

**GENESIS AND ROLE OF THE NATIONAL  
HUMAN RIGHTS COMMISSION IN INDIA**

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**CERTIFICATE**

This is to certify that the dissertation entitled, "Genesis and Role of the National Human Rights Commission in India", submitted by Arun Kumar Palai, in partial fulfilment of the requirements for the award of Master of Philosophy of this University, has not been previously submitted for any degree of this or any other University. This is his own work.

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*To all Those Who Have Been Denied  
the Right to Human Existence*

*"Human Rights: Know Them, Demand  
Them, Defend Them"*

*- A slogan designated at the World Conference  
on Human Rights, Geneva, June 1993.*

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I express my personal gratitude to **Babita** for the eloquent and enthusiastic inspirations she has given me in my desolate moments.

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At the end I thank all for providing the threads of this tapestry and I ofcourse, absolve them of any responsibility for my own shortfalls or oversights.

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# CONTENTS

Page No.

## ABBREVIATIONS

## INTRODUCTION

1-12

## CHAPTER-1. HUMAN RIGHTS IN THEORETICAL PERSPECTIVE

13-49

1.1 Introduction

1.2 Historiccal Development

1.3 Meaning and Definition

1.4 Theories of Human Rights

1.5 Classification of Human Rights

1.6 Liberal, Socialist and Third World

Perspectives of Human Rights

1.7 The Indian Perspective on Human Rights

1.8 The Indian Constitution and Human Rights

## CHAPTER-2. ESTABLISHMENT, STRUCTURE AND STATUS OF THE NATIONAL HUMAN RIGHTS COMMISSION

50-103

2.1 Establishing Standards & Goals for National Human Rights Institutions

2.2 Human Rights Commissions in Different Countries - An Overview

2.2A Establishment of the NHRC

- 2.2A.1 A Brief History
- 2.2A.2 Need for Setting up of the NHRC
- 2.2A.3 Objective of the Act
- 2.2B.1 Structure of the NHRC
- 2.2B.2 Composition of the Commission
- 2.2B.3 Officers and other Staff of the Commission
- 2.2C. Status of the NHRC
  - 2.2C.1 NHRC's Definition on Human Rights
  - 2.2C.2 Functions and Powers of th Commission
  - 2.2C.3 Powers relating to inquiries
  - 2.2C.3 Powers Relating to Inquiries into complaints
  - 2.2C.4 Procedure and Regulations of the Commission
  - 2.2C.5 Inquiry into Complaints
  - 2.2C.6 Steps after Inquiry
  - 2.2C.7 Procedure with respect to Armed Forces
  - 2.2C.8 Constitutional Validity of the Commission under  
the Commission of Inquiry Act, 1952
  - 2.2C.9 Status of the Commission under International Law
- 2.3 Concluding Remarks

**CHAPTER-3. THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION IN THE PROTECTION OF HUMAN RIGHTS. 104-129**

- 3.1 Objectives of the Commission
- 3.2 Achievements of the Commission
- 3.3 Effectiveness of the Commission
- 3.4 Concluding Remarks



**CHAPTER-4. COORDINATION BETWEEN THE GOVERNMENT AND NON-GOVERNMENTAL ORGANISATIONS. 130-145**

4.1 Coordination between Central/State Governments

4.2 State Human Rights Commission, Human Rights Courts and District Committees

4.3 Coordination with Inter-governmental Organisations

4.4 Coordination between National Institutions

4.5 Contacts with Statesman/Delegates from Foreign Countries

4.6 Cooperation with External NGOs

4.7 Coordination between Indian NGOs

4.8 Concluding Remarks

**SUMMARY AND CONCLUSION 146-155**

**SELECT BIBLIOGRAPHY 156-165**

**APPENDICES**

- I. The Protection of Human Rights Act, 1993,(with procedural Regulations).
- II. Human Rights Provisions in the Indian Constitution.
- III. Indian Laws Relating to Human Rights.
- IV. A List of Human Rights Covenants, Conventions and Treaties<sup>25</sup> to which India is a Party.
- V. A List of Human Right Commissions Around the World.
- VI. A List of Indian NGOs in the Field of Human Rights.

# ABBREVIATIONS

AI	Amnesty International
APCLC	Andhra Pradesh Civil Liberties Committee
APDR	Association for Protection of Democratic Rights
AW	Asia Watch
CFD	Citizens for Democracy
CLUC <del>ivil</del>	Civil Liberties Union
CLAHRO	Civil Liberties and Human Rights Organisation
COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities.
CHRC	Canadian Human Rights Commission
CHRI.	Commonwealth of Human Rights Initiative
CPDR	Committee for the Protection of Democratic Rights
CrPC	Criminal Procedure Code
ESMA	Essential Service Maintenance Act
FLAC	Free Legal Aid Committee
ICCPR	International Covenant on Civil and Political Rights
ICSECR	International Covenant on Social, Economic and Cultural Rights
ICRC	International Committee of the Red Cross
IPC	Indian Penal Code
ILO	International Labour Organisation
MHA	Ministry of Home Affairs

MISA	Maintenance of Internal Security Act
NGOS	Non Governmental Organisations
NHRC	National Human Rights Commission
NSA	National Security Act
PDA	Preventive Detention Act
PUCL	People's Union for Civil Liberties
PUCLDR	People's Union for Civil Liberties and Democratic Rights
PUDR	Peoples Union for Democratic Rights
SHRC	State Human Rights Commission
TADA	Terrorist and Distruptive Activities (Preventive) Act
UDHR	Universal Declaration of Human Rights
UN	United Nations

# **Introduction**

## INTRODUCTION

Humankind aims at the maintenance of the humanness of its society. This concept is an age old concept and its roots are found in the ancient Indian civilization from Vedic literature as well as in the prophecies of Buddha and his contemporaries. There may be a relative difference in the approach towards analysing the concept of humanness in a society but the basic protection of the human qualities still prevail. In the contemporary world it is known as human rights. Human rights are those rights which are considered to be absolutely essential for the survival, existence and personality development of human beings.

Through the course of the development of human society, the society has stratified itself into various sections, sectors and levels. They may be differentiated on the basis of caste, colour, origin, sex, occupation and of physical superiority. Few have been denied simple their basic human existence as others have taken advantage of it being superior in some respect. In order to develop a proper and more egalitarian respect for all human beings, despite their differences, is what human rights aim at achieving. These basic rights which human beings are denied creates immense significance for the study of such rights, keeping this in mind they have also been referred to as 'Fundamental Rights', 'Basic Rights', 'Natural Rights' or above all 'Human Rights'.

Every society has a proper authority supervising the relation of its members and their relationship with the authority. These authorities in other words, the governments have set up certain institutions to protect and promote the human

rights as well as frame policies after debates and discussions. India as a nation state, has also set up proper institutions to look into these facts. National Human Rights Commission (NHRC) is one of them. The very inception of NHRC as a government machinery may be debatable. Despite the fact that the constitution of India guarantees us with fundamental rights, impartial judiciary, political parties, pressure groups, free press and a signatory to various covenants, conventions and treaties on human rights, it has set up a human rights commission.

There have been immense pressure on India by the Western Countries, European union, United Nations Commission on Human Rights and ofcourse, human rights groups i.e. the Amenesty International, The Red Cross, Asia Watch as well as criticisms of gross violation of human rights from within the country particularly from the non-governmental organisations working on human rights. This may have been one of the reasons for setting up of the NHRC by the Congress Government on 12 October 1993.

The formal end of the cold war, the collapse of the Soviet Union, the democratisation of world order and above all the world-wide violation of human rights have made it imperative to think seriously over this 'problematic' by all the nations as well as the academicians. This also follows in India. It has prompted many a researcher to explore its origin, nature, scope, significance, functions, prospects etc. so as to make people aware of their rights, to familiarise them with the organisation and to find out the structural and functional problems of the commission itself.

The various studies made so far, make an attempt towards analysing the human rights conditions in India but a detailed study on the NHRC still remains unexplored. A brief survey of the literature available so far is as follows:

Subash C. Kashyap, *Human Rights and Parliament* (1978), attempts to clarify the meaning, scope and ramifications of the concept of human rights in India and the role that parliament has played in safeguarding them. The focus throughout is on the actual role of parliament in the field of human rights, concerns in India as typified by two illustrative case studies - one in the matter of property right and the other concerning restoring of basic human rights of non-discrimination and securing of adequate advancement and welfare of the scheduled castes and scheduled tribes.<sup>1</sup>

T.S. Batra in his study, *Human Rights - A Critique* (1979), is much worried about the violation of human rights. He explains how, on the one hand, human rights are proclaimed to be inviolable and on the other hand, human beings seeking such rights are tortured, maimed, disembowelled, killed and even burnt alive. Provisions all over the world ring with the cries of their unfortunate victims. This work is useful to identify the areas of violations of human rights.<sup>2</sup>

R. S. Agarwal in his work, *Human Rights in the Modern World* (1979), deals with the nature of condition of human rights in developing countries. According to him, each country is entitled to develop its own forms and methods for the realisation of civil, political, economic, social and cultural rights.<sup>3</sup>

H.O. Agarwal in his work, *Implementation of Human Rights Covenant* (1983), examines international standards for the protection of human rights and then compares them with that of Indian standards. In this regard, he throws light upon how there is a difference of theme and reality. He enumerates those fundamental rights which have been enshrined in part III of the Indian constitution. Besides this he also enlists those rights which are available to the citizens of India by liberal interpretations of Art 21 which otherwise are not specifically mentioned in the constitution.<sup>4</sup>

Justice V.R. Krishna Iyer in his book entitled *Human Rights and the Law* (1984) with refreshing fearlessness and passion for socio spiritual betterment, explores men and matters, issues and themes, displaying a deep commitment to humanity. The author has rightly examined the inter-action of law and social change in the context of Indian legal system. He has gone beyond and written with zeal and amazing originality on a panorama of subjects. This work is a combination of stimulating scholasticism and sparkling style.<sup>5</sup>

R.C. Hingurani's work *Human Rights in India* (1985) shows how far international human rights are observed in the Indian context. This book classifies rights into five categories i.e. civil, political, economic, social and cultural rights and then examines the Constitution of India to assess the availability of these rights to Indians. But this is not an indepth study of implementation of human rights in India because it ignores judicial activism in this field. It only presents an overview of rights guaranteed to Indians.<sup>6</sup>



Attar Chand's, *Politics of Human Rights and Civil Liberties* (1985), is an important work which enumerates various rights guaranteed in the contemporary political system of the world. This book is useful to have a composite picture of rights and restrictions imposed upon those rights. A close study of this book makes possible to correctly assess the position of realisation of these rights in the Indian context.<sup>7</sup>

Prof. Aswini K. Ray's, *Civil Rights Movement and Social Struggle in India* (1986), analyses the politics of emergency as imposed by Indira Gandhi in between 1975-77 and its far-reaching impact on the subsequent India's developmental politics. To him, the present Civil Rights Movement owes its origin to that of emergency era and inherently some of the leading events such as the "increasing weakness in professional efficiency of the state apparatus and many of the democratic institutions like the bureaucracy, political parties, judiciary and the media, their social bias and political partisanship and the growing incredibility in popular perceptions"<sup>8</sup> have a close bearing on India's quest for nation-building, economic development and social transformation. In addition to this, he also argues that brutalisation of state machinery, criminalisation of politics, use of money, muscle and mafia in electoral practices, misuse of preventive detention, intensification of the social and regional tensions in Kashmir, Assam, Punjab, Andhra Pradesh, Tamilnadu and Karnataka, the demand for regional autonomy and the emergence of democratic groups like PUCL, PUDR, APCLC etc., are also some of the resultants of this movement. His article, after all, is an eloquent analysis on the civil rights movement and social struggle in India.

A.R. Desai (ed), *Violation of Democratic Rights in India* (1986), adequately discusses how far the fundamental rights guaranteed by the Indian Constitution are enjoyed by the people of India. A systematic attempt has been made in this book to record the literature which exposes violation of the legitimate rights of the people against the backdrop of the rights given in the constitution of India and in the Universal Declaration of Human Rights. The volume also contains the response of Amnesty International, exposing the harsh treatment meted out to the citizens of India by the state. He has very elaborately examined some of the selected reports and documents which give authentic accounts of the attacks by the guardians of law by way of police atrocities, encounter deaths, deliberate murders and fortune inflicted on the people hailing from different parts of the country. This book provides useful data relating to the violations. of the right to life in India.<sup>9</sup>

Nagendra Singh, in his book *Enforcement of Human Rights* (1986), enlists the way and means for enforcement of human rights during peace and war. The book contains actual picture of human rights which need strong hand to implement them. It provide, insight to the problem of enforcement of rights in India. The entire book is devoted to only legal aspects of human rights thereby ignoring political implications of these rights.<sup>10</sup>

Upendra Baxi, (ed), *The Right to be Human* (1987), is a collection of articles, which are indicating that new rights arise from the womb of the old. Now the sphere of the ideas and values concerning human rights thought is very wide covering new areas and constituencies. The main emphasis of this is on the human rights of child mentally ill and beggars.<sup>11</sup>

Fareed Kazmi, in his book, *Human Rights - Myth and Reality* (1987), makes an attempt to demystify the numerous myths that have been woven around the concept of human rights and to understand human rights by locating them within a large social matrix in an attempt to identify the preferred structure and organisation which would be most conducive to the full functioning of these fundamental liberties. He has, therefore, clarified the concept of human rights for the promotion of happiness of the people of India.<sup>12</sup>

Justice E.S. Venketrarniah, (ed), *Human Rights in Changing World* (1988), is a recent work which includes, 'Human Rights in prison Justice', 'Human Rights - The Indian Experiment', 'The Development of the Rights to Development' and 'philosophical background of Human Rights'. These articles are useful to trace out the development of various rights in our constitution.<sup>13</sup>

S.N. Sharma in, *Personal Liberty Under Indian Constitution* (1990), provides an empirical and analytical study of social perception of the context and extent of personal liberty in the light of recent judicial policy of liberal interpretation. It also provides a systematic analysis of the correlation between the personal liberty decision and the maintenance of law and order. Within a conceptual framework based on an empirical approach to the fundamental rights of personal liberty, the constitutional, legal, social and political aspects of the recent judicial decisions are discussed in detail.<sup>14</sup>

Dr. Y.K. Tyagi's *Indian State and Human Rights* (1992), maintains of the view that human rights are different things for different people at different point of

time. The physical security and respect for human dignity are common expectations of every body in all situation. And in this context, the role of a responsible, capable, willing and effective state becomes indispensable. He traces the need for accountability for the police - an executive arm of the Indian State; simultaneously they are also entitled to be well-equipped and well-paid. In addition, other institutional arrangements of the Indian state be made effective and NGO participation in matter of violation of human rights be made. With this the administration of justice system should be sensitised along with the formation of national policies keeping socio-political and cultural development in mind. India's policy formulations should drafted and persuade in the light of national necessity to maintain the rule of law and to protect human rights which are the foremost function of every state.

G.S. Bajwa, in his work *Human Rights in India: Violation and Implementation* (1995), objectively analyses various constitutional and legal rights available to the people of India taking into consideration the provisions of UDHR and other international treaties on Human Rights. He also evaluates the role of judiciary for implementation of human rights in India. Though our constitution guarantees certain fundamental rights, still police abuses, unbearable conditions of prisons, child labour, bonded labour, abuses of women remain at the core of violation. In order to check this, he suggests that the Indian legal system should be more sensitised to take care of these gross violations.

Dr. Gurbax Singh in his book entitled *Commentary on the Protection of Human Act 1993* (1996), discusses various legal safeguards pertaining to human rights and

the role of different statutory commission constituted under the Commission of Inquiry Act, 1952, in detail. He has extensively interpreted the provisions, procedures, limitations and recommendations of the NHRC from the various angles. This book is quite useful for those who are actively engaged in the task of protecting human rights as a Lawyer, social worker, human rights activist and research scholar working on human rights.

From the above-mentioned literature, it is clear that almost all writers have dealt with the concept of Human Rights: its theoretical aspect, its legal aspect, its political aspect, its practicability, its violation and above all state response towards it. But none of them have explored the basis of the formation nature and functioning of the NHRC. So the present research-endeavour examines all the factors and features which are responsible for the formation and functioning of this new organisation.

The main objective of making an inquiry into the NHRC is to examine certain unanswered questions so far, and to raise questions for further research. The questions which this research-endeavour intends to examine are the following: what is a human rights commission? The period taken by the government of India to setup the NHRC. Is it the inspiration of genuine desire towards protection of human rights or a face-saving gesture towards the various criticisms hurled against India both from within the country as well as from international bodies? The procedure of setting up of the NHRC with inadequate debate in the parliament over its controversial provisions. The finer percolation of the policies and recommendations made by the NHRC to the people as it is just an advisory, investigatory, statutory

and recommendatory body. The Law Commission, The Police Commission, The Women Commission, The Minority Commission, The Election Commission etc. allows for an examination of the status of this new commission called NHRC. The obligation of the State Governments towards forming state human right commission in their respective states. The importance of NGOs in protecting human right before and after formation of NHRC. The achievements of NHRC towards creating a culture of human rights throughout the country since its inception. And finally, the future prospective of the NHRC.

The study makes a modest attempt to examine these and other cognate questions which may arise during the course of analysis, or are present and yet go unnoticed.

The relevance of the study through the examination of these questions may lead to a better understanding of this organisation, factors which led to the formation of the commission, its function and role, structural and functional problems inherent in it and to study its future prospects.

The present study, therefore tries to analyse the genesis and role of the NHRC in India, takes into consideration specific research methods and sources of material. The methodology in the study is historical-cum-analytical. The various sources are used for the present study can be presented in the following way. The primary source of the study includes NHRC documents, publications and papers, reports of other national institutions on human rights, Amensty International reports on India, UN reports on human rights, reports published by various NGOs like PUDR, PUCL,

etc. Questionnaire and interview methods have also been used to collect data from the members and other staff of commission as well as the members of the NGO community. Among the secondary sources books on human rights, press clippings, periodicals and journals have been referred.

The course of analysis of this research endeavour begins with a theoretical background of the concept of human rights, enabling us to understand the basic principles of the concept and its perspective in the Indian context. Secondly, the establishment, structure and status of the NHRC, this allows to highlight the valid reasons for its formation, which instead throws light to elucidate the role played by NHRC in the protection of human rights. The NHRC within itself, externally and its coordination with other international and national organisations working in the field of human right has also been emphasised. Finally, the overall impression of the course of research, as well as the question arising for further research may be presented.

The concept of human rights which though very practical in nature has a sound theoretical base which will remain as prologue to the further analysis of the NHRC.

## NOTES

1. G.S. Bajwa, Human Rights in India: Implementation and Violation, Anmol Publications, New Delhi, 1995, p. 10.
2. ibid., p. 12.
3. ibid., p. 13.
4. ibid., p. 9.
5. ibid., p. 8.
6. ibid., p. 9.
7. ibid., p. 15.
8. Aswini K. Ray, Civil Rights Movement and Social Struggle in India Economic and Political Weekly, Vol. XXI, No. 28, July 12, 1986, p. 1202.
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# CHAPTER 1

## *Human Rights in Theoretical Perspective*

# CHAPTER - 1

## HUMAN RIGHTS IN THEORETICAL PERSPECTIVE

### 1.1 INTRODUCTION

Throughout history, every society has sought to define the concept of human dignity, in the sense of seeking to ascertain the qualities and inherent value, if any, of each person and their relationship to society. These questions have been answered in various ways, whether on the basis of the social obligations and duties owed by individuals, in terms of a social hierarchy based on birth or sex, through submission to the will of royal or divine forces, or on the basis of the over-riding importance attached to the maintenance of social harmony. Invariably, the ethical, religious or political bases by which each society has premised its answers to these questions have been reflected, to a large extent, in the values and systems by which that society has in turn been governed.<sup>1</sup>

It is in this context that the concept of human rights arises, a concept which tends to emphasize the worth of the individual and to recognize his or her rights as against their society. As generally used today, the term human rights covers the series of often disparate rights and freedoms asserted by many to be universally accepted and essential prerequisites for peoples' enjoyment of a life based on the centrality of human dignity. Proponents of human rights regard them as being inherent, inalienable and universal: inherent in the sense that they are the birth right of all human beings and people enjoy them simply by virtue of their human existence and, as such, they do not have to be granted to them by any superior or sovereign

authority; inalienable, in the sense that people cannot agree to give them up or have them taken away from them; and universal in the sense that they do not just apply to individuals as “citizens” or groups but to all persons regardless of their group identities.<sup>2</sup> These basic ingredients of human rights as proposed by the proponents, interalia, pose certain fundamental questions regarding the very ethics of the subject because of the fact that the question of “human rights has always been an important, interesting and acute one”<sup>3</sup> within the discourse of social science particularly in recent times. In this context, many researchers have been prompted to explore the basis, nature and scope of this subject. So an historical enquiry may help to understand its growth and development in different phases of human history.

## **1.2 Historical Development**

The concern for human rights became popular particularly in the twentieth century, though it had its roots in different forms since time immemorial. It is not static but a part of “continuing dialectic process through which progress in the field might be and manifestly has been made”.<sup>4</sup> Most of the students of human rights trace the historical origin of the concept back to ancient Greece and Rome where it was closely linked with the pre-modern natural law doctrine of Greek Stoicism.<sup>5</sup> This school of thought was initially founded by Zeno of Citium, which held the view that a “Universal working force pervades all creation and that human conduct, therefore should be judged according to and brought into harmony with the law of nature”.<sup>6</sup> This theory of stoicism played a key role in political theories of natural rights both in Greece and Rome. Western political philosophy, however, contends that the “classical Greek Philosophy was based on an examination of the individual

and his role in the running of a civil society in particular - "the polis" - which became a precursor to the philosophical debate on "the rights of man"<sup>7</sup> - a debate which has continued throughout the history of the West. Even during the times of Plato and Socrates, this idea was linked to the kindred notions of natural law and political idealism. On the basis of these ideas, it was later argued that above and beyond the real world of the laws and rules promulgated by kings and emperors (the so-called positive law), there existed certain immutable and natural laws to which all human beings are entitled and by which rulers should be judged. "Such views were taken up and developed by the stoics and later by Christian thinkers such as St. Aquinas in the medieval period".<sup>8</sup>

However, in the medieval period which roughly ranges from 13th Century to the Treaty of Westphalia (1648), absorbing the period of Renaissance and the decline of feudalism, certain basic changes in the beliefs and practices of society were seen because people felt the idea of human rights as a general social need. "The teachings of Aquinas (1224-1274) and Hugo Grotius (1583-1645) on the European continent and the Magna Carta (1215), the petition of right (1628) and the English Bill of Rights (1689) in England were added as proofs of this change".<sup>9</sup> "All these events testified the increasing popular view that all human beings are endowed with certain eternal and inalienable rights and they could never be renounced even when humankind contracted to enter the civil society"<sup>10</sup> from that of primitive one, or from the claim of the divine rights of the kings; and thus, the progressive vision of rights took a real meaning as natural rights in the 17th and 18th centuries.

The scientific and intellectual achievements of the 17th century such as the

discoveries of Galileo and Sir Isaac Newton, the materialism of Thomas Hobbes, the rationalism of Rene Des Cartes and Gottfried Wilhelm Leibnitz, the Pantheism of Benedict de Spinoza, the empiricism of Francis Bacon and John Locke encouraged a belief in the natural law and universal order.<sup>11</sup> During the 18th century, the so-called Age of Enlightenment, a growing confidence in human reason, and of course, the perfectability of human affairs led it to become more comprehensive one” John Locke in England, Montesquieu, Voltaire and Jean Jacques Rousseau in France, to name a few, supported human reason and also tried to prove the superiority of natural law. John Locke, the child of glorious revolution of 1688 and of course, the father of modern liberalism argued in his writings that certain natural rights like right to life, liberty and property are self-evidently necessary as they existed in the state of nature before humankind entered into civil society. He further argued that the state after the contract has to ensure those fixed natural rights and in case state does not do so, people also have a right to revolt against the state. The Glorious revolution was the reflection of these liberal notions of human rights where the idea was to have a common faith in reason, denouncing religion, dogmatism and intolerance. These liberal theories sought to discover a common theory of rights which should be based on universally valid principles governing the law of nature, human reason, civil society as well as the inalienable rights of man.

