights Commissions**

(1) A State Government may constitute a body to be known as the ..... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court;

(c) one Member who is, or has been, a district judge in that State;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

## **22. Appointment of Chairperson and other Members of State Commission**

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

- |   |                               |
|---|-------------------------------|
| (a) the Chief Minister                      | Chairperson                   |
| (b) Speaker of the Legislative              | Member Assembly               |
| (c) Minister in-charge of the Department -- | Member of Home, in that State |
| (d) Leader of the Opposition in the —       | Member Legislative Assembly   |

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

### **23. Removal of a Member of the State Commission**

(1) Subject to the provisions of sub-section (2), the Chairperson or any other member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be –

- (a) is adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body;
- (d) is of unsound mind and stands so declared by a competent court;
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

### **24. Term of office of Members of the State Commission**

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

## **25. Member to act as Chairperson or to discharge his functions in certain circumstances**

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

## **26. Terms and conditions of service of Members of the State Commission**

The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

## **27. Officers and other staff of the State Commission**

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary. (3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

## **28. Annual and special reports of State Commission**

(1) The State Commission shall submit an annual report to the State 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 State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

## **29. Application of certain provisions relating to National Human Rights Commission to State Commissions**

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely :-

- (a) references to "Commission" shall be construed as references to "State Commission";
- (b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;
- (c) in section 12, clause (f) shall be omitted;
- (d) in section 17, in clause (i), the words "Central Government or any" shall be omitted.

## Chapter VI

### HUMAN RIGHTS COURTS

## **30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State**

Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights 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, for such offences under any other law for the time being in force.

## **31. Special Public Prosecutor**



For every Human Rights Court, the State 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 VII

### FINANCE, ACCOUNTS AND AUDIT

#### 32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes 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).

#### 33. Grants by the State Government

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

#### 34. Accounts and Audit

(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 Central 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 or 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 person appointed by him in this behalf, together with the audit report thereon shall be forwarded only to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

### **35. Accounts and Audit of State Commission**

(1) The State 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 State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State 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 State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the State 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 State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

## **Chapter VIII**

### **MISCELLANEOUS**

#### **36. Matters not subject to jurisdiction of the Commission**

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

### **37. Constitution of special investigation teams**

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

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

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State 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 any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

### **39. Members and officers to be public servants**

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

### **40. Power of Central Government to make rules**

(1) The Central Government may, by notification, make rules to carry 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) the salaries and allowances and other terms and conditions of service of the Members under section 8;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and

- allowances of officers and other staff under sub-section (3) of section 11;
- (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;
- (d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and
- (e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **41. Power of State Government to make rules**

(1) The State Government may, by notification, make rules to carry 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) the salaries and allowances and other terms and conditions of service of the members under section 26;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;
- (c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

#### **42. Power to remove difficulties**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each house of Parliament.

#### **43. Repeal and Savings**

(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

**ANNEX II**  
**NATIONAL HUMAN RIGHTS COMMISSIONS**  
**(PROCEDURE) REGULATIONS**

**ANNEX II**  
**National Human Rights Commission**  
**(Procedure) Regulations**

No.A-11031/1/194/NHRC. In exercise of the powers conferred by sub-section (2) of Section 10 of the Protection of Human Rights Act, 1993 (No.10 of 1994), the National Human Rights Commission hereby makes the following regulations, namely;

**1. Short Title and Commencement:**

(1) These Regulations may be called the National Human Rights Commission (Procedure) Regulations, 1994.

(2) They shall come into force with effect from the 1<sup>st</sup> day of March, 1994.

**2. Definitions:**

In these regulations unless the context of otherwise requires,-

(a) "Act" means the Protection of Human Rights Act, 1993.

(b) The "Chairperson" means the Chairperson of the Commission.

(c) The "Commission" means the National Human Rights Commission.

(d) "Member" means a member of the Commission and includes the Chairperson.

**3. Headquarters of the Commission:**

The Headquarters of the Commission shall be located at Delhi.

**4. Venue of the meetings:**

The Commission shall ordinarily hold its meetings and sittings in its office located at Delhi. However, it may, in its direction, hold its meetings and sittings at any other place in India if it considers it necessary and expedient.

**5. Periodicity of meetings:**

The Commission shall normally have its regular sittings in the first and third weeks of every month, excepting holidays. However, the Chairperson by himself or at the instance of one or more of the members may direct a special sitting of the Commission to be convened to consider any specific matter of urgency.

6. **Secretariat Assistance:**

The Secretary-General, along with such other officers of the Commission as may be directed by the Chairperson, or considered necessary, shall attend the meetings of the Commission.

7. **Agenda:**

The Secretary-General shall, in consultation with the Chairperson, prepare the agenda for each meeting of the Commission and shall cause notes thereon to be prepared by the Secretariat. Such notes shall, as far as possible, be self-contained. Specific files covering the agenda items shall be made readily available to the Commission for reference. The agenda papers shall ordinarily be circulated to the Members at least two clear days in advance of every meeting; but when matters are set down only for hearing, cause list of the day sitting shall be prepared and circulated.

8. **Procedure for dealing with Complaints:**

(1) All Complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a Bench of two members constituted for the purpose not later than two weeks of receipt thereof. Ordinarily complaints of the following nature are not entertainable by the Commission.

- (a) in regard to events which happened more than one year before the making of complaints;
- (b) with regard to matters which are sub-judice;
- (c) which are vague, anonymous or pseudonymous;
- (d) which are of frivolous nature; or
- (e) those which are outside the purview of the Commission.