The philosophy associated with John Locke and others had a tremendous influence on the western world in the late 18th and early 19th century. The practical examples of England’s glorious revolution of 1688 and the resulting Bill of Rights in 1689 as well provided the rationale for the wave of a revolutionary agitation which influenced the west, most notably in North America and France. Certain

historic texts like Pennsylvania Declaration (1776), Maryland Declaration (1776), New Hemisphere Declaration (1783), The American Declarations (1787), The French Declarations of the Rights of Man (1789), the Massachusetts Declarations (1789) reflected the intellectual milieu of the contemporary socio-political situations spawning the struggle against political absolutism. In the words of Maurice Cranston, a leading human rights scholar, it is evident that these struggles took place because the absolutism prompted men to claim their rights denied to them.

The idea of human rights as natural rights still remained controversial due to its abstract nature and the link with religious orthodoxy. That is why, it became less and less acceptable to both philosophical and political liberals and consequently with the passage of time, the doctrine of natural rights came under severe criticisms both from the contemporary liberal and radical circles. In England, for example, conservatives like Edmund Burke and David Hume started questioning the very basis of the doctrine. They held the view that natural rights are an abstract concept and being absolute in nature would certainly come into conflict with one another. Another Philosopher Jeremy Bentham, the founder of utilitarianism asserted that “Rights is the child of law, from real law come real right; but from imaginary laws, from law of nature come imaginary rights .....”. David Hume also argued on the same lines that natural laws and natural rights are unreal and metaphysical phenomena. This attack on natural law and natural rights, thus began during the late 18th century and became intensified and broadened during the 19th and early 20th century. Philosophers like J.S. Mill, Fredrich Karl Von Savigny, Sir Henry Maine and many other historians in England expressed the view that rights are the product of cultural and environmental variables and so are very unique to particular

communities. On the other hand, a group of jurists and philosophers like John Austin, Ludwig Wittergenium and many others argued that law alone is the command of the sovereign and the truth could be established by verifiable experience. In other words, rights, to them are real, definite, concrete and identified variables. So intense was the attack on natural rights theory that there were hardly any defence for it to be the real rights of man till the first World War. Thereafter, under the influence of the 19th century German idealism of Hegel and the rising European Nationalism, th Marxian school of thought emerged, which did not reject individual rights altogether put rather maintained that rights derived from whatsoever source belong to the community or the whole society and not only to individuals. Here there was a clear cut depiction of the birth of social rights. Though the Marxists emphasised on social rights by narrowing down the parameters of natural rights, still thé concept of natural rights of human being remained in one form or the other. The abolition of slavery, factory legislation, popular education, trade unionism, the universal suffrage movements were some of the examples of 19th century impulses which kept alive this idea even though it was viewed with general skepticism. But it was the rise and fall of Nazism in Germany which imparted a real meaning to the idea of human rights. In Germany, the laws authorising the dispossession and extermination of Jews and other minorities, the laws permitting arbitrary police search and seizure, the laws condoning imprisonment, torture and execution without public trial and similar obscenities brought about a new realization that law and morality, if they exist at all, are to be kept alive at any cost irrespective of the prevalence of any doctrine - be it Idealism, Utilitarianism or Marxism. So the dignity of the individual was emphasised as a result of this realization. Consequently, certain

institutional bases were developed over time to preserve and protect people's rights in a more systematic and decent way. The League of Nations was one such institution.

With the establishment of the League of Nations after the first World War, Human rights were further developed in the international sphere. Though human rights were not explicitly mentioned in the covenant of the League of Nations, the organization was alive to the task of seeking to protect the rights of people in two particular spheres, namely, the minorities, and persons inhabiting the colonies of the defeated powers.<sup>12</sup> Another important field from the human rights perspective in which the League was active was on the protection of workers' rights and indeed the goal of fair and humane conditions of labour for man and children.<sup>13</sup> This particular objective has been put into practice through International Labour Organization (ILO) since its inception in 1919. Now it works as a specialised agency in the UN system.

The horrors of the Second World War led to the birth and recognition of the modern human rights movement in the international sphere. President Roosevelt's proclamation in 1941 of the four freedoms (that is of speech and expression, of belief, freedom from fear and want) as a universally acceptable set of standards along with the works of NGOs were some of the significant developments in this direction. But it was the establishment of the UN in 1945 and the subsequent international concern for and commitment to human rights that widened the scope of this movement. In fact, "the second-half of the present century has seen a universal acceptance of human rights in principle, and general agreement on its content".<sup>14</sup> A



corner-stone of this post-war human rights regime is the Universal Declaration of Human Rights (UDHR) adopted on 10 December, 1948, which is commonly known as “Human Rights Day”. The sources of this Declaration owe much to the English Revolution, the American Revolution, the French Revolution, the Mexican Revolution, and also the Russian and the Chinese Revolution.

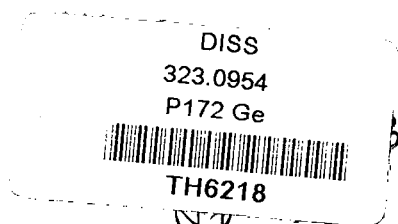
Thus, “the 20th century brought a new and changing political context for human rights and transformed the philosophical and ideological debates about it”.<sup>15</sup> Hitler’s atrocities, the universal demand for constitutionalism and representative government, universal suffrage, popular education on one hand, and the emergence of the Soviet Union and People’s Republic of China as World Powers and the resurgence of third world countries on the other provided this new context. The demand for a new international economic order voiced by the Third World Countries expanded and deepened the international concern and commitment for human rights. The Post-war era heralded the adoption of equality, liberty and social justice as the cardinal principles of human rights, but operationally reinforced after the end of the cold war. Representatives from many diverse cultures endorsed the Charter of UDHR which is universally regarded as a common standard of achievement for all peoples and all nations. The vast majority of legal scholars, philosophers and others irrespective of their culture and civilization are now unanimous upon that every human being is entitled at least in aspiration, to certain basic rights and thereby no state, Government, authority can deny it. The first documentary use of the expression of human rights took place in UDHR and two other international covenants - International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Social, Economic and Cultural Rights (ICSECR) of 1966 which came

into force in 1976 with the consent and approval of the United Nations.

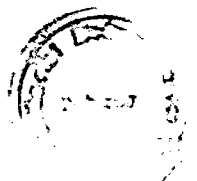
This historical narration underscores empirical realities of man's struggle for rights being as old as the history of mankind itself. "The concept of human rights was in a rudimentary form in ancient times, in formative stage in middle ages, and fully grown in the 20th century with the formation of the United Nations".<sup>16</sup>

### 1.3 Meaning and Definition

The most striking feature of the concept of human rights is that they may be difficult to define but impossible to ignore. The theorists and the ideologues, the politicians or statesmen, may quarrel about the forms of government or the principles of state craft but they cannot repudiate the indefensibility of torture, cruelty, inhuman and degrading treatments, hunger, genocide, arbitrary arrests and detentions and the like. The colour of the skin may be white or black, the level of mental make-up may be high or low, the way of life of a people may be modern or primitive to the core, the essential reality of all belonging to the species of human race cannot be dismissed by any stretch of imagination.<sup>17</sup> Man as a member of the human society has some rights in order to survive, sustain and nourish his best potential. To quote A.J.M. Milne, "There can be no human community without rights. Having rights is part of what it is to be member of any community. A community necessarily consists of members who have rights and obligations. Unless there are members, there cannot be community. There have to be rights if there is to be any social life. Thus, rights enable an individual with at least some of the elements of a place, an identity and a role in the social milieu."



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The word "Right" in the most general sense means that it is something to which we are entitled. This word in ordinary English usage not only implies a "lawful entitlement" but a "just entitlement". This entitlement is due to various factors such as law, custom or morality. Rules and principles cause an individual to have rights. For there to be a right to something, there must be rules or principles which specify certain conditions and declare that all those who satisfy them are entitled to it. Rules are social institutions and so are customs. As a source of rights, customs describe what is invariably done in a specific social context and prescribe that it should continue to be done. Rights can also be defined and conferred by legal rules under the general principles of the rule of law. The three inter-related specific principles which make the general principles are, (a) freedom under the law (b) the supremacy of law and (c) equality before the law. More emphatically a positive law can modify the existing rights through legislation. Positive law in the context of human rights is necessary for two reasons. Firstly, for security, since it provides sanction and secondly, it enables a community to organize and regulate its affairs. Thus, positive law or state intervention in human rights is but necessary for an orderly society. There are still divergent views and perceptions about the meaning and nature of human rights. As the concept of human rights is a complex and contradictory one, it is desirable to go through some of the standard definitions offered by different scholars from time to time.

"Human Rights, in the words of R.J. Vincent, are the rights that everyone has, and everyone equally, by virtue of their very humanity. They are grounded in our appeal to human nature". Following the same argument, David Selby says, "Human Rights pertain to all persons and are possessed by everybody in the world because

they are human beings, they are not earned, bought or inherited nor are they created by any contractual undertaking". According to A.A. Said, "Human Rights are concerned with the dignity of the individual - the level of self-esteem that secures personal identity and promotes human community". All the above writers have described human rights mainly on three important grounds, viz., human nature, human dignity and the existence of a good society. Combining all these features, Plano and Olton have stated that human rights are those rights which are considered to be absolutely essential for the survival, existence and personality development of a human being". Another exponent, Scott Davidson offers a very precise and up-to-date definition on the subject. According to him, "The concept of human rights is closely connected with the protection of individual from the exercise of state, Government or authority in certain areas of their lives, it is also directed towards the creation of societal conditions by the state in which individuals are to develop their fullest potential".

From the above-cited definitions of human rights, it is pretty clear that human rights, whether recognised or not, belong to all human beings at all times and in all places. These are the rights which are solely by virtue of being human, irrespective of any distinction. It is the role of the state to uphold, promote and protect them in accordance with the existing law of the land. Thus, individuality, universality, paramountcy, practicability and enforceability are some of the important features of this crucial doctrine. It however, remains to be said that difficulty in defining human rights arises as there is no single and simple conception of its real meaning. It has, in fact, varied from time to time, place to place and people to people. Thus,

the on-going debate would continue so long as a striking balance between contending approaches to public order and scarce resources takes place.

#### **1.4 Theories of Human Rights**

In order to study the basic understanding of human rights one should look at certain theories of the subject so that the shifting priorities of rights during different phases of history could be observed. The function of theory, however, is to provide an analytical tool by which it is possible to determine the precise subject matter of the concept, upon which there might be an agreement. A precise insight into the major theories of rights are as follows:

##### **1. The Theory of Natural Rights**

This is the earliest theory of rights and its origin can be traced back to the ancient Greeks. According to this theory, rights belong to man by nature and thus are self-evident truths. They were considered as inborn, absolute, pre-civil and, according to some, even pre-social. They can be asserted anywhere and everywhere. Thomas Paine, Grotius, Tom Paine and John Locke, to name a few, are the main exponents of this theory. These theorists derived their ideas about rights from God, reason or a priori moral assumptions. To them, every individual possesses a unique identity and is expected to account his actions as per his own conscience.

However, the critics of the natural rights theory argue that rights are not abstract, absolute or unidentified phenomena. Liberty, as they argue, lives within restraints. So restraints upon rights create social conditions where everyone has a

share to develop their personality and correspondingly have their obligations to others. Right and obligations in fact are the two sides of the same coin. Despite the above shortcomings, the theory of natural rights inspired the idea that any kind of unjust, arbitrary or oppressive treatment to human beings is an assault upon humanity itself. Apart from this, it also provided the basis for the English, French and American revolutions, thereby resulting in the Bill of Rights.

## **2. The Legal Theory of Rights**

This theory is a reaction against the theory of Natural Rights. Advocates of this theory argue that the idea of natural law and natural rights are abstract and ridiculous phenomena. Hence, the existence and enjoyment of fundamental rights of an individual could be better maintained and practiced by the state rather than by the individual himself. Thomas Hobbes, John Austin and Jeremy Bentham are the main propounders of this theory. According to them, rights are purely an utilitarian concept and thus the rule and regulations are necessary for the identification and protection of one's rights. Towards this end, every individual has to sacrifice certain rights and freedoms for the general welfare of the society.

This theory has been severely criticized on the ground that law alone does not create rights. Rather, it recognises and protects them. Customs, tradition and morality have also a basis for rights. However, the truth in this theory lies in the fact that it enables individuals to demand certain specific and recognized rights as granted and guaranteed by the state.

### **3. The Anti-utilitarian Theory of Rights**

There are yet other theorists who strongly argue that the priority of the well-being of the majority as stated by the utilitarians is not the prime objective of the state. Amongst them Dworkin, Nozic and John Rawls are the leading ones. They hold the view that the welfare of the majority might lead to detrimental consequences as far as the welfare of a particular person or a group of persons is concerned. So there has to be proper reconciliation between the well being of the majority and individual well-being for the better enjoyment of social and individual rights. Today, the demand for right to development on international fora is perhaps the manifestation of this theory.

### **4. The Legal Realist Theory of Rights**

The Legal Realist theory of Rights is of recent origin. It mainly originated in USA with the expansion of regulatory activities followed by president Roosevelt's "New Deal Policy". A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as to what law does rather than what law is in a highly complex and industrialized society. These theorists did not propound a common theory of rights. Rather, they considered rights as the end product of both the interaction of prevailing moral values of the society as well as the broad-based international sharing of values. So human rights, as they argue, are nothing but a manifestation of an on going process rather than a theoretical debate. This kind of a new approach to the concept of rights does away with the problems relating to the abstract nature of the concept. However, this theory goes about questioning

the existing laws, their theory goes about questioning the existing laws, their values and the actions, so far enacted upon the society. In other words, it questions the shortcomings and ineffectiveness of the existing laws but does not prescribe any solution in the form of super-value of a human being.

## **5. The Marxist Theory of Rights**

Rights, according to Marx are simply a bourgeois concept and a product of bourgeois capitalist society primarily designed to maintain and reinforce the predominant position of the ruling class.<sup>18</sup> This theory of rights is very simple and to a certain extent convincing too. He regards the state as a coercive agency to uphold the particular type of social organization and law is a tool of the state that perpetuates and safeguards the interest of the dominant group in the society. Karl Marx firmly believes that rights can exist and flourish only in a classless society where all are equal and no one is an exploiter. Social and economic rights are thus the main concern of this theory. However, the contribution of marxist thought to the development of international concern on social, economic and cultural rights has been found in the International Covenant on social, economic and cultural rights (ICESCR) in 1966. This theory, however, does not include religion, customs, tradition and morality as integral components of human rights.

To sum up, "There is not a single theory which can adequately explain the origin and nature of rights. Each theory is the product of its own time and in conformity with the genius of the people with whom the propounders of the theory were associated. There is some element of truth in all such theories. But there is



one eternal truth which cannot be ignored; that individual good and social good go together. Society is an organic unity and welfare of the community is built upon the welfare of the individuals; both go hand in hand.<sup>19</sup> Hence, a good theory of rights should take into consideration the most conducive variables essential for the members of its people and welfare of the society.

### **1.5 Classification of Human Rights**

Human Rights can be broadly classified into two different perspectives. Firstly, from the perspective of various aspects of human --life, social, economic, political, moral and civil and secondly, from the perspective of the methods of securing them. On the second basis, they are constitutional or legal. These classifications can be discussed under the following heads:-

1. Natural Rights:- Natural rights are those rights which are considered to be inherent and integral to human nature. In fact, every individual by nature is given an individual property of his own which cannot be taken away by any authority. These kind of rights include intellectual rights, rights of the mind and also those rights of acting as an individual for his own comfort and happiness, provided they are not injurious to the natural rights of others.

2. Moral Rights:- These rights are based on the general principles of fairness and justice. These are simply aspirations and ideals of the people who claim for it. Sometimes, people justify these rights on the ground that the role they perform or the position they occupy in society. For example, the mother of a family might complain that she has the right to be consulted about what is going on in her family.

In this case, she is appealing the principle that parents are entitled to be consulted when family decisions affect the members. So it is the moral duty of other member to do the same.

3. Fundamental Rights:- There are certain rights which are more important and basic than that of others. For example, right to life is the most basic of all rights upon which the enjoyment of other rights depend. These rights can never be restricted or taken away by any authority. That is why, every society has a fundamental duty to protect it at all times. Among other basic rights are the right to be recognized as a person before the law, the right to equal protection under law and freedom from illegal arrest or detention.

4. Legal Rights:- Legal Rights are otherwise known as positive rights. These rights are laid down in law. They are also guaranteed and protected by the law of the state. Thus, legal rights are uniform and open to all irrespective of the caste, colour, race or culture.

5. Civil and Political Rights:- Rights that arise out of Government or civil society are called civil and political rights. These rights provide the basis for the fulfillment of elementary conditions of the social life. Without them, civilized life is not possible and they are, therefore, considered very essential for the free and progressive life of man. Civil and political rights, however, include the right to freedom of speech, of assembly, the right to move freely, to hold property and practise trade or profession and the right to take part in the governance of one's country. Part - III of the Indian Constitution have resemblances with these rights.

6. Social, Economic and Cultural Rights:- These are entitlements of the individual vis-a-vis the state, in order to eradicate social inequality, economic imbalances and to limit disadvantages caused by nature, age and so on. These rights, however, are bestowed by the state. The state is not bound to meet these entitlements all at once. It depends upon the economic resources of the society. Most of the socialist states recognize these rights as fundamental rights of the people. Right to equality, the right to work, the right to have family, the right to privacy, the right to information, the right to public assistance during old age and sickness, the right to health care, the right to special care during childhood and during motherhood are some of the examples of these rights. However, most of these rights are found in part-IV of the Indian Constitution known as the Directive Principles of State Policy.

These aforesaid rights are some of the major categorizations of rights. But these categorisations are not enough in the sense that rights have a tendency to grow with the changing circumstances of the society. Certain rights like right to development, right to know and right to self-determination are some of the recent examples.

Since the adoption of the Universal Declaration, there have been many controversies regarding the question of which rights are more important and which are less. The representatives of some states had been asserting that civil and political rights are more important than economic, social and cultural rights. They also had serious reservations about acknowledging the right to development which, if effectively implemented, would affect the existing pattern of economic and political

power in the world. Other countries stressed the importance of economic, social and cultural rights and the right to development. These controversies, in principle, can be said to have been resolved when all human rights were recognized to be indivisible. The Vienna Declaration, issued after a conference in which representatives of 171 countries and hundreds of non-governmental organizations participated, unambiguously affirmed that all human rights are universal, indivisible, interdependent and interrelated. It has also been affirmed that democracy is the sole guarantor of individual rights - civil, political, economic, social, cultural and collective rights 'within states and within the community of states'<sup>20</sup>

### **1.6 Liberal, Socialist and Third World Perspectives of Human Rights**

Human rights are vast, varied and dynamic. It contains so many issues that everything and anything relating to human beings come under its jurisdiction. They are in fact, an integral part of the totality of a society. Historical experience, socio-cultural patterns, ideological underpinnings, socio-economic structure, political system, their inter-relationship and interaction are the contexts within which human rights are formulated and become operative. However, the aforesaid contexts vary to a great extent in different perspectives to the concept of human rights in general. Now it would be worthwhile to take up three different perspectives, viz. liberal, socialist and third world perspective.

#### **I. The Liberal Perspective:**

According to Western Liberal thought, the nature of man is an isolated, autonomous one, possessing certain inherent and inalienable rights with the

establishment of a civil and political society instituted through a social contract among individuals. Man gave up some of his natural rights whereas others remained inalienable. And it is the role of the state to protect individual safety, security, his rights and property in pursuance of a just and orderly society. In addition to this autonomy of human nature, further elaborations were made in the context of his private property. Man's consumeristic attitude, passions and drives motivated him to acquire possession of property through competition and conflict with other individuals. Individual self-aggrandisement defined in terms of ownership of material objects was then added to the nature of man. Thus, private property became the pivot of a free enterprise economic system and subsequently became a fundamental human right and thereby making the approach to rights as politico-materialistic in nature. A competitive economic system and a liberal state system thus provided the institutional framework for the defence of private property and the free exercise of rights reflected in the nature of developing capitalism in the west. In this context, inalienable, individual, civil and political rights became the base of the new society.

The bourgeois that emerged out of the industrial revolution rebelled against the constraints and control imposed by the Government on the one hand, and demanded their rights, freedom, the free interplay of market forces and political power, on the other. Political power, in turn, was to be attained and maintained through a representative political system grounded in the exercise of individual, civil and political rights. This kind of system, subsequently resulted in gross inequality and economic imbalances in the society. To counter all these socio-economic upheavals, a new kind of political system called welfare state emerged during the early 20th century. The idea of welfare state, however, characterises

that the government is responsible to provide certain benefits for the unemployed, the handicapped, the aged and other disadvantaged individuals and groups in the society, which encompasses certain principles of both capitalism, individualism and of socialism. However, the principles of welfare state with individualism and capitalism as its base are found in USA and most of the Western European countries where the Lockean tradition of representative government prescribes state infringement of certain basic human rights.

## **II. The Socialist Perspective:**

The socialist countries do not share the historical experiences, cultural patterns, economic systems and ideologies of the industrialized capitalist states of the West. According to socialist thought, human nature is largely determined by the conditions of man's material life and not as an autonomous individual in the state of nature. It basically rejects the idea that both historically and analytically human nature is not prior to civil and political society. Engles argued that prior to civilization, men and women lived in a state of primitive communism. It was a communal existence characterised by equality among all, an existence in which land, animal and tools were shared. The accumulation of individual wealth, private property, ownership of the means of production and class differences were developed at the later stages of history, where the property owners claimed their rights and principles over others. This became the very basis of capitalism, according to socialists.

The reality of this class structure of primitive society, which was the determinant of an individual's ability to exercise his rights and to enter into contracts

with equals was ignored by the liberal political philosophers. Socialist philosophy, however, contends that civil and political rights are bourgeois rights emerging out of the rise of capitalism which serve the interests of capitalists. So they are not necessarily natural rights.

Socialists, strongly argue that man's realization of self-fulfillment is where his abilities are to be used to the fullest extent and his expanded needs are to be satisfied. They are of the opinion that man is a social being, not a competitive, atomized and self-aggrandised one. In order to achieve social good he has to perform certain basic obligations that the society has put before him. The mutuality between rights and obligations in fact is the key to attain both freedom and equality. The state is the embodiment of the collective people and is responsible for the welfare of all members and their by progressive realization of economic and social rights. Keeping this in view, most of the socialist countries such as China, Hungary, Cuba and North Korea give priority to social and economic rights than to civil and political rights both in theory and practice.

### **III. The Third World Perspective:**

After having a general idea about both liberal and socialistic perspective of human rights, it almost becomes imperative to look at the Third World Perspective of human rights, so as to make the study a complete one. Most of the Third World countries freed from the cluster of colonial legacy recently have three important things to achieve, viz., economic development, industrialisation and nation-building. In due course of time, one of the most important as well as pertinent questions that

has made the process of development all the more difficult is the question of the rights/freedoms of man vis-a-vis state in these countries. The Third World Countries are characterized by their traditional cultural patterns and ethnic social setup do not fully share either the intellectual heritage of the West or that of the socialist interpretation of rights. However, the contemporary nationalist elite having been influenced by concepts and ideologies of the West have developed a new kind of approach to the theory and practice of human rights.

The natural and individual rights of liberals, social and economic rights of the socialists have not been incorporated in totality in the Third World Perspective of human rights. Rather they give emphasis on group rights or the rights of the minority because of their heterogeneous social set up. They say that the concept of right of an individual has relevance in relation to the enjoyment of rights of others in the society. In other words, rights of an individual can be enjoyed with the shared value and shared experiences with other members of the society. The state is viewed as an organic whole in the sense that it is the embodiment of different groups, cultures, religions, and communities. The Government as an agent of the state is responsible to provide, protect and promote rights and freedoms of the various sections of the society.

Over the years, these countries have undertaken massive changes as far as the nation-building is concerned amidst all kinds of social upheavals. For that reason, most of the third world countries in Africa, Asia, Middle East and the Latin America accord priority to economic and social rights over civil and political rights. That is why, civil, political and legal rights have little psychological meaning in comparison



to social and economic rights in these countries. Nonetheless, it is desirable to have a healthy union of these two categories of rights for the Third World countries on the ground that "They want to attain economic development, along with the preservation of their religious and cultural heritage. Thus, they at times find themselves in a peculiar situation. Sometimes, they behave in a manner more socialistic than the socialist countries, and on the other occasions become more capitalist than capitalist countries. Perhaps, this contradiction is inherent in most Third World countries, torn as they are between the two worlds - the capitalist and the socialist. The conflict between their inherited socio-political, economic infrastructure and their projected desires for development is clearly visible in their approach towards human rights.<sup>21</sup>

India being a third world country derives its human rights perception from the two above mentioned schools of thought i.e. liberal and socialist but is an exception to the rest of the third world nations as it has also its own perception of rights that emanates from its ancient culture and civilization. It would be worthwhile here to make an attempt to analyse the Indian perspective of human rights.

### **1.7 The Indian Perspective on Human Rights**

The vast literature that has grown in the west around the concept of rights is in itself an indication that the concept had to be defended and philosophically justified against concluding view points. In the long history of the Indian civilization, the freedom of thought and speech, the freedom of one's life in the light of one's beliefs, the freedom of association, the freedom of public debate between the contending philosophical schools were taken to be the natural foundations of human

relationships. It was always taken for granted, and consequently there is hardly any literature on the idea of rights. When the word 'Adhikar' was used to convey a similar sense, it always had a much deeper meaning. However, the freedom of the individual in the western societies was secured after a long and bitter struggle against the Church and the state; in India, those freedoms were seen as the very substance of human existence. So from the rich literature for their defence in the West, and its absence in India, it would be wrong to conclude that the idea of freedom is chiefly a western one.<sup>22</sup>

The foundations of human rights may be established in two different frameworks of perceiving man and the world; one is that of the modern western political thought and the philosophy of law, and the other of Dharma and its method that characterizes the journey of Indian civilization. Keeping this in view, the western philosophy had its own way of perceiving man, society and their relationship from which it deduced the foundation of human rights, but nevertheless, the Indian philosophy characterizes the foundation in the ancient conception of Dharma and Danda which regulated the governance of State and its citizens. The concept of Sanatan Dharma which laid down these foundation in ancient civilization is needless to say, 2,000 years older than western Christianity with a central theocratic doctrine. It laid down the foundation of a sane society in ancient Indian civilization encompassing a moral code, righteousness and responsibilities. It was certainly wider and broader than the concept of religion, as used in the western historiography. It was on the basis of those existing principles that detailed rules were laid down for the guidance of the king. It was his duty to uphold the law and he was as much subject to law as any other person (equality before law and equal protection of law

can be deduced from that practice). One of his chief duties was administration of justice according to the laws of religious texts, local customs and usages and written codes. It was obligatory for him to enforce not only the sacred laws of the existing texts but also the customary laws (rights and claims) of the subjects. This was possibly the human rights enforcement situation in its embryonic stage. The guiding principles laid down for the kings were, however, taken mainly from the species of dharmic 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 these Vedic features, the Upanishads, the Mahabharat, the Bhagavat Gita also furnished philosophic foundations for subsequent social developments and thereby enriching the doctrine of human rights. The Upanishads, emphasizing the individual self and its truth say that "there is nothing higher than the person". The 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". The Bhagvat 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. It is evident that the subsequent scriptures emphasizing on the individual, and the guiding principles of his success, forms the base from which the essence of the modern conception of human rights can be deduced.

However, even at the individual level, there were some significant contributions by the religious prophets with regard to the basis of human rights. Mahavir, the founder of Jainism said that the foundation of human freedom in its deepest sense,

is truth, known as Anekantaved, which demonstrates the idea of the relative pluralism and many sides of truth. This attitude towards truth gives a profound implication for various aspects of human life - personal and social. During Chandra Gupta Maurya's regime, Kautilya in his Artha-Sastra which depicted the political, social and economic codes of conduct laid down certain principles of the law of punishment as the foundation of social existence. These principles then became the basis of the law against, *inter-alia* illegal arrests and detention, custodial death, ill-treatment of women such as rape, inequality of gender corrupt judicial system etc. The legendary king Asoka in the post Kalinga regime had sown the seeds of a humanitarian society, which, in its operational content was not sharply asymmetrical from the western version of a welfare state; the law of piety being its leitmotif. Ashoka's policy of tolerance bears a close resemblance to the concept of civil liberties. His majesty desired that all animate beings should have security, self-control, peace of mind and joyousness; inhuman treatment or torture of prisoners were prohibited in Ashoka's administration.

Thus, the influence of ancient Indian dharma with its universalistic and humanistic strains, the contribution of Hindu Scriptures, and of noted scholars and kings, tends to underscore the historical reality that the concept of rights is neither gift from the west nor a typical western monopoly of wisdom; its origins are as much rooted in Ancient Hindu civilization. This may explain its contemporary universal appeal which, of course, has been facilitated in the era of the global domination of the west since the colonial era. What is being contested within this historical narration is the appropriation of the idea of human rights as an essentially western contribution to human civilisation, as is often implicit in the western

discourse on this subject. This tends to under-rate its truly universal heritage, and the possible contributions of other civilisations like that of India described here, to the contemporary universal appeal of human rights.

However, one cannot possibly ignore the violation of human rights in ancient India which mainly stems from the then social stratification. Social life was largely stratified into the four major divisions of Brahmins (Priestly class), The Kshatriyas (rulers and warriors class), the Baisyas (trading class) and the Sudras (labourer and unskilled workers other than agriculturists). The rights and duties of the aforesaid classes were determined according to their assigned duty. According to Raimundo Panikar, the Indian framework of rights was essentially derived from Swadharma, the Dharma inherent in every human being which maintains cohesion and strengthens reality: The Brahmins due to their hegemony over the caste-system denied the rights to the lower caste, the untouchables, and other deprived sections of the society, there was violation of their rights and dignity. But in general the ancient Indian society was peaceful within the moral codes of conduct of the society provided by religion which hegemonised all sections of the society within its rules of the game which considerably reduced the actual violation of such rights.

In the medieval period, however, the three basic elements of the ancient Indian tradition: universalism and humanism in its philosophical thought, the struggle against caste discrimination and religious tolerance received a fresh relevance and impetus from Islam following the Muslim conquest during the tenth century A.D. Emphasising the greatness of this religion, Abdul Aziz says "in Islam as in other religious traditions, human rights are concerned with the dignity of the individual,

the level of self-esteem that secures personal identity and promotes human community". It also, he further argues, established a social order designed to enlarge freedom, justice and opportunity for the perfectibility of human beings keeping an eye on the overall social, political and, economic development of the society. However, "The operational ramifications of the Islamic norms can be gleaned from the Mughal History of India. Though the Mughal Government could be typically characterised as centralised despotism, its judicial administration contained all the basic elements of modern doctrine of due process of law, fair trial and independent judiciary".<sup>23</sup> Akbar's (1526-1605) great regard for rights, justice and secularism could be cited as an example in this regard. In his religious policy Din Ilahi (divine religion), he tried to preach the ideas of secularism (respect for all religions) and religious tolerance. Similarly, parallel to Akbar's exquisite religious reform policies, religious movements like Bhakti (Hindu) and Sufi (Islamic) made remarkable contributions towards eliminating the irreligious practices of the contemporary society. These movements tried to revive the ancient humanist tradition and preached the sacred principles of humanism and universalism denouncing the narrow sectarianism prevalent in both the religion - Hindu and Muslim. Further efforts were also made in the modern era by Britishers to break and politicise the amity of these two religions on the basis of their famous principle 'divide and rule' by bringing into practice certain measures like the introduction of English education, the merit system for recruitment and a system of discriminatory representation and communal representation at a later stage. However, some Indian leaders being influenced by English education started a movement for Renaissance and Reformation. Raja Ram Mohan Ray being one of them, demanded the abolition of Sati system, female

infanticide, caste system and also initiated a movement for widow re-marriage and female education. Here, once again the attention centred around the human being rather than God; which was somewhat of new approach to human reason and human dignity. Further, establishment of Brahma Samaj (1830) and Arya Samaj (1875) led support to this cause.

The formation of the Indian National Congress (1885) to promote the political freedom of India also gave a new vista for the cause of human rights which was being violated by the British rule in India.

Influenced by the reformist movements in different parts of the world for the cause of freedom, the Nehru report of 1928, the first commitment to civil liberties and the Karachi Resolution of 1936, the most important commitment to individual and group rights were prepared. These were included in the Constitution of free India as Fundamental Rights in part - III and Directive Principles of State Policy in part-IV respectively.

To conclude, however, the Indian perception of human rights does not emanate from the theory of a-priori or natural rights doctrine of the west; rather it has its own base in ancient Indian culture and civilisation. "The Indian vision of rights emphasises not only the individual but also the total person; a person whose interdependent rights and duties are determined by his/her position within a hierarchial network of relationship".<sup>24</sup> The impact of Islamic religion, renaissance and reforms movements, British colonialism and the nationalist ideology played a vital role in the formation and practice of human rights in India.

The Western and the Indian conception of rights also differ in their attitude towards the relationship between rights and duties. Unlike the Western Counterpart, traditional Indian thought emphasises the duty especially towards the group and society. Thus, the support for observance of rights and duties is conditioned by ancient tradition and belief.

According to my perception, the Indian intellectuals generally do not accept the view that rights are prior to the state, rather they are gift from the state. To them, right of an individual must be balanced with the interest of the society as a whole. The good of each, as they argue, must contribute to the good of all.

During the struggle against colonial rule, Indian nationalist movement emphasised upon political right as a reaction against the repressive and exploitative character of the British rule; but the nationalist ideology also emphasised on social and economic rights, as evident from their inclusion in the Indian Constitution formulated by the leaders of the national movement.

Even though the Indian Nationalist leaders adopted the western framework of political right, they rejected the Lockean theory of a prior or natural rights. They consider rights as the gift from the state hence are not absolute and their enjoyment is conditioned by a number of factors - social, economic and political. The rights of different groups and society are counter balanced by the rights of the state and its obligation to the weaker sections of the society.

The economic rights of the people is limited only by considerations of economic development and national security, which take precedence over the individual's



economic rights and consume a lion's share of the annual budget of the country. This is so because Indian leaders perhaps follow and practice the principle of 'Nation before community or society over the individuals. "While the low priority given to economic rights can be justified on the basis of theories of economic development and consideration of national security, in the final analysis priorities are determined by the ideological commitment of the leadership, which in turn, depends upon the distribution of political and economic power within the system. Hence, political and economic underdevelopment, to a large extent, and not ideology seems to be the greatest hurdle in the quest for the realisation of human rights in India".<sup>25</sup>

### **1.8 The Indian Constitution and Human Rights**

The constitution of India which came into force in 1950 is an eloquent testimony of the nation's deep commitment to human rights. It proclaims basic human rights and fundamental freedom and guarantees their enjoyment by all irrespective of caste, colour, sex or religion. It has also created legal institutions to enforce the fundamental rights comprising liberty, equality and social justice.<sup>26</sup>

Recognising the existing realities that the social disparities might impair full enjoyment of these rights by all, the Indian constitution was deliberately framed to provide positive discrimination and affirmative action in favour of those who could not exercise their human rights unaided. There are also constitutional safeguards to ensure effective representation of the socially and economically deprived sections of the society in the legislatures as well as public services.

• Since independence, India had sought to institutionalise its commitment to

human rights by a deliberate choice of an open society and a democratic polity based on universal adult suffrage, respect for the dignity of the individual, the rule of law and a multi-party system.

India has been steadfast in its conviction that democracy is the best guarantor of human rights and it also provides an optimal political framework for development. Poor countries like India requires a massive social and economic transformation to conquer the ancient scourges of poverty, ignorance and justice. But India believes that in order to be feasible, such basic charges have to be based on free and willing consent of the people provided by a democracy. The institutions which India fashioned to sustain as plural, multi-ethnic, multi-religious, multi-linguistic and a secular polity had the over-reaching objective of consolidating the norms and principles of our democracy.<sup>27</sup>

India has elected parliamentary institutions and conducts free and fair elections - local, state and centre. It has built mechanisms for peaceful and orderly changes of government in response to popular will. These mechanisms have been tested time and again and have provided their effectiveness. The governmental mechanism such as police, security forces are also working to safeguard people's life, liberty and security. India's independent judiciary which is the custodian of the people's rights is also acting zealously to protect them. Public Interest litigation, an additional system of Indian judiciary has also been instituted for this cause.

A free and vibrant press, existence of various interest groups, strong public opinion, an assertive NGO community and above all Rule of law fortify India's democratic system and its legal safeguards.

India is also a signatory to the UDHR and party to various international covenants, conventions and treaties. Further more, greater access to the statesmen of various countries and international human rights agencies have been facilitated. It is to reaffirm the atmosphere of freedom and India's commitment to its own catalogue of rights.<sup>28</sup>

Despite all these instrumentalities and institutional arrangements meant for the protection of human rights standards in our country, there has been a large scale reports of violation of human rights in different parts of the country. They are observed particularly at three different levels i.e. individual, society and state.

In our country majority of the population live in rural areas. As they are poor and illiterate and are not aware of their basic rights, they are easily exploited by the better of people. So there has been large scale violation of their rights by money lenders, land lords, petty politicians, tribal leaders, rural elites etc. Child labour, bonded labour and migrant labour are some of the examples of this factor. At societal level, we have also a different picture altogether. There are a number of cases of communal riots, caste conflicts, dowry deaths, social violence, criminalisation of politics and so on. These cases are apparent in certain states like Uttar Pradesh, Bihar, Rajasthan, Andhra Pradesh ad Tamil Nadu.

The violation of human rights is a matter of great concern, today as the state seems to be the worst kind of institution in violating human rights in terms of Army excess, custodial deaths and rape, inhuman and degrading treatment of prisoners, atrocities by police and paramilitary forces and above all the existence of certain black laws like the Disturbed Areas Act, Indian Police Act, Armed Forces Special

Power Act, Disturbed Areas Specific Court Act, Arms Amendment Act etc. In addition to these, MISA, ESMA, COFEPOSA and NSA are also some of the repressive laws of the Government which very often violate the fundamental rights and freedom of the people. These are certainly matter of sorrow and need to be checked.

In order to check these and other forms of violations arising out of numerous factors, the Government of India has also taken measured steps in creating institutions and reforming laws with regard to safeguard the legitimate rights of the people in general and the minorities, the dalits, the backward, the women and children in particular. Special Commissions like the Minority, the SCs and STs, the Backward classes, the women and other commissions on similar causes are also welcome steps in this regard.

Apart from these governmental and non-governmental institutions meant to safeguard people's legitimate rights, the Government of India has recently constituted the National Human Rights Commission (NHRC) for the promotion and protection of the human rights. The commission which came into existence on 12th October, 1993, is statutorily autonomous and has the authority to deal with the legal matters concerning the human rights cause. It has been endowed with the powers of investigation and recommendation to the respective agencies of the government whose task is to enforce its recommendations. Its annual reports are submitted to the parliament for scrutiny and comments under the watchful eyes of the media and the growing civil and democratic rights groups as well as other non-governmental organizations working on human rights in th country and abroad.

## NOTES

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## CHAPTER 2

# *Establishment, Structure and Status of the National Human Rights Commission*

## **CHAPTER - 2**

### **ESTABLISHMENT, STRUCTURE AND STATUS OF THE NATIONAL HUMAN RIGHTS COMMISSION**

The charter of the United Nations is perhaps the most visionary document ever adopted by the nations of the world. In its scope and range, in its prescriptions for peace and progress, it dares to propose a framework for collective security and action that is without precedent in political history. Central to that concept and to the over-arching determination contained in the premise "to save succeeding generations from the scourge of war" is the recognition that the world should reaffirm faith in fundamental human rights"... and promote social progress and better standard of life in larger freedom if the world is to attain peace. Not surprisingly, the same connection is made in Article 1 of the charter which asserts, inter alia, that one of the purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all, without discrimination as to race, sex, language or religion.<sup>1</sup>

In the 47 years since the adoption of the Universal Declaration of Human Rights, "the United Nations has developed a comprehensive strategy aimed at achieving the human rights objective set out in the Charter. The basis of this strategy is the body of international rules and standards which now cover virtually every sphere of human activity."<sup>2</sup>

~~Upon~~ **Upon** this strong legislative foundation has been built an extensive network of human rights machinery designed to further develop international standards, to



monitor their implementation, to promote compliance, and to investigate violations of human rights. The strategy is reinforced by a wide variety of public information activities and a technical co-operation programme which provides practical help to states in their efforts to promote and protect human rights.<sup>3</sup>

These structures and activities permit the United Nations to play a pivotal standard-setting and leadership role in the struggle for human rights and fundamental freedoms. The task of promoting and protecting human rights, however, is not one which could or should be assumed by only one organisation. United Nations practice in the field of human rights, is based on the fundamental premise that universal respect for human rights requires the concerted efforts of every government, every individual, every group and every organ in society.<sup>4</sup>

However, in the past two decades many countries have become parties to the major human rights treaties, thereby incurring a legal obligation to implement the human rights standards to which they subscribe at the international level. Human Rights involve relationships among individuals, and between individuals and the state. The practical task of protecting human rights is therefore primarily a national one, for which each state must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment and strengthening of democratic institutions. Activities aimed at the promotion of human rights and the development of a human rights culture should also be viewed as primarily national responsibilities. The most effective education and information campaigns, for example, are likely to be those which are designed and carried out

at the national or local level which take the local cultural and traditional context into account.<sup>5</sup>

When states ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained in the instrument. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if that law does not also provide for all the legal powers and institutions necessary to ensure the effective realisation of those rights.<sup>6</sup>

This problem of effective implementation at the national level has, in recent times, generated a great deal of international interest and action. The emergence or reemergence of domestic rule in many countries has focussed attention on the importance of democratic institutions in safeguarding the legal and political foundations on which human rights are based.<sup>7</sup>

It has therefore become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructure for their promotion and protection. In recent years, many countries have established institutions with the express function of protecting human rights. While the specific tasks of such institutions may vary considerably from country to country, they share a common purpose, and for this reason are referred to collectively as national human rights institutions.<sup>8</sup>

## **2.1 Establishing Standards and Goals for National Human Rights Institutions:**

The question of national human rights institutions was first discussed by the Economic and Social Council 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 in furthering the work of the Commission on Human Rights. Fourteen years later the matter was raised again, in a resolution which recognised the important role that national institutions could play in the promotion and protection of human rights, and which invited governments to encourage the formation and continuation of such bodies as well as to communicate all relevant information on the subject to the Secretary General of the United Nations.<sup>9</sup>

As standard setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focussed on the ways in which such bodies could assist in the effective implementation of these international standards. In 1978, the UN Commission on Human Rights decided to organise a seminar in order, inter alia, 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 and approved a set of such guidelines. These guidelines suggested that the functions of national institutions should be:

To act as a source of human rights information for the Government and people of the country;

To assist in educating public opinion and promoting awareness of and respect for human rights;

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;

To advise on the questions regarding human rights matter referred to them by the Government;

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 subject reports on these matters to the appropriate authorities.

To perform any other function which the government may wish to them in connection with the duties of the state under those international instruments in the field of human rights to which it is a party.<sup>10</sup>

As regards the structure of such institutions, the guidelines recommended that they should:

Reflect in their composition wide cross sections of the nation, thereby bringing all parts of the population into the decision - making process in regard to human rights;

Function regularly, and that immediate access to them should be available to any member of the public or any public authority;

In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and the General Assembly. The Assembly invited states to take appropriate steps for the establishment, where they did not already exist, of national institutions, for the promotion and protection of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.<sup>11</sup>

Throughout the 1980s, the United Nations continued to take an active interest in this topic and a series of reports prepared by the Secretary-General was presented to the General Assembly. It was during this time that a considerable number of national institutions were established - many with the support of the United Nations Centre for Human Rights.<sup>12</sup>

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the promotion and protection of human rights.

The workshop was to review patterns of co-operation between national institutions and international organisations, such as the United Nations and its agencies and to explore ways of increasing the effectiveness of national institutions. Accordingly, 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 principles relating to the status of national institutions (“the Paris Principle”), and subsequently by the General Assembly in its resolution 48/134 of 20th December 1993. The principles affirm that national institutions are to be vested with competence to promote and protect human rights and given as broad mandate as possible, set forth clearly in a constitutional or legislative text.

According to these principles, which represent a refinement and extension of the guidelines developed in 1978, a national institution shall have the following responsibilities:

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;

To promote conformity of national laws and practices with international human rights standards;

To contribute to the reporting procedure under international instruments;

To assist in formulating and executing human rights teaching and research programmes and to increase public awareness of human rights through information and education;

To co-operate with the United Nations, regional institutions, and national institutions of other countries.

The principles also recognised that a number of national institutions have been given competence to receive and act on individual complaints of human rights violations. They stipulate that the functions of national institutions in this respect may be based on the following principles:

Seeking an amicable settlement of the matter through conciliation, binding decision or other means;

Informing the complainant of his or her rights and of available means of redress, and promoting access to such redress. Hearing complaints or referring them to competent authority;

Making recommendations to the competent authorities, including proposals for amendment of laws, regulations or administrative practices which obstruct the free exercise of rights.<sup>13</sup>

Broadly speaking, on the lines of the aforesaid international guidelines, a considerable number of human rights commissions have been set up in different parts of the world. "These institutions have a very unique role in translating international human rights standards into reality, and giving them a local flavour and acceptability without diluting their essential universal characteristics."<sup>14</sup> In view of such considerations, it would be worthwhile here to highlight an overview of the nature, composition and functioning of the existing national commissions meant for the promotion and protection of human rights.

## **2.2 Human Rights Commissions in Different Countries - An Overview**

Human Rights Commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. These commissions and similar public bodies at the national level are generally designed to hear and investigate individual charges of human rights violations or discriminatory acts committed in violation of existing law.<sup>15</sup> The precise function and powers of a particular commission is defined in the legislative act or decrees under which it is established. These laws or decrees also serve to define the commission's jurisdiction by specifying the range of discriminatory or violative conduct that it is empowered to investigate. For example, the Australian Human Rights Commission is authorised to hear and investigate complaints of violation of any rights defined in the Racial Discrimination Act and the Human Rights Commission Act. Similarly, the United States Civil Rights Commission may hear and investigate complaints alleging discrimination on the grounds of race, colour, religion, sex or national origin.

Most human rights commissions are collegial bodies, comprising of members who, in most cases are selected by the executive.<sup>16</sup> In many cases, the commissions enjoy statutory independence and are responsible for reporting to the legislative body on a regular basis. Another point of consideration is that the selection procedure of the members of Human Rights Commission are organised in different ministries of the government. For example, in Canada and Japan, the ministry of Justice is responsible for the selection of members of the human rights commissions whereas in Norway and Denmark, the ministry of Foreign Affairs is responsible for the same.



In keeping with their independent nature, commission members are selected from a number of fields, but preference is generally given to the person having prior experience in the field of human rights. For instance, in Denmark, the members of the Human Rights Committee include representatives from the Foreign Ministry, other ministries and various non-governmental organisations. In some cases, restrictions are followed for the selection of commission members. For example, in the United States, members of the Civil Rights Commission are selected by the President and must be confirmed by the Senate, with the requirement that not more than half of a commission's members belong to the same party. In Japan, the ministry of Justice selects the members of the Civil Liberties Bureau's eight offices across the country. The citizens chosen as commissioners include social workers, school teachers, attorneys, media personnel and manual workers in agriculture and forestry.

The procedures followed by Human Rights Commissions in the investigation and resolution of complaints vary from country to country. However, it is true that in almost all countries the Human Rights Commission does not have the power to make binding decisions itself in resolving a complaint. In most cases, the Human Rights Commission attempts to arrive at settlements between parties. If the settlement or appropriate remedial steps suggested by the commission are not implemented, it frequently has the authority to apprehend the courts or prosecutors office for adjudication or prosecution of the matter. The commission may, as in Australia, submit the matter to the Attorney-General with a recommendation as to the appropriate legal action.<sup>17</sup>

Cases in which no settlement can be reached, the law often provides the

procedures to be followed. In Canada, for example, the provincial minister of justice concerned, may, upon the recommendation of the human rights commission, set up a board of inquiry. The Board's membership is entirely independent of the commission. If the Board decides that human rights violation has indeed been committed, it may determine the appropriate remedial action to be taken including the payment of damages. When the Board's recommendation is not implemented, it may be enforced by the courts or in some provinces by the Human Rights Commission itself. In one Canadian province, in which no board of inquiry exists, the Human Rights Commission may, with the plain tiff's consent, seek an injunction from the court, in the event that its recommendation has not been implemented.