(2) No fee is chargeable on complaints.

(3) Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of complaints, the commission shall, however, entertain complaints in any language included in Eighth Schedule of the Constitution. It shall be open the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

(4) The Commission may, in its discretion, accept telegraphic complaints and complaints conveyed through Fax.

(5) The Commission shall have power to dismiss a complaint in limini.



(6) Upon admission of a complaint, the Chairperson/Commission shall direct whether the matter would be set down for inquiry by it or should be investigated into.

(7) On every complaint on which a decision is taken by the Chairperson/Commission to either hold an inquiry or investigation, the Secretariat shall call for reports/comments from the concerned Government/authority giving the latter a reasonable time therefore.

(8) On receipt of the comments of the concerned authority, a detailed note on the merits of the case shall be prepared for consideration of the Commission.

(9) The directions and recommendations of the Commission shall be communicated to the concerned Government/authority and the petitioner as provided for in sections 18 and 19 of the Act.

(10) The Commission may, in its discretion, afford a personal hearing to the petitioner or any other person on his behalf and such other person or persons as in the opinion of the Commission should be heard for appropriate disposal of the matter before it and, where necessary, call for records and examine witnesses in connection with it. The Commission shall afford a reasonable hearing, including opportunity of cross-examining witnesses, if stand, to a person whose conduct is enquired into by it or where in its opinion the reputation of such person is likely to be prejudicially affected.

(11) Where investigation is undertaken, the report shall be submitted within a week of its completion or such further time as the Commission may allow. The Commission may, in its discretion, direct further investigation in a given case if it is of opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may direct inquiry to be carried by it and receive evidence in course of such inquiry.

(12) The Commission or any of its members when requested by the Chairperson may undertake visits for an on-the-spot and where such a study is undertaken by one or more members, a report thereon shall be furnished to the Commission as early as possible.

## **9. Minutes of the Meeting:**

(a) The minutes of each meeting of the Commission shall be recorded during the meeting itself or immediately thereafter by the Secretary-General or by any other officer as directed. Such minutes shall be submitted to the Chairperson

for his approval and upon approval, be circulated to all the Members of the Commission at the earliest and in any case, sufficiently before the commencement of the next meeting.

(b) The conclusions of the Commission in every matter undertaken by it shall be recorded in the form of an opinion. Dissenting opinions, if given, shall also form part of and be kept on record. Action shall be taken on the basis of the majority opinion where there be any difference.

(c) Follow-up Action: Unless specifically authorised, no action shall be taken by the Secretariat of the Commission on the minutes of the meetings until the same are confirmed by the Chairperson.

**10. Record of minutes:**

A master copy of the minutes of every meeting and options of the Commission shall be maintained duly authenticated by the Secretary-General and a copy of the minutes pertaining to each item shall be added to the relevant file for appropriate action. Opinions shall be kept in the respective records and for convenience, copies thereof with appropriate indexing shall be kept in guard files.

**11. Report of Action Taken:**

Report of follow-up action shall be submitted to the Commission at every subsequent sitting indicating therein the present stage of action on each item on which the Commission had taken a decision in any of its earlier meetings, excepting the items on which no further action is called for.

**12. Transaction of business outside the Headquarter:**

The Commission or some of the Members may transact business at places outside its Headquarters as and when previously approved by the Chairperson, provided that if parties are to be heard in connection with any inquiry under the Act, at least two Members shall constitute the bench of the Commission for such purpose.

**13. Authentication of orders and decisions:**

(1) Orders and decisions of the Commission shall be authenticated by the Secretary General or any officer of the Commission (authorised by the Chairperson) not below the rank of an Under Secretary.

(2) Copies of enquiry reports or orders passed finally disposing of matters by the Commission shall be furnished free of cost to the petitioner or his representative.

(3) Unless any document is classified shall furnish its annual report for the period commencing from 1<sup>st</sup> April of the year to 31<sup>st</sup> March of the succeeding year to the Central Government and to the State Governments concerned as provided in Section 20 (1) of the Act. The original report shall be signed by the Chairperson and Members of the Commission and appropriately preserved and a duly authenticated copy shall be sent to the appropriate Government by end of May of every year.

**: 15. Special Reports:**

The Commission may furnish such special reports on specific matters as may be considered necessary in terms of Section 20 (1) of the Act.

**16. Reports on Complaints and Inquiries:**

Every report to which Section 18 or 19 of the Act applies shall be sent to the concerned Government, authority or person, as the case may be, within one week of completion of the proceedings before the Commission and on receipt of the comments of the concerned Government or authority, the Commission shall publish the report in the manner provided in sections 18(6) or 19(3) of the Act, as the case may be, within one week of the receipt of the appropriate intimation.

**17. Printing of the Report:**

The Secretariat of the Commission shall be responsible for the printing of the Annual Report and Special Reports with utmost expectation and in any case, not later than one month of finalisation of the same.

**18. Investigation Team:**

The Commission shall have its own team of investigation to be headed by a person not below the rank of a Director-General of Police appointed by it and such team shall consist of one Deputy Inspector General of Police, 2 Superintendents of police, 6 Deputy Superintendents of Police and 24 Inspectors of Police and such other categories of officers as the Commission from time to time decides. The Commission may in any given case appoint an appropriate number of outsiders to be associated with the investigation either as Investigators or Observers.

19. As and when any matter which is not covered by these Regulations arises, it shall be competent for the Commission to make appropriate directions and the Commission may add, delete amplify and amend these Regulations from time to time.

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