In some cases, a Human Rights Commission may hear and investigate complaints, but may not be empowered to act upon them. The commission's function is, primarily, to review the status of compliance with Civil Rights law and to study the situation concerning respect for human rights. The commission is empowered, however, to hear complaints and receive information regarding those complaints. In fulfilling its responsibilities, the United Civil Rights Commission may issue 'supoenas', (a writ commanding attendance in court under a penalty) and hold formal meeting.

One of the most important functions of a human rights commission is its power to review systematically existing government policy towards human rights and suggest improvements. For instance, in addition to its competence to hear, investigate and apply remedies to cases involving human rights violations, the national commission for the promotion and protection of human rights in Nicaragua

conducts periodic reviews of the legislative and administrative systems and recommends to the government, ways in which these systems might be improved. Similarly, the Standing Advisory Commission on Human Rights for Northern Ireland advises parliament on the adequacy and effectiveness of existing laws in preventing discrimination on religious beliefs and public opinion.

Many human rights commissions engage in monitoring state legislative compliance with existing human rights law.<sup>18</sup> In its review of every newly enacted state law, the senate legal committee of Zimbabwe, for example, seeks to ensure that all new legislation compliance with the Declaration of Rights embodied in the Zimbabwean constitution. The Committee also advises the government on whether any provision in the new legislation would be in violation of the Declaration of Rights. Similarly, the Italian Inter-ministerial Committee on Human Rights engages in a systematic review of legislative and administrative measures in an effort to ensure that Italy meets its obligations under international covenants on Human Rights. In New Zealand, the Human Rights Commission is also responsible for advising the Prime Minister regarding the acceptance and enforcement of international instrument on Human Rights.

Most human rights commissions are also actively engaged in the public about their function and purpose as well as about various issues in the field of human rights.<sup>19</sup> They generally fulfil these functions through seminars, counselling services and meeting, as well as through the distribution of periodic reports, studies and bulletins prepared by the commissions or other human rights institutions. The statutes of the Australian Human Rights Commission, Japanese Civil Liberties

Bureau and Canadian Human Rights Commission have included this provisions in order to provide educational activities, to encourage community compaigns and non-governmental activities which promote respect for human rights. Even more specifically, the Canadian Human Rights Commission Act provides a broad range of activities in this regard. Some of the important provisions are: to institute information programmes, to foster public understanding, to carry out research programme, to provide assistance and advice directed at ensuring compliance with the Act, and to maintain close liasion with bodies or authorities on the provinces that are working in the field of human rights.

In some cases, commissions are created for the sole purpose of carrying out promotional and educational activities concerning with human rights. For example, the Sūrinam human rights commission, which is solely devoted to providing promotional services to the community for heightening an awareness of human rights issues.

From the foregoing discussions on the establishment, nature and functioning of human rights commissions in various countries, it can be rightly concluded that there has been a growing respect for and observance of human rights issues in most parts of the world. Human Rights Institutions have been established with a view to ensuring that laws and regulations concerning the protection of human rights are effectively applied and to educating the public about the purpose and operation of such legislations. India being a democratic country owes its obligation to international law and co-operation with other nations, has recently established an apex body called NHRC to comply with international standards of human rights

and to promote and protect human rights as enshrined in its own constitution.

## **2 A. Establishment of the NHRC**

The present struggle for human rights in India has its antecedents during the colonial rule but it became intense and full-fledged in emergency period as imposed by Indira Gandhi in between 1975-77. During this phase the contemporary moral standards of India's democratic norms stood as particularly amoral due to the increasing weakness in the professional efficiency of the state apparatus, the beurecracy, political parties, the judiciary and the media. As a result some of the important events such as the demand for restoration of civil and democratic rights, the demand for regional autonomy, restructuring of the state apparatus and the emergence of various civil and democratic rights organisations provided the institutional base for this movement. The recent establishment of the NHRC as a governmental machinery, is a just supplement of it.

### **2A.1 Brief History of Commission**

The history of the establishment of a Human Rights Commission in India can be traced back to pre-independence era; when the national liberation struggle was stirring up against British tyranny. Civil Liberties Union, the first human rights organisation in the country was formed by Jawaharlal Nehru and some of his colleagues in early 1930s. The main objective of the organisation was to collect information on violation of human rights and to provide legal aid to nationalist who were accused of sedition against the colonial authorities. It was successful in creating a consciousness among masses. The Madras Civil Liberties Organisation was formed

in 1947 which undertook similar activities in Madras. Following the ban on Communist Party of India, a nationwide repression took place particularly in Calcutta which led to the birth of Civil Liberties Committee in 1948. The real emergence of human rights organisations took place in 1960s when both the privileged social classes and the government systematically cracked down on groups fighting for the rights of the traditionally oppressed people. In 1972, the Association for Protection of Democratic Rights (APDR) was formed in Calcutta and in 1974, the Andhra Pradesh Civil Liberties Committee (APCLC) was formed. Both the organisations were limited by their fragmented and secretarian nature, coupled with the indifference of the media and public to the plight of marginalised sections of the society. However, their main task was to highlight the growing repression and exploitation in the country side and played a crucial role in confronting and exposing the coercive action of the state.

During the emergency period (1975-77), a major agitation against the growing authoritarianism of Mrs. Indira Gandhi, the then Prime Minister of India, further widened the scope for the establishment of human rights organisations in the country. With the active initiative of Jaya Prakash Narayan, the People's Union for Civil Liberties and Democratic Rights (PUCLDR) was formed in 1975. In the subsequent phase, the PUCLDR was split in 1980 into two groups - PUDR and PUCL. During the post emergency era, a number of human rights organisations such as the Civil Liberties and Human Rights Organisations (CLAHRO) in Manipur, Citizens for Democracy in Delhi (CFD), The Committee for the Protection of Democratic Rights (PDR) in Bombay, The Free Legal Aid Committee (FLAC) in Bihar, The J & K Peoples Movement for Human Rights and many others have been formed for this

cause. Though these organisations greatly different in their structure and *modus operandi*, their activities are more or less similar with regard to the promotion and protection of human rights. Fact finding mission and investigation, public interest litigation, citizens awareness programme, campaigns, the production of supportive literature for independent movements and organisation were some of the important activities of these organisations. Their main concern is to create an atmosphere where a harmonious state-civil society interaction could be possible.

The first political initiative to set up a civil rights commission took place as early as 1977 in the election manifesto of Janata Party. It was proposed to be an independent and autonomous and was to be headed by a person equal to the status of a judge of the Supreme Court, who would be competent to ensure that the minorities, the SCs and STs and other backward classes did not suffer from discrimination and inequality. The purpose of the setting up of the civil rights commission had been mooted to fulfil the party's promise made in the election. It was also felt that with the setting up of the commission, the key offices of the Commissioners of Scheduled Castes and Tribes and the Commissioners of Linguistic Minority would become redundant. Those offices would be wound up and their responsibilities entrusted to the proposed commission. The setting up of such a commission had been thought of mainly because of the lack of sufficient powers and inadequate status of the offices of the commissioner of Scheduled Castes and Tribes and the minorities.

In early 1983, the minorities commission had recommended to set up a comprehensive national integration - cum - human rights commission and urged the

government to make a constitutional provision for it.<sup>20</sup> In 1985, the then Chief Justice of India Mr. P.N. Bhagwati had suggested for a National Human Rights Commission<sup>21</sup>. In 1986, the Civil Liberties activists in the country planned to form a human rights tribunal comprising mainly of former judges to investigate violation of human rights.<sup>22</sup> The creation of a human rights commission in each state and at the national level was suggested by Dr. L.M. Singvi, an eminent jurist, in March 1988.<sup>23</sup> He advocated for the need of a constructive, positive and participative mass movement for human rights and human obligations.

### **Activities During 1991-93**

The Congress election manifesto released in 1991 had promised to set up a human rights commission to investigate and adjudicate complaints of violation of human rights within 365 days of its assuming power.

In February 1992, it was proposed that a legislation to help establishing a human rights commission was to be formulated after studying the structure of similar organisation in other countries and also in the backdrop of existing countries.

The Union Home Minister Mr. S. V. Chavan made a remark in the Rajya Sabha on March, 1992, that the proposed body would counter the false and politically motivated propaganda by foreigner and Indian Civil Rights Agencies against the state. In a speech, the Prime Minister Mr. P.V. Narasimha Rao remarked that “we must send a clear message that we do not tolerate human rights violation”. On April 24, 1992, the Congress Party spokes man, Mr. V.N. Gadgil called for a national debate on the role, composition, power and jurisdiction of the proposed commission.



Mr. Gadgil added that the question of human rights has now climbed to the top of the international agenda. The best way to face the reality is to establish an human rights commission. It can play a useful role in furthering human rights standards in the country. Its finding will act as correctives to the biased and one sided report of some of the NGOs. It will also be an effective answer to the politically motivated international criticisms.<sup>24</sup>

In another development, “the Chief Ministers’ conference called by the Home Minister and attended by a number of Central Ministers on September 14, 1992; after day-long deliberations adopted a resolution endorsing the decision to institute the commission. In the inaugural address Prime Minister P.V. Narasimha Rao’s pointed reference to “betrayal of custodial trust by the guardians of law and those appointed to protect the individual” and his urging of the authorities to deal with such lapses with “alacrity and in an exemplary manner to ensure that victims got a positive and quick redressal”, clearly showed that the proposed commission seeks to address to the very issue, the various reports of the human rights bodies have made the centre piece of their criticism against the organs of the state. In his speech, the Home Minister asserted on the need to enact a central legislation as a deterrent to check custodial crimes in the country. The decision to set up a committee of five chief ministers with a number of central ministers suggested the keenness of the Government. to have a legislation at the earliest and to get it passed at parliament’s winter session.”<sup>25</sup>

The discussions at the Chief Ministers conference showed a great deal of divergent views. The Mizoram Chief Minister Lalthan Wala even opposed the setting

up of the commission saying that the constitution of India guarantees all civil and political rights enumerated in the Universal Declaration of Human Rights of the UN. He said that India had a press which was totally free and was most vocal and vigilant, hence there was no need to set up such a commission. Moreover the other existing commissions took care of the human rights of the weaker sections of the society. The Orissa Chief Minister Biju Patnaik said that there was no doubt that the proposed commission would function as an authority as he believed that the state governments would be accountable to it, especially as the commission would be set up by an act of Parliament. On the other hand, Punjab Chief Minister Beant Singh cautioned against the commission getting reduced to a forum with only an advisory body.<sup>26</sup> The Assam Chief Minister Hitesher Saikia lashed out at some organisations and journalists for blowing custodial crimes out of proportion, while keeping mum over rampant violations of basic human rights of the citizens by militant and terrorists. He said that some journalists and organisations like Amnesty International forget that terrorists were violating the basic rights of citizens. The then Andhra Pradesh Chief Minister Janardhan Reddy warned that the scope of the proposed commission should not come into conflict with the established institution which discharged their functions under various statutes. Karnataka Chief Minister S. Bangarappa suggested that state level human rights commission should be set up and there should be clear demarcation of the jurisdiction of these commissions from that of the National Commission. It was interesting that three chief ministers of the BJP- ruled states i.e. of Himachal Pradesh, Madhya Pradesh and Rajasthan favoured a single Human rights commission to coordinate the functions of the existing commissions on the Minorities, SCs and STs and Women.

These are some of the important views of political leaders in connection with the scope, structure and status of the proposed human rights commission. Which provided a feedback to the government. to make up its mind in this regard.

However, it would be apt here to highlight some of the important changes in connection with human rights issues which had taken place at international level during this phase. International relations is always at flux. Important activities during 1991-93 such as the formal end of the cold war, the colapse of the former soviet union, the emergence of trade war between EC, USA, Germany and Japan etc., campaign for democratisation of world order and of course, the world wide violation of human rights led to the resurgence of importance to the concept of human rights. The USA has particularly taken interest to prevail its ideological hegemony in international sphere in general and the third world countries in particular. Human rights is a sensitive issue for many third world countries facing ethnic upsurge and insurgency. This issue has been used as a tool by western powers led by the US to bring developing countries into their lines of thought. Most of the third world countries are aid seekers for their economic development and industrialisation. However, these countries have been pressurised to show their good human rights record in order to seek financial assistance from them. It is in this context that there prevailed a linkage between development, democracy and human rights between the developed and developing countries. This led a basis for most of the third world countries in establishing and strengthening national institutions on human rights .

## **2A.2 Need for Setting-up of the NHRC**

The decision by the Government of India to set up a Human Rights panel did not come a day soon. A host of factors led the Government to think in terms of setting up of a statutory and recomendatory body on human rights. This issue had been under active consideration for some time at the appropriate official levels. More than 8 months ago the government had announced its intention to prepare a legislation to serve as a basis for such a commission. The issue assumed an urgency in the context of alleged violation of human rights in certain states like J & K, Punjab and Assam in the recent years. However, some of the important factors which led to the formation of NHRC are as follows:

◆ Over the past several years, India has been severly criticised by Amnesty International, Asia Watch and International Red Cross for alleged violation of human rights by the police and security forces in most sensitive areas such as Punjab, Kashmir, Assam and Andhra Pradesh. These violations include custodial deaths, illegal confinement, police brutalities, rape and other heinous crimes. Denial of permission of these reputed international bodies to study and assess our human rights record has created suspicion in the minds of such organisations about the sincerity of our committment to uphold human rights. The denial of these organisations to visit these sensitive areas is backed by the reasons that it might be prejudicial to the security of the state and hamper the work of restoring peace and tranquility which has adversely criticised on account of the absence of any plausible reasons. In order to avoid such criticisms/reports made by these organisations, the government decided to set up a native agency to examine its own human rights records.

◆ The charges of violation of human rights in India are being raised primarily with the incidences of torture, rape and deaths in police custody and inhuman and degrading treatment of prisoners. Apart from this, rampant violation of human rights arise out of the poor socio-economic conditions of our people particularly, people belonging to the most vulnerable sections - members of the SCs and STs, migrant workers and landless labourers. It occurs due to the country's scarce resources and other problems like poverty, malnutrition, mounting unemployment, illiteracy, unbearable and unhygienic conditions in the slums, lack of primary health care in the rural areas and a horde of other problems including violence, terrorism and outrageous incidences of communal riots.<sup>27</sup> Taking all these into account, it seems that our commitment to human rights is a mere catchy slogan pronounced at public meetings, conferences and seminars. So there is a need to establish a fact finding body to recommend ways and means to the Government/authority to prevent such violations.

◆ The growing concern for the promotion and protection of human rights issues both at national and international level could be a probable reason for the Central Government to think of in terms of establishing a human rights commission in India. The increasing concern being made about human rights, a real threat has been hold out to link economic assistance to human rights conditionalities. The USA and the UK are not only western countries which have been expressing their concern over the violations of human rights in India but also other donor countries like Sweden, Norway, France and Switzerland have also expressed their concern. They have been influenced by a number of International non-governmental organisations notably Amnesty International and other Church bodies. They

acknowledge that there have been instances of arbitrary killings of civilians by terrorist group in Kashmir and hence stress the point that higher standards are expected from the government official who are entrusted to uphold and protect basic rights of people.

◆ Another consideration for the introduction of human rights commission bill could be analysed in the light of Kashmir issue. Pakistan has a long standing demand to sponsor resolution recommending the visit of a fact finding mission to J & K to investigate alleged violation of human rights by the police and other security forces. This issue has been raised at various international conferences and became more intense particularly in the world conference on Human Rights at Geneva on 3 March, 1993.

◆ In its proposal for “co-operation Agreement on partnership and Development with India (1993)”, the EC has inserted a clause which states that respect for human rights and democratic principles is the basis for the co-operation between the contracting parties which constitutes a key element to this agreement. Prior to it, the EC has also emphasised on a resolution on Human Rights, Democracy and Development in 1991. In this resolution, the EC has made the insertion of human rights clauses compulsory in the economic and co-operation agreement between the EC and its member states and developing countries. Towards this end, India has recently received an annual aid of about \$ 100 million to \$ 150 million for specific projects from the EC. With regard to violation of human rights in India, the European Parliament had also passed a resolution on hightened tension in J & K state in 1992 in which it condemned all acts of terrorism and repression and abuses

of human rights and stressed the point that such acts may influence EC's relations with India and Pakistan. As a party to the Agreement, India has to perform its obligation to fulfil these conditions/clauses imposed by the EC members.

◆ The various rulings of the supreme court, high courts, the reports of the Law Commission, the National Police Commission and the reports of Independent observers have made clear that the immediate need for amending relevant sections of the CrPC and the IPC are necessary. The amendments suggested that it would shift the liability of proof on the police officials in case there is evidence that injury caused while in custody, mandatory judicial enquiry in case of death or disappearance in custody and post-mortem within 24 hours and medical examination in case of allegation of rape.<sup>28</sup> So the proposed Human Rights Commission may be of useful instrument in this regard.

◆ The need for bringing a central legislation providing for mandatory financial compensation to the victims of custodial crimes is long overdue. Thus, by adopting a three pronged strategy - first, establishment of human rights commission, second, amendment of the existing administrative law on crime, and third, a central legislation for compensation for the victims of custodial crimes; India can fulfil its international obligation and live upto the constitutional mandate.

◆ Another point of observation is that the judicial process in India is very slow. It takes, sometimes, years for a case to be decided. The courts are clogged with cases hence there is a great backlog of pending cases, besides the technicalities of procedure make it a case of 'justice delayed hence justice denied'. So the proposed commission could be another redressal mechanism for the promotion and

protection of human rights in a more systematic way.

◆ Despite the criticisms labelled against India by human rights organisations, “the world community by and large, perceives India as a stable democracy with an independent judiciary, vibrant legislature and a vigilant press. It is therefore, incumbent upon us to uphold India’s image at home and abroad by establishing an independent and investigatory watchdog body on human rights”.<sup>29</sup> As discussed earlier, many countries like Canada, Australia, Mexico, Algeria, Northern Ireland, Japan, Surinam, Nicaragua and The Philipines have set up human rights commissions in their respective states. So it is clear from the available indications that our country should have a commission similar to those countries. The commission so set up can have Indian Laws and Conditions, excluding the functions of the existing commissions meant for safeguarding the rights of the SCs and STs, women and the minorities.

Taking all these points into consideration, the Government of India introduced Human Rights Commission Bill in lok sabha on 14 May 1992. When the same was considered by the Parliamentary Standing Committee on Home Affairs, it was extensively criticised on the ground of its powers, functions and manner of functioning of the proposed commission. After certain modifications in the light of comments on the original Bill, the commission was initially constituted on 12 October 1993 under the protection of Human Rights Ordinance of 28 September 1993. This was later presented to Parliament on 25 November 1993 to replace the Ordinance and became the Protection of Human Rights Act, 1993.



### **2A.3 Objective of the Act**

The main objective of the Act is to provide for the constitution of a National and State Human Rights Commissions and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. Thus, it has a twin objective to fulfil namely establishment of institutional structure, both at centre and state level, and to create enforcement machinery in terms of human rights courts for better protection of human rights.

As per the Act, the NHRC has arranged its structural and functional framework in order to execute its functions as mentioned in the act. This has generated much interest to look into a detailed study on the structural and functional aspects of it in the following way.

### **2B. Structure of the NHRC:**

The unique feature of the NHRC is its well arranged and newly developed organisational structure. Organisationally, NHRC consists of a Chairperson, Members, Secretary-General, Heads, Subheads and other staff of different Divisions.

#### **2B.1 Composition of the Commission:**

The composition of the commission can be studied taking into consideration the following sub points. **Chairperson and Other Members:** Section 3 of the Act envisages that 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, matter relating to human rights.

#### **Vacancy of the Office of Chairperson**

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. 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.

However, no sitting Judge of the Supreme Court or a sitting Chief Justice of a High Court shall be appointed without consultation with the Chief Justice of India.

In order to facilitate the work of the commission, the Act also lays down the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women are to be deemed to be Members of the Commission for the discharge of certain functions, except for function relating to inquiry into complaints of violation of human rights, viz., that mentioned in Section 12(a)(i) and (ii) of the Act.

**Appointing Authority:** In accordance with Section 4 of the Act, the

Chairperson and Members of the commission are appointed by the President of India on the basis of the recommendations of a committee comprising the Prime Minister, as the Chairperson, and the Speaker of the Lok Sabha, the Home Minister, the Leaders of the Opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha as Members.

**Term:** The term of office of the Chairperson and members will be five years from the date of assumption of office or until the age of 70 years, whichever is earlier. On ceasing to hold office, the Chairperson and Members shall be ineligible for further appointment under the Government of India or under the Government of any State.

**Removal:** The Chairperson or any other Member of the Commission can only be removed from his office by an order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court has, on an inquiry held in this behalf recommended such removal.

### **Head Quarter of Commission**

The Headquarters of the Commission shall be at Delhi and there is an enabling provision in the Act to establish offices at other places in India with the previous approval of the Central Government.

### **2B.2 Officers and Other Staff of the Commission:**

The Act provides that besides the Secretary-General, the Central Government shall make available to the Commission such police and investigative staff and an

officer not below the rank of Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The Commission may appoint other administrative, technical and scientific staff considered necessary in conformity with the Rules made by the Central Government in this behalf.

#### **Secretary General:**

Secretary-General of the Commission is an officer of the rank of secretary to the Government of India. As a chief executive officer of the commission, all the orders and decisions taken by the commission is authenticated by him. The whole secretariate of the commission i.e., all the divisions comes under the overall administrative control of the secretary - General who is directly responsible to the commission. Being the chief coordinator of the commission, he also keeps liason with the various Ministries of the Government of India.

There are at least five different divisions of the commission entrusted with specific task, in close consultation and coordination with each other. These are: the Investigation Division, the Law Division, the Administration Division, the Information and Public Relations Division and the Research Division. In addition to this, the commission also maintains a library and computer cell. All these components of the commission call for a more detailed study.

#### **I. The Investigation Division:**

The commission has its own investigatory staff for investigation into complaints

either through its own initiative or a petition filed by a person in relation to human rights violations. As per the Act, the head of the investigation team is an officer of the rank of Director General of Police who is appointed by the Commission itself. This team includes one Deputy Inspector General of Police, 3 Superintendent of Police, 6 Deputy Superintendent of Police, 24 Inspector of Police and 24 constables. In addition to this, the act also envisages the association in appropriate cases of outsiders as investigators or observers. However, the specified strength of the division is yet to be achieved.

As the head of the division the Director General is responsible for the whole process of investigation into complaints of human rights violation. In the process of its inquiry, it is also open to the officials of the division to utilise the services of the central government or any state government as the case may be. During the investigation process an officer/agency whose services are utilised comes under the direction and control of the commission. The commission through the concerned officer or agency has the power to summon and enforce the attendance of any person and to examine him. Thereafter, the officer or agency utilised for this purpose is required to submit a report to the commission in a given period of time as prescribed by the commission. Accordingly the commission makes its own recommendations.

Another task of the division is the despatch of delegation. The main aim of the task is to get more information about the violation of human rights and other related problems. For example, a delegation has been recently sent to J & K for an on the field investigation. These are the main responsibilities of the division with hierarchy of functioning.

The following table gives a fair idea about the details of outcome of NHRC investigations during the year 1995-96.

No. of Police personnel cases where victims/ Next of kin recommended for compensation	No. of Police personnel against whom departmental action initiated	No. of Police personnel prosecuted		No. of persons recommended for prosecution	No. of cases registered by police	No of cases recommended for investigation by police	
		P*	C**			CID	CBI
79	26	22	02	29	03	10	02
13 cases; 22 victims							
P* : Police C** : Civilian							

## II. The Law Division

The Law Division of the commission plays a pivotal role in both receiving of complaints and redressal procedure of such complaints of human rights. It also informs the petitioner and violative agency about the action taken or likely to be taken in that regard. The medium of interaction could however be through any vernacular language as mentioned in 8th schedule of our constitution. However, no fee is chargeable on complaints.

Till the date, it is headed by a Registrar, one Joint Registrar, one Deputy Registrar, 5 Assistant Registrar, 6 Section Officers, 9 Office Assistant and such other ministerial staff. The functioning of the Law Division of the commission is quite systematic and meticulous one. It acts in a sort of circle. First of all it receives the complaints and after formal registration of these it sends to decision making body of the commission. The decision making body, after a proper assessment of the complaint, it passes orders having three different possibilities:

■ Dismissal of complaints in limini on the following grounds:

1. The complaints which do not fall within the perview of the commission.
2. The matter is subjudice or pending before another commission.
3. The event which is the object of the complaint had occurred more then one year before making of the complaint.
4. The complaint which is vague anonymous or pseudonymous in nature. and
5. The complaint relating to service matter.

■ Disposal of complaints with direction to the concerned authority where the case is likely to be decided.

■ After the proper assessment of a complaint a notice is given, provided the commission feels that the case comes within the perview of it and consequently detailed reports are demanded from concerned authority. In case delays in furnishing the report, the commission sends reminders and then the concerned agencies/ authorities are bound to send the report to the commission which passes the final

order and sends the same back to the authority. However, all these works of the commission are practically done by the this division with the help of the computer based network system.

Apart from these three different possibilities, there are certain exceptional cases where the Chairman is likely to write letters to the concerned authority, which in term responds directly to the Chairman's Office or to this division. The following tables (on page 82a, 82b) show the number of cases considered by the commission since its inception till the date.

### **III. The Administration Division:**

This division looks after all administrative, personnel, establishment, cadre matters of all the staff and officers of the commission. It is headed by a Joint Secretary who is the Head of Department and is assisted by a Director, two Under Secretaries, two Section Officers and such other ministerial staff.

This division looks after the meetings of the full commission, daily seatings of the commission and issues notices for such meetings/sittings. It also arranges the tours of the commission including foreign tour/visits. It also looks after the Protocol, arranges staff card, telephones, computers and other equipments of the commission.

The accounts branch also functions under the overall charge of the Joint Secretary. It has as on date, one Senior Accounts Officer, three Assistant Account Officers and other ministerial staff. This branch looks after all the accounts matter of the commission, perparees budget as also monitors the same.



The General section of the Division takes care of all the housekeeping jobs, i.e. procurement of stationary, stores equipments like Type Writers, Electronic Typewriters, Photostat machines, fax and such other equipments, furnitures etc. It also issues various items of housekeeping to different divisions and staff. It also looks after the maintainance, renovation and repairs etc. of the office premises as also keeps close liason with CPWD for the maintainance etc of the bungalow allotted to the Chairperson and other members of the commission. Under secretary (Estt.) is the head of the office and is also assisted by a Drawing and Disburshing Officer (DDO).

A Hindi section of the commission also functions presently under this division. This section arranges translation of complaints from Hindi and other vernacular languages into english as also normal Hindi work of the commission including translation of Monthly News Letter and Annual Report. It has also introduced correspondence in Hindi in office permises.

The commission is an autonomous body and its autonomy scheme came into being in April 1994. Under the autonomy scheme, various powers of the Ministries/ Departments of the Central Government have been delegated to the Chairperson. Financial power, general financial rules, fundamental and supplementary rules, Central Services leave rules and such other rules exception to the usual exceptions as applicable to other Ministry/departments of the Govenment of India have also been delegated to the commission.

A steering committee headed by the Chairperson has been set up to look after the budget estimates, revised budget estimates, allocation of funds to various heads

and sub-heads, approval of accounts and provisions directions on the audit report and such other matters within the competence of the Chairperson as he may like to refer this committee.

#### **IV. The Information and Public Relation Division:**

This division publicizes the activities of the commission through the Print and Electronic Media. Headed by an Information and Public Relation Officer who also acts as the Editor of the Monthly Human Rights News Letter, Annual Reports and other editorial matters of the commission. This division is also responsible for the production and distribution of pamphlets/brochers/audiospots video spots on human rights. As the spokesman of the commission, the IPRO briefs the media persons, issues press releases and also organises press conferences. Besides this it also maintains a data base entitled News Paper Clipping Information System, (NPCIS), concerning certain important features of press reacting to NHRC's work. It also looks after co-ordination with NGOs and maintains a Directory of NGOs in the computer system. It also keeps in touch with the representatives of international news agencies/Telecast/Broadcast etc.

#### **V. The Research Division:**

In order to discharge the responsibility to undertake and promote research in the field of Human Rights, a research division has recently been set up for this purpose. This division keeps contact with both private and official persons, prepares and participates in research missions, monitors news reports on each item relating to human rights. The researchers from different schools and universities are also

getting assistance from this division. Headed by a Senior Research Officer, who, in close cooperation with the Law Division is responsible for giving advice on research matters to the members of the commission.

Presently, this division is underway to prepare reports on various issues relating to human rights on the the basis of press clippings. These includes custodial deaths, compensation to the vicitims of crime, child labour, bonded labour, child prostitution which are some of the burning issues on Human Rights.

### **Library**

In the due course of time the commission has also taken step to set up a library cum documentation centre. Till the date it maintains around 1900 books and other documents such as UN Documents, AIR manuals, Supreme Court Reports, Government Reports, NGO Bulletin, to name a few, which are of relevance to the commission's work. The library also subscribes to a few journals. In order to make it more systematic and accessible one, it is proposed to be computerised soon.

### **Computer Cell**

With the number of complaints before the commission growing rapidly, the computerisation of data has become almost essential in order to take timely and meticulous follow-up. A pentium (p-5) based system with 28 Terminals, one Laser Printer, three Global Printers and 8 local printers have been installed. With the close collaboration with National Informatic Centre (NIC), it has developed a user-

friendly package for monitoring the status of complaints, from receipt to final disposal. As soon as a complaint is received a case number and the file number is assigned to it by the law division. Thereafter the details of the complaints are entered into the computer and an acknowledgement printed in the name of commission is mailed to the concerned complaint. The facility has also been undertaken to update the case record, so that, at any point of time, the status of any complaint is seen by the members of the officers of the commissions. It is also proposed to avail up NICNET connectivity which will facilitate interaction with officials of NHRC, Human Rights Courts and District Committees for a direct link with the commission.

## **2C. Status of the NHRC:**

The all encompassing concept of human rights and its protection by the existing institution i.e. NHRC, besides an independent, impartial, accessible and effective judiciary, indicates that there are equally effective instruments of human rights protection. This very fact underlines the status of NHRC, notwithstanding, the importance of judiciary of our country. However, the status of the commission is not only derived from its statute only but from different sources.

The dynamism of the concept of human rights has given rise to varied meanings of it. It has been perceived differently at different places and different context. In India, however, the NHRC has legally defined the concept in the following way.

### **2C.1 NHRC's Definition on Human Rights:**

In terms of Section 2 of the Act, "human rights" means the rights relating to the life, liberty, equality and dignity of the individual guaranteed by the Constitution

or embodied in the International Covenants and enforceable by courts in India. "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 16 December 1966.

## **2C.2 Functions and Powers of the Commission:**

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:

- a. inquire, on its own initiative or on a petition presented to it by a victim or any persons on his behalf, into complaints of -
  - (i) violation of human rights or abetment thereof; 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 living conditions of the inmates and make recommendations thereon;
- 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 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; and
- j. such other functions as it may consider necessary for the promotion of human rights.

### **2C.3 Powers Relating to Inquiries**

The Commission is vested with the wide ranging powers relating to inquiries and investigation under the Act. While inquiring into complaints under the Act, the Commission could exercise 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, 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; and
- f. any other matter which may be prescribed.

In the light of the extraordinary range of the functions assigned to the Commission and the scope of the powers conferred on it seems that the Commission must will act and be seen to act at all times, with autonomy and transparency. Indeed, it is on these two conceptual pillars that its work must rest if the Commission is to sustain and enhance the trust reposed in it by the nation. Both of these attributes will therefore need to be scrupulously respected and nurtured.

#### **2C.4 Procedure and Regulations of the Commission:**

In order to discharge the aforesaid functions of the commission, certain procedures and regulations are followed by it. The commission convenes its meeting at the discretion of the Chairman and also regulates its own procedures.

#### **2C. 5 Inquiry into Complaints:**

The Commission, while inquiring into complaints of violations of human rights, may 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. If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; on the other hand, 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.

#### **2C.6 Steps after Inquiry:**

The Commission may take any of the following steps upon the completion of an inquiry:

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; and
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 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.

#### **2C.7 Procedure with Respect to Armed Forces:**

The term 'armed forces' for purposes of the Act means naval, military and air forces and includes any other armed forces of the Union. The Act envisages the procedure respect to armed forces which is at variance with the procedure set out for complaints of violations of human rights by any other public servant.

1. The Commission shall, notwithstanding other procedure of the Act, adopt the following procedure while dealing with complaints of vilations of the human rights Members of the armed forces.
  - 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 redcommendations 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.

As per the act, NHRC is primarily entrusted with the responsibility of inquiring into complaints against the gross violation of human rights. The status of the commission is strengthened by the definition, powers, functions and procedures that it follows. Now one very important and pertinent question crops up that besides these provisions whether there is any validity of the existence of such a statutory commission in India? Does the constitution of India permit to set up such a commission for the purpose of inquiry/recommendation and reporting? Is there any specific guidelines prescribed by international law for composition, responsibilities and operational methodology of the commissions existing in different countries? Now in order to examine these queries, one has to peep into the details of these provisions as follows.

#### **2C.8 Constitutional Validity of the Commission under the Commission of Inquiry Act, 1952:**

Under article 246 of the Indian constitution the Central Government or the State Government may appoint commission of inquiry relating to list - I, II or III of the central and seventh schedule and list II or III of the state respectively not necessarily formulating for legislation but to know its recommendations for administrative and other purposes.<sup>30</sup>

Preliminary objection was that the commission of Inquiry Act is ultravires of the constitution or that the appointment under section 3 of the acts amounts excessive

delegation of power to the concerned Government. It was urged first, that inquiries can not be ordered for any purpose other than for legislation and secondly, section 3 is bad for excessive delegation of power to the government usurping the powers and functions of both the Parliament and the courts. However, in *Ramkrishna Dalmia vrs. Justice Tendulkar* case, the Supreme Court was of the view that “the recommendations of the Commission are of great importance to the government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial object it has in view”. In *Dalmia’s* case, it was further observed ‘a very wide and discretionary powers have been conferred on the government ... which may in some cases be misused or abused. Nevertheless the bare possibility that the power may be misused or abused can not *per se* induce the court to deny the existence of such power’. The discretion is not necessarily discrimination. “The parliament confided the discretion not to any petty official but to the appropriate government itself to take action in conformity with the policy and principle laid down in the Act itself”.<sup>31</sup>

*Dalmia’s* case, also repelled the second ground that appointment under section 3 of the Act amounts to usurpation of judicial function and delegation of essential legislative power. The court is of the view that it is not correct to say that the parliament or the government itself has undertaken to hold inquiry .... Assuming there is delegation of legislative function, the Act having laid down its policy, such delegation of power, if any, is not vitiated at all, for legislation by the delegate will have to conform to the policy laid down by the Act. Nor can commission usurp the function of the judiciary for the simple reason that even if the commission be presided over by sitting judge of the supreme court or the High Court, the commission can

not claim to be judge nor can its proceeding be called judiciary having no power to pass definite and enforceable judgement. "As the commission can only make recommendations which are not enforceable proprio vigore, there can be no usurpation of judicial function".<sup>32</sup>

NHRC hence has been established keeping in view the provisions laid down by the commission of inquiry Act, 1952.

### **2C.9 Status of the Commission under International Law:**

Principles relating to the status of national human rights institution are embodied on the UN Commission on Human Rights resolution 1992/54 of March 1992, annex (official record 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, annex\*\*\*. These provisions are as follows.

#### **I. Competence and Responsibilities:**

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on the advisory basis either at the request of the authorities concerned or through

the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

- b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

## **II. Composition and Guarantees of Independence and Pluralism:**

1. The composition of the national institution and the appointment of its members; whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will

enable effective cooperation to be established with, or through the presence of, representatives of:

- a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - b) Trends in philosophical or religious thought;
  - c) Universities and qualified experts;
  - d) Parliament;
  - e) Government departments (if they are included, these representatives should participate in the deliberation only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
  3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **III. Methods of Operation:**

Within the framework of its operation, the national institution shall:

- a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- g) In view of the fundamental role played by non-governmental organizations in expanding the work of national institutions, develop relations with non-governmental organizations devote to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.



#### **IV. Additional Principles Concerning the Status of Commissions with Quasi-judicial Competence:**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a) Seeking an amicable settlement through conciliation or, within or within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, specially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.\*

#### **2.3 Concluding Remarks**

The setting up of the NHRC through the Protection of Human Rights Act,

1993 is an important development in the quest for human rights in India. The appointment of such commission can make a platform for institutionalising the concept of the human rights in addition to the provisions of fundamental rights as enshrined in our Constitution.

There is a general skepticism among intelligentsia, policy makers, human rights activists and many others regarding the very basis of the formation of this commission. They are of the view that whether the establishment of the NHRC is inspired by the genuine desire to protect and promote human rights standards in our country or is just a response from external pressure. In order to answer this it can be said that the setting up of the commission is a response to both internal demand/necessity and external pressure. While internal demand/necessity includes political parties manifestos and demand from various circles - NGO community, press, pressure groups, eminent jurists, constitutional experts and recommendations of different organisations, the external pressure includes pressure from donor countries particularly USA and other European countries like U.K., Germany, Norway and Sweden. By establishing this commission, India has also shown its international accountability as mentioned in Article 51 of the constitution, one of the Directive Principles of State Policy which states that the states shall endeavour to foster respect for international peace and treaty obligations to the UN, UDHR and other treaties on human rights.

The need for setting up of the commission can be further analysed in the context of its structure and status. The structure of the commission shows that it is a fully independent body and based on two conceptual pillars i.e., autonomy and

transparency. Being a recommendatory and investigatory body, the recommendations of the commission are of great importance to the government in order to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evils found or to implement the beneficial object it has in view. The status of the commission is not confined with its statute only, rather it has its constitutional validity under the commission of inquiry act, 1952. The status of the commission is also defined in international law particularly in 'Paris principle of 1991' and many international workshops on National Institutions for the Promotion and Protection of Human Rights.

Therefore, the creation of a national human rights commission in India can be an important mechanism to strengthen human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. In India, the creation of such a human rights commission should go hand in hand with a thorough review of existing institutions and mechanisms - including legal aid programmes - in order to make these more effective instruments of human rights protection. These initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ending the impunity now effectively granted to virtually all those who violate human rights.

## NOTES

1. A paper entitled 'Principal Developments at the International level relating to National Human Rights Institutions' by Mr. Virendra Dayal for the seminar on National Institutions for the Promotion and Protection of Human Rights, Ulaan Baatar, Mongolia, 23-25, April 1996.
2. A handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, Centre for Human Rights, 1995, p. 3.
3. ibid.
4. ibid.
5. ibid.
6. ibid.
7. ibid., pp. 3-4.
8. ibid.
9. ibid., p. 4.
10. ibid., p. 5.
11. ibid.
12. ibid.
13. ibid.
14. Excerpted from the statement by Mr. Justice S.S. Kang, member of the NHRC, at the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights at Manila.
15. Encyclopedia of Human Rights (ed) by Edward Lawson, U.K. Taylor & Francis Ltd, London, 1991, p. 771.
16. ibid.
17. ibid.
18. ibid., p. 772.
19. ibid.

20. Panel urged on Human Rights Integration, The Times of India, New Delhi, 20 April, 1983.
  21. Manoranjan Mohanty, The Fight for Rights, Race of Civil Liberties Groups, The Statesman, New Delhi, 15, September 1985.
  22. Plan to Form Human Rights Tribunal, The Indian Express, 30 June, 1986.
  23. The Statesman, 20 March, 1988.
  24. Singh Prem, Human Rights Commission: Need for Consensus, Link, November 8, 1992, pp. 21-22.
  25. ibid., p. 21.
  26. ibid.
  27. D.S. Aswal, Human Rights Body: Why, The Patriot, 21 June, 1993.
  28. ibid.
  29. ibid.
  30. Dr. Gurbax Singh, Commentry on the Protection of Human Rights Act, 1993, Dominion Law Depot, Jaipur, 1996, p. 213.
  31. ibid.
  32. ibid., p. 215.
- \*\*\* Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights under subheading "Status of the Commission under International Law" has been drawn from "A Handbook on the Establishing and Strengthening National Institutions for the Promotion and Protection of Human Rights" Professional Training Series No. 4, Centre for, Geneva, 1995, pp. 37-38.

## CHAPTER 3

### *The Role of National Human Rights*

### *Commission in the Protection of Human Rights*

## CHAPTER - 3

### THE ROLE OF NATIONAL HUMANRIGHTS COMMISSION IN THE PROTECTION OF HUMAN RIGHTS

Fact finding is the heart of human rights activity. The prescription of human rights norms implies an understanding of the needs to be addressed, which in turn requires an application of the factual conditions. Since the application and supervision of human rights norms do not take place in *abstracts* but in relation to specific circumstances and situations, a human rights organisation is supposed to handle with the tangled web of facts, circumstances, perceptions and the situation more realistically. Fact finding itself and the conclusions/ recommendations emanating from a human rights organisation is more likely to find acceptance if it is done by an independent, competent and impartial authority without having any bias. As a result, the entire process will take care against any suppression or distortion to arrive at its findings.

Fact finding and recommendation being the basis of a human rights organisation, it needs to be analysed what variety of issues are undertaken by the NHRC as far as the Promotion and Protection of Human Rights is concerned. Hence those provisions are to be taken into consideration.

Fact finding in a vast and pluralistic country like ours, is a complex, tedious and costly process. In order to execute this process, the NHRC has arranged its structural and functional framework. As discussed in the previous chapter, this framework provides the commission with an efficiency to execute the diverse

responsibilities entrusted to it. This presupposes the availability of adequate financial and human resources, which in turn, provides its operational efficiency.

Effectiveness of the commission depends upon the range of functions it is entrusted to perform, the powers conferred upon it to accomplish them and ultimately the fate of its recommendations. This effectiveness in turn, will provide for the future growth and survival of the commission. Besides, its objectivity will make it more accountable and accessible to the public.

Objectivity being the basis of the commission, any deviance could be a major short coming for it. On the other hand, the complex process of achieving its objective depends upon its effective projection of it on the public through various other institutions. This will provide an expression of the acceptance and credibility of the commission.

In order to analyse and assess the role of NHRC in the Protection of human rights, the following sub-heads have been taken into consideration.

### **3. 1 Objective of the Commission:**

The National Human Rights Commission came into existence with certain well-identified objectives. The primary and essential objective of the commission is to create a culture of human rights throughout the country and amongst of its people. Being a investigatory and recommendatory body with specific statutory powers, it acts as an adviser to the Government and submits its reports/recommendations for the future on the materials available and is not subject to indict or charge any person



or group in the society. Hence its procedure is basically investigatory and recommendatory rather than accusatory or judicial one. The five important manifestations of NHRC's objectives are:

1. Inquiry into complaints
2. Review of Laws, Implementation of Treaties and other International Instruments on Human Rights.
3. Improving jail conditions.
4. Promotion of human rights literacy and awareness among various sections of the society; and
5. Undertaking and promoting research in the field of human rights.

### **3.2 Achievements of the Commission:**

The expression of the objective of the commission is provided by a variety of achievements it has undertaken so far which instead will provide an expression of the acceptance and credibility of the commission.

#### **1. Inquiry into Complaints:**

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 human rights through the commission. "Immediately after the commission was set up, it issued directives to all the State Government to ensure that incidences of custodial deaths or rape are reported to

the commission within 24 hours by the District Magistrates/Superintendent of Police, failing which the commission would presume that there was an attempt to suppress the incidents. Following these instructions a number of reports have been received from different states in respect of death which occurred in police or judicial custody. These reports are studied by the commission and action recommended against officers found, prima facie, guilty. One very significant development in this connection has been a higher level of awareness among authority in the government to initiate action against officials along with reports to the commission on incidents of custodial deaths".<sup>1</sup>

The following tables (on page 107a, 107b) give an impression of the statewise statement of cases admitted for disposal till the date.

Over the past 30 months of its existence, the NHRC has received nearly 16000 complaints, of which action had already been taken or initiated on some.

These complaints covered every aspect of the armed forces and police, custodial deaths and rape, torture, child labour and bonded labour, disappearances, dowry deaths and indignity to women, the rights of the disadvantaged sections of society especially of SCs & STs, special problems of minority communities and environmental issues affecting the right to life and dignity reasonable health and rest of odd complaints the commission either dismissed or disposed of complaints with observations to the effect that the remedies were more appropriately available in other fora, and that the complaints should seek such remedies from them.

However, the following cases provide some idea of the diverse ways in which the commission has been handling cases since its inception. The sources of these reporting of cases are drawn from individual petitioner, his/her representative, government authority, press. AIR, and above-all by its own initiative.

**Example of Cases During the Year 1993-94:\***

- (i) Firing by security forces in Bijbehara, Jammu and Kashmir.
- (ii) Alleged custodial death of Shri ShanskhemKharsaiot followed by death of two persons in police firing in Meghalaya.
- (iii) Alleged custodial death of Shri Madan Lal in Delhi.
- (iv) Alleged custodial death of Shri Om Prakash in Delhi.
- (v) Alleged custodial death of Shri Chandrasekharan in Pondicherry.
- (vi) Alleged custodial death of Raja in Dharma-Puri District, Tamilnadu.
- (vii) Disappearance of Shri Harjit Singh in Punjab.
- (viii) Disappearance of Shri Ram Singh Biling and Avtar Singh Mander, Journalist in Punjab.
- (ix) Alleged custodial death of Shri Balwinder Singh alis kala in Gurdaspur, District Punjab.
- (x) Alleged Rape by an official of Punjab Police
- (xi) Atrocity in police custody: alleged amputation of male organ of Shri Jugatram in police custody in Barmer, Rajasthan.

- (xii) Atrocities against women - Harijan women paraded naked on the streets of Dauna Village, Allahabad District in Uttar Pradesh.
- (xiii) Complaint regarding non-publication of reports of Justice T.L.N. Reddy commission of inquiry relating to "disappearance" of 43 persons alleged by police custody and killing allegedly by police.
- (xiv) Alleged beating of a Harijan girl Nirmala by her employer in sarita vihar, Delhi.
- (xv) Alleged fortune of prisoners of Naini Central Jail, Allahabad by the Jail authorities.
- (xvi) Beating of Shri Luies, advocate by sub inspector of police - complaint by Shri M. Udaya Bhanu, Advocate, Madras.
- (xvii) Complaint by All Assam Students Union (AASU) alleging killing of the Adviser of their unit of Tinsukia distirct and four other persons by Army personnel.
- (xviii) Allegations of police excesses, Dehradun District of Uttar Pradesh and death of Shri Asab Ali and Shri Kamal Kumar Aggarwal. (xix) Appeal for expeditions arrangements for heart surgery of Harihar Behera lodged in central Jail, Berhampur, Ganjam (orissa).
- (xx) Police action against human rights groups gathered to observe World Human Rights Day in Darrang Distirct of Assam.
- (xxi) Medical Ethics: Rights of the Disabled.
- (xxii) Interventions in court procedings under section 12(a) of the protection of Human Rights Act, 1993: Cruel, inhuman and degrading punishment of women.

(xxiii) Murder of Mahesh Pathak, editor of a newspaper in Baroda.

**During the Year 1994-95\*\***

- (i) Alleged custodial death of Madan Lal in Delhi.
- (ii) Alleged death of Korra Satya Rao, a tribal, in Vishakhapatnam District, Andhra Pradesh as a result of police mistreatment.
- (iii) Alleged killings of civilians in Ukhrul town, Manipur, in Crossfiring between 20 Assam Rifle and NSCN.
- (iv) Alleged death of Muhammad Akbar Sheikh in armed forces custody, Baramulla district, Jammu and Kashmir.
- (v) Alleged death of Allen Kuki of KholJang Village, Manipur, in custody of the Armed forces.
- (vi) Alleged death of 125 children in Phullbani District, Orissa, owing to malnutrition, malaria, and chicken pox.
- (vii) Disappearance of Shri Harijit Singh since April 1992.
- (vii) Illegal Chaining of patient in a hospital in Orissa
- (viii) Conditions of Chakma and Hajong refugees settled in Arunanchal Pradesh.
- (ix) Enhanced compensation to persons affected by the activities of extremists in Andhra Pradesh.
- (x) Alleged rape in custody by an Assistant sub-inspector of Delhi Police.
- (xi) Complaint of Dr. Subramanian Swamy, President, Janata Party, alleging

systematic denial of permission to him to his party, by the government of Tamilnadu, to hold meeting in the state.

- (xii) Illegal chaining of a patient in a hospital in Orissa.
- (xiii) Conditions of Chakma and Hajong refugees settled in Arunanchal Pradesh.
- (xiv) Enhanced compensation to persons affected by the activities of extremists in Andhra Pradesh.

**During the Year 1995-96\*\*\***

- (i) Custodial death of Abdul Gafar Khan in Goa.
- (ii) Commission takes up cases of custodial deaths in UP.
- (iii) Investigation of custodial death in Bihar.
- (iv) Recovery of compensation amount from police personnel responsible for custodial death in Tamilnadu, Orissa, and Rajasthan.
- (v) Death of Kueshiho Sumi in the custody of the armed forces (Assam Rifles) in Nagaland.
- (vi) Rape in police custody of T Uma in Tamilnadu.
- (vii) Alleged rape of Jain Sadhvis, Madhya Pradesh police asked to follow the spirit of law.
- (viii) Alleged rape of Smt. Bhanwati Devi in Rajasthan.
- (ix) Torture and sexual assault of a minor, in Bihar.
- (x) Stripping of Teenagers in police lock-up in Kerala.

- (xi) Commission investigates complaints of police high handedness against the villagers of Mannikere, Karnataka.
- (xii) Mistreatment of Shri Robin Paul of Calcutta, West Bengal.
- (xiii) Killing of CPI(ML) activists in police firing in Begusarai, Bihar.
- (xiv) Killing of Harijinder Singh in Punjab.
- (xv) Commission moves the supreme court on Chakma refugees in Arunanchal Pradesh.
- (xvi) Non-supply of relief materials to Kuki refugees in Manipur.
- (xvii) Action in the case of Rohtak fire cracker unit blast in Haryana.
- (xviii) End to discriminatory treatment in the remission of unexpired portion of life sentence in Orissa.
- (xix) Alleged kidnapping of Jhirmal Singh by police in Punjab.
- (xx) Killing of Josi Thakur in a fake encounter in Bihar.
- (xxi) Compensation to the next of kin of riot victims in Gujarat.

## **2. Improving Jail Conditions:**

Section 12)c) of the Protection of Human Rights Act, 1993 empowers the commission to visit, under intimation to the State Government, any Jail or any other institution under the control of the State Government, where persons are detained. The approach of the commission has been two-fold: first, to study the factors responsible for over-crowding in jail and the steps needed, to reduce that over-

crowding; second, to encourage such measures as may be necessary to develop or improve the skills of inmates, with a view to enabling their re-orientation and facilitating their reintegration into society upon release from jail.<sup>2</sup>

Members of the commission have already visited and studied conditions in a number of jails in various parts of the country. These include the jails in Delhi, Hyderabad, Patna, Indore and Vellore.

Jail manuals of various states are under examination with a view to evolving a model of All-India Jail Manual. The commission initiated its review with an examination of conditions in Tihar Jail in the Capital. Discussions were also held with the Chief Secretary and other senior officers of the Government of National Capital Territory of Delhi including, in particular, the inspector - General (Prisons).<sup>3</sup>

The commission noted that 85000 prisoners had been lodged in Tihar as against its capacity of 2500. 300 women had been lodged in the women's ward which has a capacity of 75. 900 juvenile had been accommodated separately in a ward having a capacity of 200. The commission further noted that 85% of the inmates were under-trials and only a small percentage were regular convicts.<sup>4</sup>

After discussions, it was agreed that over crowding would be substantially reduced by main concerted efforts in the following areas, namely speedy trials of detainees under the Narcotic Drugs and Psychotropic Substances (NDPS) Act; a separate ward for prisoners convicted of ticketless travel; construction of additional premises and the vesting of powers for the granting of parole to police officers.<sup>5</sup>



In order to separate those convicted of ticketless travel from hardcore criminals, it was decided that the Government of the National Capital Territory of Delhi would make the necessary efforts to find a suitable place outside the Tihar Jail complex for accommodating the former.

The commission urged the Government of National Capital Territory of Delhi to expedite the construction of two additional buildings in the Tihar Jail complex and one jail each at Mandawali, Shadra, Rohni, Dwarka and Narela, for which the latter has taken a decision in principle.

A vocational training school was established in the Tihar jail complex on 15 August 1994. Vocational course in tailoring, carpentry, book binding etc have also been started.

During its visit to Andhra Pradesh in August 1994, the commission had visited the open air jail situated in the out-skirt of Hyderabad and Secunderabad. The commission had noted that prisoners were paid a pittance as wages for each day's work, out of which half was credited to the prisoners account to be given to him on his release. Considering the nature of work and also keeping in view rehabilitation needs, the commission had suggested to the Andhra Pradesh Government that their wages be substantially increased.

Encountered with a similar issue in its visit to the central prison and women's prison in Vellore district of Tamil Nadu, the commission has recommended that prisoners working in crafts such as the manufacturing of books should be treated as skilled labour and remunerated accordingly. The commission has also asked the authorities to increase the medical care failing to the inmates.

The commission has also been aware of police 'lock-ups' and their abnormal conditions to take but one example, from the data received by the commission, it appears that the daily feeding allowance in police lock-ups ranges from Rs. 2 to 7. In consequence, detainees are either unfed or dependent on the clemency of the police. It is hereto note that the very first encounter of a person with the criminal justice system in the country gives rise to reaction of lasting abhorrence and distrust. In this connection, the commissions concern is that there is no dearth of sound corrective ideas; rather, it is negligence and apathy tht have lead to a situation that is simply impressible. The commission has raised the matter of lock-ups and sub-jails with State Government and intends to press for minimum standards of decency and responsibilities which is obviously going to be a long and ordus undertaking. It recommends that appropriate corrective actions be taken to improve the conditions in 'lock-ups'.

### **3. Review of Existing Laws: Implementation of Treaties and other International Instruments on Human Rights:**

There has been growing concern in the country and abroad about issues pertaining to human rights. Having referred to this, and to changing social realities and emergencing trend in nature of crime and violence, it has been considered as one of the vital purposes of the Protection of Human Act, 1993, to review the existing laws and proceedings and the system of administration with a view to bringing about great efficiency and transparency.

Sub-section (d) and (f) of section 12 of the Act impowers the commission "to review the safeguards provided by or under the constitution or any law for the

final being in force for the Protection of Human Rights and recommended measures for their effective implementation”.

In the short period since its inception, the commission has directed its attention to starting an in-depth study of the TADA Act, a task in which it has enlisted the assistance of Law commission. This is a matter of the highest importance to the commission since it touches on three most sensitive areas: the constitution, India's treaty obligation, and the determinants of the nation to preserve and protect human rights despite the lethal impact of terrorism which, often fuelled and supported from beyond the borders of this country, is the mortal enemy of civil society and all the issues that the Indian polity holds sacred. The visits recently recommended by the commission to various state of republic, including those that have suffer the scourge of terrorism, will facilitate this study, by bringing to bear on it first hand awareness of the situation prevailing on the ground.

A second area of study for the commission relates to the range of issues concerning the rights of child including the vexed and cruel question of child labour. Here again, the commission is establishing contact with the law commission, concerned non-governmental organisations and competent governmental and, indeed, international agencies. Visits planned to specific areas where child labour particularly prevalent will, once again, provide insights to the commission as its developed its views on how best to examine existing legislation and the implementation of international treaties and instruments on this matter. The commission is engaged in a similar process with regard to bonded labour and child prostitution.

A third area of the study for the commission relates to legislation affecting the rights of women. Thus, the national commission for women which is represented in the commission through its Chairperson has done considerable work in this area with the help of a most eminent committee which is established for this purpose. The NHRC intends to remain in close touch with its sister commission on this matter, with a view to examining the issues on which it can best be of support and encouragement. This is a task which gains immediately as, India is expected to submit her first periodic report on implementation of the provisions of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) by August 1994.

#### **Review of TADA:**

Reinforced by its visit to various states and following wide-ranging discussions regarding the act, the Chairperson of the commission announced publicly, as early as 6 June 1994 in Srinagar, that the commission had learned enough to have serious doubts about the worth and term of the act and that it was contemplating seeking a review of the judgement of the Supreme Court wherein the latter had upheld the virus of Act.<sup>6</sup>

The commission thereafter pursued a three fold strategy: it continued to monitor closely the manner in which the act was being implemented, it prepared a dossier for possible recourse to the Supreme Court and, as the data amounted concerning the abuses and excesses of the Act and date near for the consideration of the extension of the life of the statute, it prepared a direct approach to parliament seeking an end to the law. The exercise of the third option resulted in a letter

from the Chairperson to all parliamentarians dated 20 February 1995, recommending that the Act not to be renewed when its life expired on 23 May 1995 on the grounds that it was “incompatible with our cultural traditions, legal history and treaty obligations”. The letter concluded with the observation that Parliament had “entrusted to the commission with the charge of maintaining human rights” and that “the commission is finding it difficult to do so unless this draconian law is removed from the statute book.<sup>7</sup> However, “the efforts of the commission contributed substantively to the nation-wide debate on this issue and that, as a result its persistence and the remarkable efforts of many distinguished citizens and groups, a heightened and firmer sense of what is acceptable, and what is not, in terms of law and practice has begun to emerge and assert itself in our polity”.<sup>8</sup> Presently TADA has been replaced by criminal procedure Act, still around 6000 of TADA detainees remain in various jails of the country.

#### **4. Promotion of Human Rights Literacy and Awareness among various Section of the Society:**

One of the provisions of the Protection of Human Rights Act 1993 in section 12 (h) sets before the commission the responsibility to “spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminar and other available means”. This accords a necessity to undertake to create a culture of human rights across the entire country and amongst all its people.

Human rights education plays a very important part as fifty percent of the population are illiterate where the the concept of Human Rights is yet to be

understood. The method of discharging the responsibility entrusted to the commission to spread human rights literacy may be questioned but the commission on the other hand chosen to be pragmatic one instead of getting into any theoretical debate. It has set as its goal the spreading of knowledge concerning the rights embodied in the constitution, in the two International Conventions of 1966, i.e., Covenant on Civil and Political Rights and Covenant on Social, Economic and Cultural Rights as well as other human rights instruments adopted under the aegis of the United Nations System and of the mechanism available for defending these rights.

A three fold strategy to discharge this responsibility was undertaken by the commission. Firstly support of all political parties both at National and Regional levels was solicited where suggestions to the manner in which human rights could be promoted, monitoring the conduct of their cadre and liaisoning with the commission were discussed. Secondly, meeting with the Chief Ministers to sensitize their Civil Servants. Thirdly dialogues with the H.R.D. Ministry and NCERT at the centre and competent educational authorities at the state level. Dialogues with the Vice-Chancellors of various universities as well as Dean of Law Faculty to examine of the subject of Human Rights was also done.

The commission has intensified its efforts in a variety of ways, the details of which are a series of meetings with the Department of Education in the Ministry of HRD and with the NCERT to review the testbooks to delete the portions prejudicial to human rights and include materials that show genuine sensitivity towards such rights, secondly a source book has been prepared on human rights material to guide

teachers and other academics as far as schooling system is concerned. Thirdly, modules have been prepared to train to teaching staff at various levels. This is being fully supported by the State Councils of Educational Research and Training. Further a workshop was convened by the Delhi chapter of peoples union for civil liberties on 11th March 1995 which was attended by members of the commission, UGC, competent Ministry, NCERT, various NGO's, academicians and teachers. The Commission has also 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 contained in Article 45 of the Indian Constitution. Recently in February 1996, a seminar on 'Human Rights Education' was jointly organized by the Canadian Human Rights Commission and National Human Rights Commission at New Delhi, in which the need of human rights education among the masses including training for personnel of National Institutions was stressed.

The Chairperson's suggestion of including the study of Human Rights at the under-graduate and post graduate levels was widely accepted by the Vice-Chancellors and the Deans of Law Faculties. Infact the National Law School at Bangalore and the Universities at Dumka and Guwahati have indicated the introduction of courses on human rights. The Universities of Calcutta and Varanasi have set up special cells for this cause. The law panel of UGC is examining and updating ideas proposed by the committee chaired by Justice Sikri in 1981 on Human rights education, The UGC has planned to extend support to five universities for the study of Human Rights. The commission has urged time bound action in this regard.

The Chairperson and the Members of the Commission have associated themselves with a number of workshops and seminars organized by universities and non-governmental organisations. For example seminar on 'Human Rights - 'Global problems and perspective' by Law faculty of Jammu University in March 1995 , 'The Rights of Women' in Kurukshetra University in september 1994, National Seminar on 'Human Rights, Development and Democracy' in varanasi University in March 1995, Seminar on Legalized in-country child Adoption and Family Rights of Abandoned children held in Bhubaneswar, workshop on Criminal Law and Human Rights organised by PUCL in Madurai. The Director General (investigation) participated in a discussion on policing violence against women at a National Academy of Administration in Mussorie. The Chairperson has accepted speaking in locations as varied as Bangalore, Bhopal, Calcutta, Kochi, Lucknow, Patna, Pilani, Putta Parthy, Puri, Varanasi and Tiruvanthapuram.

Learning to respect human rights remaining constantly mindful of them despite provocative circumstances faced by the police, the military and the para-military forces are important. In this regard the commission called upon a meeting with the various Director General of police of various states to prepare model training syllabi for all levels of police force. The members of the commission visit various police training institutes in various states as well as the National Police Academy at Hyderabad whose Ex-Director General is the present Director-General (investigation) of the commission.

Discussions with the high authorities of the Para-military and military were taken up by the commission. The commission recommends that the training of both



officers and men needs to be sustained at a high level so that errors in conduct are avoided to the maximum possible extent. The commission recommends prosecution of personnel if found guilty of violating human rights. In this regard the Army and BSF have made available to the commission data relevant to the prosecution of those accused of violating human rights.

Participation by the Chairperson and its members in discussion on human rights have been done in the National Police Academy Hyderabad, and BSF centre at Tekanpur. The Secretary General has spoken at the Internal Security Academy of the CRPF at Mount Abu. Director General (investigation) has been to the National Institute of Criminology and the Indian Institute of Public Administration to participate in workshop relating to the training of Police and CRPF personnel. The International Committee of Red Cross addressed the trainees of BSF at BSF centre Tekanpur.

The accountability of the Authorities for their action will help in the flourishing of Human Rights in an open society hence the role of the media is of considerable importance. The commission has sought to meet regularly with representative of the media, including Seminar editors, correspondents and other personalities. The commission has been grateful towards the coverage provided and the activities of the media for highlighting issues of particular concern to the commission, the debate resulting to TADA is one of the examples. The commission, has sharpened and intends to further sharpen its information focus so that it may further benefit, in the propagation of its message, through its interaction with the media. One of the present modes of propagation is a Thirty second TV advertisement shown by the

National Network of Door Darshan as well as the regional centres which propagates the cause of Human Rights.

Finally, the commission has made efforts to increase involvement to celebrate the 'Human Rights Day' on the 10th of December. This day is to be observed in all the colleges and schools of the country. In order to highlight Human Rights Day on 10th December the Commission has hosted two functions on the day. In 1994 the chief guest was the speaker of the then Lok Sabha Mr. Shivraj Patil and the Former President Mr. R. Venkatraman is solicited is being the chief guest in the second function in 1995. The commission also publishes a Monthly News Letter since October 1994 to inform the public about its activities. In 1994 it was published only in English and since 1995 it published in Hindi also.

#### **5. Undertaking and Promoting Research on Human Rights:**

The commission is entrusted among others, with the statutory responsibilities to undertake and promote research in the field of human rights. As research is one of the most important functions of NHRC, Chairperson of the commission has desired that a new budget head to be open and the amount be asked for 1996-97 from MHA and Ministry of Finance to organise research on socio-legal aspects concerning on human rights particularly in respect of the weaker sections of the society. Accordingly, the commission has taken up the research studies on the following areas.

- (a) Abolition of child labour in the safety matches and fire work industry in Tamil Nadu.
- (b) Improving conditions of Mental Hospitals & Rehabilitation of Cured Patients;

- (c) Child Prostitution;
- (d) Prevention of female infanticide and foeticide;
- (e) Terrorism and violation of Human Rights in Punjab; and
- (f) The problems of the aged.

The aforesaid achievements of the commission on the normative plane can not adequately express the overall assessment of the commission. Hence it is here imperative to analyse the efficiency/effectiveness of the commission towards achieving its goal side by side to make it to be more independent, accessible and accountable to the public.

### **3.3 Effectiveness of the Commission:**

Effectiveness of the commission can be analysed in the light of following points: survival and growth, independence, adequate resources, operational efficiency, accessibility and accountability.

#### **a. Survival and Growth:**

The increasing number of complaints, budget, scope and the expanse activities of the commission since its inception in October 1993, constitute an ample evidence of its survival and sustained growth.

#### **b. Independence:**

An effective national institution is one which is capable of acting outside the purview of party politics and of all other entities and situations which may be in a

position to affect its work. Independence is, however, a relative concept. The very fact that a national institution is granted a certain independence of action distinguishes it from government instrumentalities. On the other hand, independence for a national institution can never mean a total lack of connection with the State. However, the legislative basis of the NHRC prescribes certain links and limits with the state. In accordance with this basis the independence of NHRC has been assessed.

**c. Adequate Resources:**

As per section 32 of the Act, the Central Government has to pay to the commission by way of grants such sums of money as the government “may think fit for being utilised for the purposes of the Act” after an appropriation by the Parliament. The commission maintains proper accounts and other relevant records and prepares budget as per the format made by the Central Government in consultation with the Comptroller and Auditor General of India. The CAG audits the accounts of the commission and also certifies the same.

The commission being a grant-in-aids body receives money from Ministry of Finance through Ministry of Home Affairs. However, the commission was initially working under MOH the year 1993-94 but it enjoys its autonomy scheme since April 1994. The annual budget allocated to the commission was 1.5 crore in 1993-94, 2.10 crore in 1994-95 and 2.25 crore in 1995-96.

**d. Operational Efficiency:**

A national institution, like any other organisation, must take care to ensure

that its methods of work are as efficient and effective as possible. Operational efficiency touches all aspects of an institution be it procedure, the recruitment and selection of prsonnel, the development of working methods and rules of procedure for the implementation of such regulations or performance reviews. Hence operational efficinecy well have a great impact on the capacity and creditibility of an institution. Till the date, the commission has 282 officials; they are engaged in different tasks as per the rules and regulations of the commission.

**E. Accessibility:**

An effective national institution is one which is readily accessable to the individual and groups as it is established to protect and promote their interests. An institution which is percieved as responsible and effective and which has the public trust will automatically enhance its own accessibility. Towards that end, it has to devote attention in cultivating relationships with individuals and with other relevant institutions and Departments of the Government. So that awareness and physical accessibility of the institution might be increased. Towards this end, the commission is in touch with various Government Departments/Ministries and as also facilitated different arrangements for tour to various institutions both at home and abroad. It also receives foreign delegates as well as distinguished members from non-governmental organisations and participates in different national and international meetings.

**F. Accountability:**

The NHRC is not an end in itself and can not be as strong or of humble as its

achievement. In accordance with its legislative basis, the commission is legally and financially accountable to the Government and the Parliament. This aspect of accountability is most usually dealt with through reporting obligations. The commission is required to submit detailed reports of its activities to Parliament or State legislature for consideration. In view of such consideration NHRC has presented its three Annual Reports - 1993-94, 1994-95, and 1995-96. Through this it has been open to all parliamentarians for scrutiny and comment.

Public accountability of the commission is another criterion to be judged. It can be achieved in a number of ways. All official reports of the commission is subject to open scrutiny and comment. By encouraging public debate and discussions, it has to motivate internal excellence as well as to ensure that the public and the institutions are aware of the standards of achievement it has been set. Transparency through publication and dissemination of reports, will inevitably enhance an institutions external credibility. For this purpose, it has been circulating Monthly Human Rights Newsletter, Brochers, Pamphlets etc.to public as well as various institutions.

### **3.4 Concluding Remarks**

The establishment of the NHRC by a parliamentary Act in October 1993 has added an entirely new and additional dimentions to the efforts of the country for the protection and promotion of human rights. While the courts have, through formal decisions, interpreted the constitution and the law of the land in terms of the Universal Declaration of Human Rights and various covenants to which India is a

prty, and have come to the rescue of victims of human rights, it is envisaged that NHRC would undertake a variety of tasks aimed at promoting a culture of human rights.<sup>9</sup> As a watchdog body NHRC has so far done a credible job not only promoting human rights in the country, but also raised the image of the nation in the community of states. The initial scpticism that sooner or latter the NHRC will end up as another government-type institution with its usual quota of lethargy and indifference has withered, as the commission successfully maintained its image of ojectivity, impartiality and integrity and infact assured the role of a model institution that will act as a catalyst in keeping the executive and legislative wings of the government to stick its task. Indeed, NHRC has become the central focal point for enforcement of the new generation of human rights while protecting the basic social order, in a given threat perception, the integrity and security of the state. However, it can be said that the commission had rendered a miraculous achievements in promoting and protecting human rights ethos of our country or that grivances of violations have ceased to occur. But one can honestly agree upon the point that it has brought a fresh hope to those who seek redressal of the their grivances. And there is awareness now, as perhaps never before, of the meaning of human rights in India.

## NOTES

1. Quoted from a paper entitled "Protection of Human Rights by Mr. R. V. Pillai, Secretary General of NHRC, presented at UNESCO branch office, Strussburgh, France.
  - \* For details, see Annual Report (1993-94) of the NHRC.
  - \*\* For details, see Annual Report (1994-95) of the NHRC.
  - \*\*\* Source, NHRC.
2. B.P. Singh Senegal, Human Rights in India: Problems and Perspectives, New Delhi, Deep and Deep Publication, 1995, p. 557.
3. ibid.
4. ibid.
5. ibid.
6. Dr. Gurubax Singh, Comentary on the Protection Human Rights Act, 1993, Jaipur, Dominion Law Dept., 1996, p. 246.
7. ibid.
8. See, Annual Report (1994-95) of the NHRC, pp. 9-10.
9. Quoted from paper entitled "Protection of Human Rights in India", by Mr. R. V. Pillai, Secretary General of NHRC, op.cit.



## CHAPTER 4

# *Coordination Between the Government and* *Non-Governmental Organisations*

## **CHAPTER - 4**

### **COORDINATION BETWEEN THE GOVERNMENT AND NON-GOVERNMENTAL ORGANISATIONS**

Uptimum realisation of human rights can be achieved through the enactment/development of protective law and the establishment of mechanisms to implement that law. National Human Rights Institutions, along with, inter-governmental and non-governmental organisations, can play an important role in promoting human rights at the domestic level. According to the Paris Principles relating to the status of national institutions, a national human rights institution should “Cooperate with the United Nations and other organisation in the United Nations System, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights”. Cooperation and collaboration, in fact, reinforce the initiatives taken by an institution and thereby enhances its overall effectiveness. National Human Rights Commission is well aware of these principles and hence developed a close and cooperative relation/ties between a number of institutions and persons in order to achieve its objective as mentioned in the Protection of Human Rights Act, 1993.

In order to effectively implement human rights norms, an impartial, politically independent, persistent and organised concern is required. National Human Rights Commission is no doubt an independent and autonomous body and is not subservient to any official or agency. But as far as the functioning of a governmental institution is concerned the concept of independence/autonomy can never mean a total lack of

connection with the state. The Protection of Human Rights Act 1993, accordingly prescribes certain links with the states and the limits within which the NHRC has and would be continued to act with the determination to create a culture of human rights throughout the country.

#### **4.1 Coordination between Central/State Governments:**

The creation of NHRC itself is a governmental response to the long standing demand within the country as well as pressure from the international bodies. The very basis of its formation is backed by a number of discussions and meetings with the central ministers and Chief ministers of different states. The mandate of the commission however, envisages that it has to investigate the complaints of human rights violation with the help of State Government officials (police) and investigation agency as the case may be. And accordingly it makes its recommendations to the concerned violating authority/agency whose task is to enforce it. As far as State Human Rights Commissions are concerned, every state is supposed to establish it as per its own state legislation and resources. However, NHRC's effort in this direction has been a pioneering one so far.

#### **4.2 State Human Rights Commissions, Human Rights Courts and District Committees:**

The protection of Human Rights Act 1993 provides for a National Human Rights Commission and State Human Rights Commissions. There is no specific mention in the statute on the setting-up of commission at the level of Union Territories. The presumption could be that the commission at the national level will serve the Union Territories as well. However, this militates against the concept

of a decentralised grievance redressal machinery through State Commissions.<sup>1</sup> The phenomenal increase in the number of complaints received by the Commission during the last two and half years, as also the number of requests from NGOs, academic institutions and others seeking the presence and participation of the commission in different programmes have emphasized 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, in a country as vast as ours.<sup>2</sup>

The National Human Rights Commission, for its part, has therefore continued to encourage this process and it is to be noted that, by 31 March 1996, State Human Rights Commissions had come into existence in West Bengal, Himachal Pradesh, Madhya Pradesh and Assam. Certain states like Nagaland and Manipur have formally conveyed to the commission that they would be setting up state level commission at the earliest. Maharashtra, Manipur and Orissa have indicated that the question of setting up of statelevel commission is under active consideration. Andhra Pradesh, Karnataka and Kerala have stated that the matter is under examination. The government of Tripura has mentioned that the proposal to have a state commission would be examined suitably, but it has added that the non-availability of resources was a major handicap.

Further, Human Rights Cells had come into being in the states of Jammu and Kashmir, Uttar Pradesh, Andhra Pradesh and Kerala and in the Union Territories of Daman and Diu and Dadra and Nagar Haveli and the National Capital Territory of Delhi.

As far as State Human Rights Courts are concerned, as envisaged in section 30 of the Act, certain states like Andhra Pradesh, Assam, Sikkim, Tamil Nadu and Uttar Pradesh, have already notified their willingness to do so. More states are expected to follow suit. The commission is also in touch with the concerned High Courts with a view to making clear the precise nature of the offences to be tried in such courts and other details regarding the conduct of their business.

In addition to the provisions contained in the Statute, the District-level committees are to be created. The District level committees is to be headed by the District and Sessions Judge, and will comprise, in addition, the chief Judicial District Magistrate, the Superintendent of Police and the Revenue Divisional Officer as members. Though the committees are purely official in nature, it can serve a most positive purpose. Thus, the commission has accordingly recommended the setting-up of such committees in various states. In this connection, it is heartening that many states have already accepted, in principle, to create such District level committees. The Government of Kerala has taken a leading role in this regard and has already established such committees. It had recommended that other states should try to follow the Kerala example. In the due course of time, district level committees have been established in Andhra Pradesh, Chandigarh and in Andaman and Nicobar Islands. Other states and union territories are also underway in this process.

As the commission is keen to follow the human rights situation in all regions of the country closely, to act preventively, to redress grievances speedily and to promote a culture of human rights throughout India, it has been examined ways and

means in which it can best decentralise its own administrative machinery. It has thus taken a decision in principle to establish regional offices that could serve the above mentioned purposes, strengthen liason with the state government/union territories and also help the evolution, in time, circuit benches of the commission which could result in the speedier disposal of the cases filed before it.

As regards the mechanism for the redressal of human rights grivances in union territories, the Ministry of Home Affairs, had taken the position, that the best way of proceeding may be through the extention of the jurisdiction of the state commission of neighbouring states into the adjoining union territories as has been done in respect of High Courts. However, as many states have themselves been slow in setting up commission, the national commission would recommend that, in the interim, the Home Ministry should advise union territory to establish Human Rights Cells as has been the case in Daman Diu and Dadra and Nagar Haveli.

#### **4.3 Co-ordination with Inter-governmental Organisations:**

National Human Rights Commission is also well aware of the fact that its effectiveness can be increased by drawing on the resources and expertise available within intergovernmental organisations. Intergovernmental organisations such as the United Nations, the UN Commission on Human Rights and others are very useful in facilitating contacts between national institutions. The opportunity to interact with other similar organisations on the specific purpose of exchanging information and experience can be useful for strengthening its own purpose. Towards this end, the NHRC was represented at the 50th, 51st and 52nd annual sessions of the UN Commission on Human Rights held in Geneva. On other occassion the commission

was also represented at a UN workshop held in Kathmandu, Nepal on "Regional Arrangements for the Promotion Protection of Human Rights in Asian and Pacific Regions". A member of the commission was represented at the 4th United Nations Conference on Women, held in Beijing. In March 1996 a member of commission, Shri Justice V.S. Malimath was nominated by the Secretary General of the United Nations to serve as a member of a fact finding mission to Nigeria to examine and report two issues of concern to the international community, namely (i) the validity of judicial procedure of trial of Mr. Ken Sarowiwa and others in the context of the various international human rights institutions to which Nigeria is a party and of relevant Nigerian Law and (ii) Plans of the government of Nigeria to implement its declared to commitments to restores the country to civilian democratic rule. National Human Rights Commission is also a member of the Coordinating Committee of National Institutions on Human Rights and by virtue of its status as a member, fortunately the present Chairman of the NHRC has been chosen to be its Chairperson, till such time and proper rules were drafted, in succession to the Chairmanship of the Canadian Human Rights Commission.

#### **4.4 Co-ordination between National Institutions:**

The phenomenal growth of national institutions in recent years has led to a significant expansion in opportunities for inter-institutional cooperation and collaboration. Many cooperative relations are designed to facilitate the position of assistance from a relatively strong, developed institution to a newer or smaller one. Many national institutions often share similar goals and cooperation is often a mutually reinforcing experience. National institutions may decide to cooperate on

a promotional level by conducting joint activities and collaborations in study and research projects on topics of mutual concern. Information exchange is another mechanism of practical cooperation which can be implemented in a number of different ways. Through this process, they may decide to convene regular meetings in order to compare experience and methods of work to exchange reports and publications and perhaps even to address issues of common interests. Two or more institutions may decide to develop a programme of regular staff exchange in an effort to institutionalise cooperation and reinforce the flow of information.

The National Human Rights Commission is keen to see close cooperation developing between National Institutions established to promote and protect human rights. In fact, it has been interacting with a number of national institutions since its inception. Among others, the National Institution of Canada, Australia, Pakistan and the Philippines are the main. Following high-level visits between the Canadian Human Rights Commission and the NHRC, a memorandum of understanding was signed between them, providing for staff exchanges, the sharing of information and documentation, training materials, and the development of stronger links between human centres in their respective Universities which would enhance the quality of research and study in the two countries. In addition the Canadian and Indian Human Rights Commissions recently conducted a useful seminar on 'Human Rights Education' in Feb. 1996 in New Delhi. The commission was also represented at the second and third international workshops of national institutions held in Tunis in 1993 and in Manila in 1994 respectively. Besides this, NHRC was also represented at the seminar on "Principle Development at the International Level relating to National Human Rights Institutions" in April 23-25, 1996, held in Ulaan Baatur, Mongolia.



#### **4.5 Contacts with Statesmen/Delegates from Foreign Countries:**

In a global climate of heightened awareness of human rights, it has come to as no surprise to the commission that its formation and activities should be the subject of considerable interest both at home and abroad.

The commission welcomes this by taking into account that a country like India, with its open and democratic society, its pluralism, its commitments to the rule of law, the Universal Declaration of Human Rights and its own constitution should be in vanguard of worldwide movement for human rights.

The commission has therefore, received a steady stream of eminent visitors, both from the diplomatic corps stationed in Delhi and from Governmental, parliamentary, judicial and non-governmental organisations located abroad. It welcomes these contacts and has, in its part, encouraged them in various ways. The commission believes, it is important that the country should be open to visitors interested in human rights matters, as such rights best protected through policies of transparency. A knowledge of realities on the ground is also essential to the correct application of a problem in the field of human rights, as indeed in any other field. In the due course of time, the commission has received a number of distinguished visitors from abroad. These included more than one delegation of parliamentarians from the U.K. and Germany, Representatives from the United States Congress, from the Standing Committee of Foreign of the Netherlands, from the liberal party of Belgium and European Parliament, to name few, The discussion thus far have, by and large, centered on the powers and functions of commission, its status, activities and procedures, and on certain issues that are central to the perception of the state

of human rights in India. In the course of the year 1995-96 under review, the commission had occasion to hold extensive discussions with Mr. Jose Ayala Lasso, the UN High Commissioner for Human Rights, Mr Jose Ayala Lassoduring his visit to India Mr. Ibrahima Fall, Assistant Secretary General in Geneva. There are also discussions held between the commission and various groups, particularly, Parliamentary, Juducial, Non-governmental that come to the country from U.K. and European Parliament to name of few. The commission was especially happy to receive a delegation of the UN Committee on the Rights Child when it visited India under the auspices of UNICEF. The commission was also happy to receive a delegation from the human rights commission of Pakistan.

On various occassions, individual members of the commission attended international meetings and discussion of interest and consequence to the commission. Thus Chairperson of the commission also paid a visited to North-America, U.K. and the UN office in Geneva in connection with the work of the commission. Similarly the Secretary-General of the commission participated in a seminar on "the role of the human rights community in conflict resolution (South Asia) organised by the Friedrich Neumann Foundation in Strusburg, France in December 1995. The Secretary-General and Director-General investigation paid one-week visit to the United Kingdom to study questions relating to prision administration and reform. All these contacts haveconsiderably resulted valuable exchange of views of different high dignitaries in connection with the purpose of strengthening and protecting human rights institutions. The commission looks forward further interaction in the period ahead.

#### **4.6 Cooperation with External NGOs:**

The commission continued to have contact both at home and abroad with a number of non-governmental organisations concerned with human rights. These include Amnesty International, Human Rights Watch of (Asia), the International Committee of the Jurists and others which welcomed and encouraged their efforts in the humanitarian field. The commission was also represented at a meeting in Hongkong organised by an NGO the Asian Human Rights Commission, which discussed various issues relating to the statutes of National Commission. The commission is of the view that its participation in meeting of human rights groups and activists can be great value to the country to those who wish to learn of the situation in India, and indeed to all those engaged in furthering human rights world wide.

#### **4.7 Coordination between Indian NGOs:**

The exceptional role of non-governmental organisations (NGOs) in furthering human rights is given appropriate and special recognition in the Act. Section 12(i) expressly charges the Commission to “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>3</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. The Commission sees a most positive role for NGOs in bringing complaints to its notice. 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. There can be instances when the Commission, in accordance with its Regulation No. 18, in addition to using its investigative staff, may choose to associate NGOs actively in investigation work. 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. There would thus be a role for NGOs in the research and study programmes of the Commission as this develops.<sup>4</sup>

The Commission has already had the benefit of interacting with a large number of NGOs, both Indian and foreign. Certain of them have already brought complaints that are under consideration by the Commission. Yet others have already helped the Commission by their reports and publication and by their vigilance in the defence of human rights.

In a country as large and as diverse as India, there is always the problem of being unaware, in Delhi, of the extent of talent and commitment amongst groups and individuals often far removed from the nation's capital but heroic in their devotion to principles and often in their accomplishments. The Commission is seeking to prepare an appropriate National Register of NGOs working in the field of

human rights, both in order to develop practical links with them and between them, if they so choose. In undertaking this task, the Commission is seeking advice from prominent human rights activists and NGOs that have already established a repute for probity and commitment.<sup>5</sup>

The responsibilities entrusted to the Commission under the Protection of Human Rights Act 1993 cannot be adequately discharged without the development of close and cooperative ties between the Commission and non-governmental organizations - the eyes and ears of the people of India. For the Commission, it is not just a statutory obligation, under Section 12(i), of the Act, "encourage the efforts of non-governmental organizations and institutions working in the field of human rights", but a necessity to do so, if its own efforts are to be well-informed and in tune with the deeper aspirations of the country - aspirations that find expression in the courage and idealism of many non-governmental organizations. As the Commission noted in its first report, the cause of human rights 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. To this end, the Commission has, from time to time, invited leading human rights activists and NGO representatives over for discussions and advice and sought their help in practical ways. In addition, in every visit to a State, the Commission has made it a point to benefit from the experience and knowledge of NGOs, whose contacts at the "grass-roots" level give strength and meaning to the human rights movement where it matters most.

In the development of this working relationship, the Commission is particularly grateful to NGOs for coming forward with complaints regarding violations of human rights. Analysis of the complaints received by the Commission indicates that over 200 NGOs were involved in the submission of such complaints - and that these complaints were received from all parts of the country. This speaks for itself concerning the range of NGOs in the country and of their interest, simultaneously, in rectifying wrongs and in using the mechanisms of the Commission. The Commission thus is heartened by this effort.

Further, in accordance with the provisions of its Regulation No. 18, the Commission has made a beginning, in the year under review, to associate NGOs with the enquiry of complaints. For example, in a case alleging illegal detention and torture by the Kerala Police in Muringoor, Chalakudy, the Commission has requested an NGO in Kochi to help enquire into the matter and report to the Commission to the State, NGOs have boldly come forward with evidence of wrongdoing in relation to specific complaints addressed to the Commission. Further, the Commission has, on more than one occasion, turned to Legal Aid & Advice Boards to ascertain facts and make enquiries on behalf of the Commission. Examples of the latter include recourse to the Tamil Nadu Legal Aid & Advice Board which has looked into allegations of police mis-conduct in Velanthangal village of VRR district on the basis of a complaint brought by an NGO, and the steps taken by the Chairman, UP State Legal Aid & Advice Board, to enquire into a particularly tragic and complex case having to do with the wrongful detention, in the Agra Mental Asylum, of a sane person for a period of nearly three decades, during which time he was stripped of his property rights by near relatives.

There are many ways in which the relationship of the Commission with NGOs can be further strengthened. As the Commission increasingly begins to concentrate on specific human rights problems, for example, child labour or bonded labour, it is normal that it should turn to NGOs having specialized knowledge in such fields. In the course of the coming year, the Commission has plans to initiate a series of action-oriented studies relating to key human rights problems facing the country. The mechanisms that it will set up for conducting such studies may well require the involvement of NGOs for their ideas, experience and research capability.

In order to derive a fuller awareness of the range and capacities of NGOs in the country, the Commission, in its very first Newsletter of October 1994, appealed to them for information on their respective organizations, their membership, major activities, addresses, fax numbers etc. A number of NGOs have responded and have provided such information, the details of over 200 specializing in human rights having been fed into the computerized list that the Commission is maintaining. Such data can be of increasing help to the Commission as it seeks the association of NGOs, for instance, in the making of inquiries into the complaints that are received from various parts of the country.

In the period ahead, the Commission would like to further rationalize and expand its arrangements of cooperation with NGOs. It firmly believes that the promotion and protection of human rights require the courage and commitment that NGOs bring to their endeavours and it is for this reason that the Commission has consistently taken the position that the country has much to gain by encouraging their efforts, whether the NGOs be national or foreign.

It is for the same reason that the Commission has participated with enthusiasm in numerous events, discussions and workshops that NGOs have organized around the country, to which reference has been made in earlier sections of this report.<sup>6</sup>

#### **4.8 Concluding Remarks:**

NHRC's co-ordination with a number of governmental and non-governmental organisations and contacts with various high dignitaries, visitors and foreign delegates have practically enhanced its status and prestige both at home and abroad. Protection of human rights however, is a concern of every body's responsibility. It requires the concerted effort of all as a government official, parliamentarian, human rights activist, lawyer journalist student, teacher, social worker and the like; their concerted and continued effort in terms of commitment, criticisms and suggestions can serve the best purpose of strengthening the organisation in a most positive and constructive way. So that the organisation can be a more reliable and accessible one bridging the space between governments on the one hand and the non-governmental organisations on the other.



## NOTES

1. See Annual Report (1994-94) of the NHRC, pp. 28-29.
2. Dr. Gurbax Singh, A Commentry on the Protection of Human Rights Act, 1993, Jaipur, Dominion Law Depot. 1996, p. 325.
3. See Annual Report (1994-95) of the NHRC, p. 11.
4. Dr. Gurbax Singh, Commentary on the Protection of Human Rights Act, 1993, op.cit., pp. 249.
5. Annual Report (1993-94) of the NHRC, pp. 28-29.
6. See Annual Report - 1994-95 of the NHRC, pp. 26-28.

## ***Summary and Conclusion***

## SUMMARY AND CONCLUSION

Human rights are essential for every individual to develop his/her potential as a Social being; they are the entitlements conferred by the state which create Societal conditions for fuller development of individual freedom. Rights and duties are co-related in the sense that a person's obligation becomes conditional for the enjoyment of the rights of others. The concept of human rights centres around individual, whose survival and existence would be the main concern of all categories of rights be it social political, economic and cultural. Rights are also regarded as universal. Inalienable, indivisible and interdependent. The indivisibility of Rights is established by the fact that the Socio-economic rights are prerequisite to make civil and political rights meaningful. Human rights can be best protected and guaranteed in a democratic polity in particular which is characterised by certain institutions like constitution, Rule of law, independent and impartial judiciary, popular legislature, multi-party system, free press, pressure groups, various civil and democratic rights groups etc. All these features embody the principles of a liberal democracy, whereby the rights of citizens are legally and largely ensured.

In recent years, however, the question of human rights has assumed global significance particularly after the end of cold war and thereby the democratisation of World order. A genuine concern is witnessed in favour of the enforcement of human rights norms and also the establishment of various governmental and non-governmental agencies for the promotion and protection of such norms. In fact, prescription of human rights norms find expression when it is enforced by and independent, competent and impartial authority. Though upholding and promoting

human rights is a responsibility of every individual, every group, every institution and every organ in the Society; the practical task of protection and promotion human rights is primarily a national one because state is known as the sole guardian, guranteer and protector of human rights. Towards this end every country has its proper institutions supervising the relation between individuals and the authority. In recent years many contries have established national institutions with the sole purpose of protecting and promoting human rights; the specific tasks of such institutions may vary considerably from country to country but they share a common purpose, and for this reason they are refferred to collectively as 'National institutions for the promotion and protection of human' rights. These institutions have a very unique role in translating international human rights standards as mentioned in the UDHR and other international treaties on Human rights and giving them an indigenous flavour and acceptability without dilluting their essential universal characteristics.

India is bestowed with all principles and institutions of democratic governance and is also a signatory to the UDHR and other international covenants on human rights, which fortify India's committment to and respect for human rights. Recently, it has taken a significant initiative for the protection and promotion of himan rights by enacting the protection of Human rights Act, 1993 which gives a concrete shape to the NHRC.

NHRC has been constituted under a leislative Act with a view to protecting individuals against discrimination and with the protection of civil and other human rights. Hence the precise function and powers of the commission have been defined

in the concerned act. Inquiry into complaints, review of existing laws, implementation of treaties and other international instruments on human rights, improving jail conditions, undertaking and promoting Research in the field of human rights, encouraging the efforts of the NGOS working on human rights and creating awareness among various sections of the Society are some of the important functions of this new institution.

The general skepticism among the intetigentsia about the very basis of the formation of NHRC as a response from external pressure appears unfounded, because the internal demand and pressure from within the country also necessiated the establishment of NHRC. It is undeniable that the pressure from the donor countries like USA, UK, Germany and Sweden to show India's good human rights record also played a crucial role in the formaton of NHRC. But India's international accountability and its commitment to the UDHR is also equally manifested through this initiative.

The status of the commission is not confined with its statute only, rather it has its constitutional validity under the commission of inquiry act, 1992. The status of the commission is also defined in international law particularly in 'Paris principle of 1991' and many international workshops on National Institutions for the Promotion and Protection of human rights.

The moot point that how far the recommendatory powers of NHRC can effectively address the question of human rights violations in a complex and plural society like India? The recommendations, made after investigations of NHRC, are

even though not binding, are a sort of guiding principles for improving basic standards of human rights by the respective agencies of the government. The recommendations through publicity, acquire immense social and administrative value.

We attempted to show that the NHRC, which initially received widespread criticisms, as a 'toothless tiger' or a 'big post office', had done so far an admirable job. We empirically found that 95% of the NHRC recommendations have been accepted by the concerned public authorities. This suggests how NHRC gained its credibility and acceptance in the country and abroad. NHRC's active campaign for repealing of TADA, the draconian and undemocratic piece of legislation is a remarkable contribution towards creating awareness for the protection of human rights. As a watchdog body NHRC has so far done a credible job not only promoting human rights in the country, but also raised the image of the nation in the community of states. The initial skepticism that NHRC, will end up as another government type institution with its usual quota of lethargy and indifference has withered away, as the commission successfully maintained the image of objectivity, impartiality and integrity and in fact has assured the role of a model institution that will act as catalyst keeping the executive and legislative wings of the government to stick to its task. Indeed, NHRC has become the central focal point for enforcement of the new generation of human rights while protecting the basic social order, in a given threat perception, the integrity and security of the state. However it can not be said that the commission has rendered a miraculous achievements in promoting and protecting human rights ethos of our country or that grievances of violations have ceased to occur. But one can honestly agree upon the point that it has brought a fresh hope to those who seek redressal of their grievances. And there is an awareness

now, as perhaps never before, of the meaning of human rights in India.

NHRC's co-ordination with a number of governmental and non-governmental organisations and contacts with various high dignitaries, visitors and foreign delegates have practically enhanced its status and prestige both at home and abroad.

Protection of human rights, however, is a concern of every body's responsibility. It requires the concerted effort of all as a government official, parliamentarian, human rights activist, lawyer, journalist, student, teacher, social worker and the like; their concerted and continued effort in terms of criticisms and suggestions can serve the best purpose of strengthening the organisation in a most positive and constructive way. So that the organisation can be a more reliable and accessible one bridging the space between governments on the one hand and the non-governmental organisations on the other.

Some of the shortcomings of the protection of Human Rights Act can be summarised as below.

The human rights violations occur both in the domain of state and civil society. The unequal structure and of dominance and exploitation give scope for violations by organised groups like terrorists and militants.. The act confines itself to addressing the human rights violation only by the state institutions. It ignores human rights violation at various other levels, outside the domain of the state. The act can be more effective if its area of concern will appropriately focus on this point..

The provision of the Act fixes one year period as the duration of filing of

complaint. With the series of Socio-Cultural factors impeding the immediate filling of complaints, hence it would be more realistic, if NHRC entertains cases where there has been reasonable and no purposeful delay in the making of the complaint.

Regarding the armed forces, the act should enlarge NHRC's jurisdiction to inquire into violation of human rights when they indulge in excesses.

The study attempted to give a panoramic view of the establishment, structure and functioning of NHRC. However, for better functioning and future of the NHRC, certain suggestions to strengthen the body are made :

- (i) It is desirable to have NHRC instituted by a constitutional amendment because such an effort would bring about greater consensus among political parties. Moreover a constitutional body whose independence from the executive is adequately guaranteed would inspire greater public confidence.
- (ii) The membership of the commission should be broad based and should include persons who are human rights activists particularly from non governmental organisations because they have been working since long for the cause of protection and promotion of human rights in India. Members of the NGO are also important community due to their grass root contacts have a practical knowledge and reality of human rights conditions in the countryside.
- (iii) As the promotion of human rights literacy and research on human rights are the two important objectives of the commission, experienced academicians should be included in the membership of the commission.



- (iv) Eminent journalists and constitutional experts should be inducted into the commission to strengthen the work of the commission NHRC with regard to better coordination.
- (v) Trade Union leaders should be given the status of being honorary member of the commission so that the workers rights are to be maintained and their problems to be discussed well.
- (vi) There is every need to set up a National academy on human rights for the technical training and knowledge of the persons who would be recruited as the personnel of the NHRC, SHRC and District committees as and when established on the lines of the other national academies like National Police academy and National Institute of Educational Planning and Administration.
- (vii) A National University on Human rights needs to be established to promote the study and research on human rights similar to that of National Law School at Bangalore.
- (viii) NHRC should undertake more effectively the stupendous task of sensitising the judiciary, the bureaucracy, the police and other government officials about the norms and principles of human rights.
- (ix) The establishment of State Human Rights Commission, Human Rights courts and District committees in respective state has to be consulted with the members of the NHRC as well as the leading human rights activists and members of the NGO community in their respective states.

- (x) The NHRC staff should be imparted mandatory course on human rights so as to get knowledge and information on human rights.
- (xi) Regional offices of NHRC which would act as eyes and ears of the at zonal levels have to be established throught our the country to facilitate immediate action adn more direct supervision.
- ( xii ) In the field of human rights south Asia shows little homogeneity and there is no regional treaties on human rights for South Asia. In the wake of intensive interaction of NHRC with parallel institutions from various regions in general and South Asian Zone in particular, it is more proportious time to formulate strategic means to evolve a South Asian commission on human rights to coordinate the activites of the National institutions on human rights.
- (xiii) A survey on the evaluation's of NHRC's work should be conducted in the sensitive areas as well as Jail premises so as to get information about the existence, and functioning and accessibility of the commission since its inception.
- (xiv) The regular feature of NHRC viz. 'Human Rights News letter' presently published in English and Hindi needs to be published in all major Varnaculr language so that the objective of human rights literacy has to reach at the various sections of the society.
- (xv) Efforts should be made for the exchange of staff of NHRC with that of similar bodies of the foreign contries so as to improve the administrative and technical knowledge of the functioning of the commission.

- (xvi) The NHRC should begin a monthly "Human Rights Chronicle", and also encourage telefilms the current problems i.e. child labour, bonded labour, female infanticide Child prostitution, etc. so as to highlight and promote discussions and disseminate ideas for improving the state of affairs.

There is every justification for setting up of NHRC on the ground that it is entrusted with the task of creating a culture of human rights. It is feared that the jurisdiction of NHRC would come into conflict with the courts and other legal bodies meant on human rights. But, NHRC entertains only those cases which are not referred to any judicial bodies or existing constitutional or statutory commissions meant for protecting human rights. NHRC being a specialised machinery recommends ways and means of promoting human rights culture, which should inform and educate all people and institutions of Public life.

The increasing number of complaints, budget, scope and the expanse activities of the NHRC since its inception in October 1993, constitute an ample evidence of its survival and sustained growth. But The creation of human rights culture is a stupendous task which can not be undertaken by the NHRC alone. Human conduct has to be regulated, appropriate social ethos has to be developed, the thinking process at every level has to be motivated so as to generate the appropriate spirit of 'live and let live' ; sharing of social benefits and disadvantages in equal proportions and ultimately legislations for ensuring the culture of human rights has to be prevailed in society.

The NHRC; endowed with sufficient funds and an appropriate constitutional status, would serve a befitting role as a moral authority for promoting human rights

ethos of our country. By receiving support from human rights activists, voluntary organisations, human rights groups and other NGO's and all those interested in upholding and promoting the cause of human rights, NHRC would assume a leading role in fulfilling its mandate and objectives. With the continued collective effort and cooperation with NHRC in terms of commitment, criticisms and constructive suggestions from various quarters, let's hope that 'the divine gift of an innocent smile may be restored to every human face'.

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# *Appendices*



APPENDIX - I

**THE  
PROTECTION OF  
HUMAN RIGHTS ACT  
1993**  
(with procedural regulations)

**THE PROTECTION OF HUMAN RIGHTS ACT,  
1993**

No. 10 of 1993

(8th January, 1994)

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions 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 relatable to any of the entries enumerated in List I or List 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 28th day of September, 1993.

**2. Definitions**

(1) In this Act, unless the context otherwise requires-

- (a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
- (b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
- (c) "Commission" means the National Human Rights Commission constituted under section 3;

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 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 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 and 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 the 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) 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 living conditions of the inmates and make recommendations thereon;

- (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 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 within the meaning of section 176 and section 177 of the Indian Penal Code.

45 OF 1860

(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.

2 OF 1974

(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.

45 OF 1860

2 OF 1974

(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.

45 OF 1860

2 OF 1974

#### 14. Investigation

(1) The Commission may, for the purpose of conducting any investi-

gation 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 submitted 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; or
- (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 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 Assembly | .. | Member      |

- |     |  |    |        |
|-----|--|----|--------|
| (c) | Minister in-charge of the Department of Home in that State | -- | Member |
| (d) | Leader of the Opposition in the Legislative Assembly       |    | Member |

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; 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.

### 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 and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually 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 and 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 gener-

ally 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. 45 OF 1860.

### 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.

ORD  
30 OF 1993.

PROCEDURAL  
REGULATIONS

## **National Human Rights Commission (Procedure) Regulations.**

No. A-11031/1/94/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 1st day of March, 1994.

### **2. Definitions :**

In these regulations unless the context 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 discretion, 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 of 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 to 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 limine.

(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 therefor.

(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 any, in support of the complaint and leading of evidence in support of his 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 by the team of the Commission or by any other person under its discretion, 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 study 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 opinions 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 Headquarters :

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 by the Commission as confidential, copy thereof would be available to the parties in the matter on payment of a reasonable fee raised to meet the cost. Every effort should be made to provide the copies with utmost expedition and, in any case, not later than one week of the date of request.

#### 14. Annual Report :

The Commission shall furnish its annual report for the period commencing from 1st April of the year to 31st 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 expedition 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.

## **APPENDICES**

- I. The Protection of Human Rights Act, 1993.
- II. Human Rights Provision in the Indian Constitution.
- III. Indian Laws Relating to Human Rights.
- IV. A list of Human Rights Covenants, Conventions and Treaties to which India is a Party.
- V. A list of Human Rights Commissions around the world.
- VI. A list of Indian NGOs in the field of Human Rights.

### **APPENDIX II**

#### **Human Rights Provisions in the Indian Constitution**

##### **I. Preamble of the Constitution**

“WE, THE PEOPLE OF INDIA, having Solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, SOCIAL, ECONOMIC AND POLITICAL, LIBERTY OF THOUGHT, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949,



do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

## **II. FUNDAMENTAL RIGHTS:**

Article 14 : Equality before law

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 : Equality of Opportunity in matters of Public Employment.

Article 17 : Abolition of untouchability.

Article 18 : Abolition of titles.

Article 19 : (a) Freedom of Speech and expression;  
(b) To assemble peaceable and without arms;  
(c) To form associations or unions.  
(d) To move freely throughout the territory of India.  
(e) To reside and settle in any part of the territory of India; and  
(f) To practice any profession, or to carry on any occupation, trade or business.

Article 20 : Protection in respect of conviction for offences;

Article 21 : Protection of life and personal liberty;

Article 22 : Protection against arrest and detention in certain cases;

- Article 23 : Prohibition of traffic in human beings and forced labour;
- Article 24 : Prohibition of employment of Children in factories, etc.;
- Article 25 : Freedom of conscience and free profession, practice and propagation of religion;
- Article 26 : Freedom to manage religious affairs;
- Article 27 : Freedom as to payment of taxes for promotion of any particular religion;
- Article 28 : Freedom as to attendance at religious instruction or religious worship in certain educational institutions;
- Article 29 : Protection of interests of minorities;
- Article 30 : Right of minorities to establish and administer educational institutions;
- Article 31C : Saving of laws giving effect to certain directive principles;
- Article 32 : Remedies for enforcement of Rights;
- Article 33 : Power of parliament to modify the Rights conferred in this part (part III of the constitution) in their application to forces, etc.;

### **III. Part-IV:**

#### **DIRECTIVE PRINCIPLES OF STATE POLICY:**

- Article 38 : State to secure a social order for the promotion of welfare of the people;

- Article 39 : Certain principles of policy to be followed by the state; e.g. adequate means of livelihood, equal pay for equal work, ownership and control of material resources of the community to subserve the common good etc.;
- Article 40 : Organisation of village panchayats, right to work, to education and to public assistance in certain cases;
- Article 41 : Right to work, to education and to public assistance in certain cases;
- Article 42 : Provision for just and humane condition of work and maternity relief;
- Article 43A: Participation of workers in management of industries;
- Article 44 : Uniform civil code;
- Article 45 : Provision for free and compulsory education for children;
- Article 46 : Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections;
- Article 47 : Duty of the state to raise the level of nutrition and the standard of living and to improve public health;
- Article 48 : Organisation of agriculture and animal husbandry;
- Article 48A : Protection and improvement of environment and safeguarding of forests and wild life;
- Article 49 : Protection of monuments and places and objects of national importance;

Article 50 : Separation of judiciary from executive.

Article 51 : Promotion of international peace and security.

### **Some other Provisions**

Article 226 : Purpose of enforcement of rights as provided in the part III of the constitution;

Article 300A: Persons not to be deprived of property save by authority of law;

Article 325 : No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex.

Article 326 : Elections to the House of the people and to the Legislative Assembly of States on the basis of adult suffrage.

Source: 1. Social Action; Vol. 40, January - March 1990. In the Article on UDHR and some recent policy measures in India. Written by Gopesh Nath Khanna.

2. Human Rights; A source book, NCERT Publication, New Delhi, 1996.

### **APPENDIX III**

#### **Indian Laws Relating to Human Rights:**

The following is a list of some of the important national statutes which have a bearing on the promotion/protection of Human Rights.

1. Constitution of India (Preamble, Parts II, IV and IVA, Articles 226, 300A, 325, 326).

2. Protection of Human Rights Act, 1993.

‘The Act provides for the constitution of a National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts for better protection of human rights’.

3. National Commission for Scheduled Castes and Scheduled Tribes.

‘Article 338 of the Constitution requires constitution of the National Commission for Scheduled Castes and Scheduled Tribes for better protection of the rights of the members of the Scheduled Castes and Scheduled Tribes’.

4. National Commission for Minorities Act, 1992.

‘An Act to constitute a National Commission for Minorities for better protection of the rights of the minorities’.

5. National Commission for Women Act, 1990.

‘An Act to constitute a National Commission for Women for better protection of the rights of women’.

6. Protection of Civil Rights Act, 1955.

‘Under Article 17 of the Constitution, untouchability is abolished and its practice in any form is forbidden. By this Act, enforcement of any disability arising out of untouchability has been made an offence punishable in accordance with the relevant provisions’.

7. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

'An Act to prevent the commission of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, for constitution of special courts for trial of such offences, and to provide relief and rehabilitation to the victims'.

8. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

'Fraternity, assuring the dignity of the individual is one of the objects proclaimed in the Preamble to the Constitution. Article 47 requires the State to raise the standard of living and improve the health of the people. This Act has been enacted to achieve those objectives. It provides for the prohibition of all manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines'.

9. Immoral Traffic (Prevention) Act, 1956.

'Article 23 of the Constitution prohibits traffic in human beings. On 9 May 1950, India ratified the International Convention for Suppression of Immoral Traffic in Women and Girls. This is an Act to give effect to the same'.

10. Indecent Representation of Women (Prohibition) Act, 1986.

'An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures, or in any other manner'.

11. Dowry Prohibition Act, 1961.

‘This is an Act to prohibit the evil practice of giving and taking of dowry’.

12. Commission of Sati (Prevention) Act, 1987.

‘Sati or burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoined by any of the religions of India as an imperative duty. This is an Act for effective prevention of the commission of Sati and its glorification’.

13. Maternity Benefit Act, 1961.

‘This is an Act to provide maternity benefits, etc., and to regulate employment of women in certain establishments for certain periods before and after child birth’.

14. Child Marriage Restraint Act, 1929.

‘This was enacted with a view to preventing child marriages, namely, a marriage to which either of the contracting parties is under the specific age’.

15. Children (Pledging of Labour) Act, 1933.

‘An Act to prohibit the pledging of the labour of children and the employment of children whose labour has been pledged’.

16. Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960.

‘An Act to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and to penalise criminal activities indulged in such institutions’.

17. Children Act, 1960.

‘An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of children and for trial of delinquent children in the Union territories’.

18. Child Labour (Prohibition and Regulation) act, 1986.

‘The Act bans employment of children in specified occupations and processes, lays down a procedure for inclusion in the schedule of banned occupations and processes and regulates the conditions of work of children in employments where they are not prohibited from working’.

19. Juvenil Justice Act, 1986.

‘An Act to provide for the care, protection treatment, development and rehabilitation of neglected or delinquent juveniles justice system’.

20. Young Persons (Harmful Publications) Act, 1956.

‘Pictorial and other publications containing stories of crime, violence, cruelty or incidents of repulsive or horrible nature and incite or encourage him to commit such acts. The Act seeks to prevent the dissemination of publications which are harmful to young persons’.

21. Caste Disabilities Removal Act, 1950.

‘The Act provides that when in a civil suit the parties belong to different persuasions, the laws of the religions of the parties shall not be permitted to operate



to deprive such parties of any property to which but for the operation of such laws, they would have been entitled’.

22. Mental Health Act, 1987.

‘The Act regulates determination of lunacy, reception, care and treatment of mentally ill persons’.

23. Bonded Labour (System) Abolition act, 1976.

‘Article 23 of the Constitution prohibits “begar” and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. The Act provides for the abolition of bonded labour system to prevent the economic and physical exploitation of the weaker sections of the people’.

**Some Other Important Statutes are the Following:**

1. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
2. Medical Termination of Pregnancy Act, 1971.
3. The Transplantation of Human Organs Act, 1994.
4. Orphanages and Other Charitable Home (Supervision and Control) Act, 1960.
5. The SAARC Convention Suppression of Terrorism.
6. Environmental Protection Act, 1986.

7. Beedi and Cigarate Workers (Conditions of employment) Act, 1966.
8. Beedi Workers Welfare fund Act, 1976.
9. Trade Unions Act, 1976.
10. Industrial Disputes Act, 1947.
11. Workmen's compensation Act, 1923.
12. Industrial Employment Standing Order Act, 1946.
13. Factories Act, 1948.
14. Employees State Insurance Act, 1948.
15. Minimum wages Act, 1948.
16. The Employees Provident Funds and Miscellaneous Provisions Act, 1952.
17. Apprentices Act, 1961.
18. Equal Remuneration Act, 1976.
19. Payment of Wages Act, 1936.
20. Weekly Holidays Act, 1942.

Source: Human Right: A Source book

NCERT Publication, 1996,

New Delhi.

## **APPENDIX IV**

### **A List of Human Rights Covenants, Conventions and Treaties to which India is a Party**

1. Convention on the prevention and punishment of the Crime of Genocide. Adopted by the General Assembly of the United Nations on 9 December 1948 by Resolution 260(III). Entered into force on 12 January 1951. (India signed it on 29 November 1949 and ratified on 27 August 1959).
2. International Convention on the Elimination of all forms of racial discrimination. Adopted by the General Assembly of the United Nations in Resolution 2166(XX) on 21 December 1965. Entered into force on 4 January 1969. (India signed it on 2 March 1967 and ratified on December 1968).
3. International Covenant on Economic, Social and Cultural Rights. Adopted by the General Assembly of the United Nations in Resolution 2200 (XXI) of 16 December 1966. (India's accession deposited on 10 April 1979).
4. International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations in Resolution 2200 (XXI) of 16 December 1966. Entered into force on 23 March 1976. (India's accession deposited on 10 April 1979).
5. Convention on the Non-Applicability of statutory limitations to war crimes and crimes against humanity. Adopted by the General Assembly of the United Nations on Resolution 2391(XXII) of 26 November 1968. Entered into force

on 11 November 1970. (India's acceded to it on 12 January 1971, with effect from 17 August 1977).

6. International Convention on the Suppression and punishment of the crime of Apartheid: Adopted by the General Assembly of the United Nations in Resolution 4068 (XXVIII) of 30 November 1973. Entered into force on 18 July 1976. (India's accession dated 22 September 1977).
7. Slavery Convention, 1926. Entered into force on 9 March 1927. (India ratified it on 18 June 1927).
8. Supplementary Convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery, 1956. Entered into force on 30 April 1957. (India signed it on 7 September 1956 and ratified on 25 June 1960).
9. Convention for the suppression of the traffic in persons and of the exploitation of the - prostitution of others. Approved by the General Assembly of the United Nations in Resolution 317(IV) of 2 December 1949. Entered into force on 25 June 1951. (India signed it on 9 May 1950 and ratified on 9 January 1953).
10. Final Protocol to the Convention for the suppression of the traffic in person and of the Exploitation of the prostitution of others of 21 March 1950. Entered into force on 25 July 1951. (India signed it on 9 May 1950 and ratified on 9 January 1953).
11. Convention on the political rights of women. Adopted by the General Assembly of United Nations in Resolution 640(VII) of 20 December 1952. Entered

into force on 7 July 1954. (India signed it on 29 April 1953 and ratified on 1 November 1961).

12. Convention on the Nationality of Married women. Done at New York on 26 February 1957. Entered into force on 11 August 1958. (India signed it on 15 May 1957).

Source: Enforcement of Human Rights by Nagendra Singh, Eastern Law House Pvt.Ltd. 1986, Calcutta, Delhi.

## **APPENDIX V**

### **A LIST OF HUMAN RIGHTS COMMISSIONS AROUND THE WORLD:**

1. Algeria

National Overseer of Human Rights  
Palats DU People,  
Franklin Roosevelt  
AlgerAlgeria, Pin - 16000

2. Australia

Human Rights and Equal Opportunity Commission Level 24  
American Express Building 338 George Street  
Sydney NSW 2000, GPO Box 5218  
Sydney NSW 2001.

3. Austria

Ombudsman (Volksanwalt) Austrian Ombudsman Board  
Singer Strasse 17, Vienna, Austria.

4. Benin  
Benin's Commission for Human Rights Bote Postau, 04-6607Cotonov,  
Benin.
5. Cameroon  
National Commission on Human Rights and freedoms  
BP 20317, Yaounde  
Cameroon.
6. Canada  
Canadian Human Rights Commission  
Queen Street, Place De Ville,  
Tower A, 13th Floor, 320 Ontario  
Canada.
7. Central Africa  
National Commission for Human Rights  
Seminait St. Marc Bimbo  
Banqui, CA.
8. Columbia  
Defender of the People  
Office of Defender of the People  
Cincuenta Y. Cinco, 1046  
Santa FE De Bogota  
Colombia.

9. Costa Rica  
Defender of the Inhabitants of the Republic  
Sabana Norte, Del Edificio  
Dellce 125, Mts, Este  
San Jose  
Costa Rica- 12401007.
  
10. El Salvador  
Attorney for the Defence of Human Rights  
Attorney's Office for the Defence of Human Rights.  
9A. Ave Norte-5A Calle Poniente 535  
San Salvador  
El Salvador
  
11. France  
Naitonal Consulting Commission of Human Rights  
Saint - Dominique 35  
Paris, France.
  
12. Geneva  
Commission of Human Rights and Administrative Justice  
Old Parliament House,  
Accra, Geneva.
  
13. Guatmala  
Attorney of Human Rights  
Attorney's Office of Human Rights  
Ave 12, Zona 1, 12-72.  
Guetmala.

14. India  
National Human Rights Commission  
Sardar Patel Bhawan  
Sandad Marg, New Delhi.
  
15. Ireland  
Ombudsman  
Office of the Ombudsman  
St. Stephens Green 52,  
Dublin, Ireland.
  
16. Italy  
Commission for Human Rights of the Presidency of the Council of  
Ministers  
Pala 220 Chigi- Pla 22a  
Colonna 7, 370 Rome,  
Italy.
  
17. Japan  
Civil Liberties Bureau,  
Ministry of Justice  
Kasumigaseki Chiyoda - KU 1-1-1  
Tokyo, Japan,  
Pin 100.



18. Mexico

National Commission for Human Rights

Periferilo Sur 3469

Mexico, Distrito Federa

Mexico, Pin 10200.

19. Morocco

Consulting Board for Human Rights

Place ACH- Chouhada - Bas Laalou,

Rabat

Morocco, Pin 10,000.

20. Netherlands

Advisory committee on Human Rights and Foreign Policy of the  
Netherlands

Post box 20061 2500 EB

The Hague

The Netherlands.

21. New Zealand

Chief Commissioner

Auckland

P.O. Box 6751 Wellesley St.

Auckland, Aotearoa

New Zealand.

22. Northern Ireland  
Standing Advisory Commission on Human Rights  
Royal Ave. 55  
Bel Falt  
Northern Ireland.
23. Pakistan  
Human Rights Commission of Pakistan  
13, Sharif Complex  
Main Market, Gul Berg II  
Lahore,  
Pakistan.
24. Phillipines  
Philippine Commission on Human Rights  
1 BB Building Dona Julia  
Vargas Ave, Manila  
Phillipines.
25. Senegal  
Ousmane Camara  
Mediator of the Republic  
Ave, F, Roosevelt Anglo N.  
Mandela  
Boite Postale  
Dakar, Senegal - 6434.

26. Slovenia

Council of Human Rights and Fundamental Freedoms

Tom Siceva 5

L Jublijana

Slovenia.

27. Spain

Defender of the People

Office of Defender of the People

Eduardo Dato 31,

Madrid, Spain.

28. Sweden

Ombudsman against Ethnic Discrimination

The Office of Omsudsman against Ethnic

Discrimination

Birger Jaris Torg 7, Pidda

R Holmen,

Stockholm

Sweden.

29. Tanzania

Permanent Commission of Enquiry

Saroma Ave,

P.O. Box 2643

Dar Es - Salaam

Tanzania.

30. Tunigia

Superior Committee of Human Rights and  
Basic freedoms  
Ave De La Liserte 85  
Tunis, Tunigia.

31. Uganda

Inspector General of Government  
Office of the Inspector  
General of Government  
Kitante Road 67-75  
Kampala, Uganda.

Source: Mr. Y.S.R. Murthy, Information and Public Relation Officer, NHRC  
Office, New Delhi.

## **APPENDIX VI**

### **A List of Indian NGOs in the Field of Human Rights:**

1. Andaman & Nicobar Island

I. Human Rights Society

Diary Farm

Post Junglighat

Andaman & Nicobar

- II. Human Rights Society  
Post Box No. 554 Port Blair  
Andaman & Nicobar  
Pin- 744103.
2. Andhra Pradesh
- I. A.P. Civil Liberties  
Committee H. No. 5-96-8,  
Behind Church Compound  
Guntur  
Andhra Pradesh 52202
- II. Foundation for Legal Aid Environment and Social Action  
D. No. 5-61-16, 2/18  
Broadipet,  
Guntur  
Andhra Pradesh.
- III. Association for Women's Right ManalagirGuntur Dist  
Andhra Pradesh 522503  
IV. APCLC21-5-409, Puran Pal Gate, Hyderabad  
Andhra Pradesh 500264.
3. Assam
- I. Human Rights Organisation  
Lakimpur P.O.  
Singarband  
Dist - Cachar,  
Assam.

- II. Manab Adhikar Parishad  
Naojan Road, Uzan Bazar  
Guwatti, Assam,  
Pin 781001
- III. All Bodo Christian Co-ordination Committee  
Allen Brook Dream Villa  
Jorpukhui, Gawahati  
Assam.

4. Bihar

- I. Human Rights Association  
169, Patilputra Colony  
Patna, Bihar  
Pin 800013.
- II. Human Rights Wing  
Vaidehi Samiti, Darbhanga  
Bihar,  
Pin 846004.
- III. The Human Rights Association of Bihar  
Boring Road  
Patna,  
Bihar 80003.

5. Delhi

I. The Human Rights Trust

204, Ghalib Apartments  
Parwana Marg, Road 42  
Pittam Pura  
Delhi 110034.

II. Centre of Concern for Child Labour

247, Akashdarshan Appartments  
Mayur Vihar Phase-I  
Delhi 110009.

III. Human Rights Trust

Chamber No-10,  
Civil Wings, Tis Hazari Court  
Delhi 110054.

IV. Mahila Uthan Samit

House No. 4F, Pocket  
Mayur Vihar, Phase-I,  
Delhi.

VI. National Centre for Protection of Human Rights

B-2/63, Safdarjung Enclave  
New Delhi-110029.

VII. South Asian Coalition Against Child Servitude

74, Aravali Apartments

Kalkaji,

New Delhi-110019.

VIII. PUDR

D-1, Staff Quarter

Indraprastha College

Delhi.

IX. PUCL

81, Sahayoga Appartments

Mayur Vihar, Phase-I,

Delhi 110091.

6. Goa

I. Citizens Committee for Civil Liberties and  
Democratic Rights

The Book Shop near Civil Court

A Hinho Mapusa, Goa

Pin 403507.

7. Gujrat

I. Dakshin Gujrat Manav Adhikar Manch

C/O Legal Aid Centre

Besides Krishimangal

Jayaprakash Narayana Road

Surat, Gujrat 395001



- II. Prem Pushpa  
28, Anand Colony  
Bhu, Kachch  
Gujrat 370001.

8. Himachal Pradesh

- I. People's Action for People in need  
Renuka  
Dist. - Sirmour  
Himachal Pradesh.
- II. Society for Rural Development and Action  
Thaltukhar  
Dist - Mandi  
Himachal Pradesh 176122.

9. Jammu & Kashmir

- I. People's Union of Civil Liberties  
The Bund Aira Kadal  
1st bridge, Srinagar  
J & K 190001.
- II. All J & K Sikh Unity Forum  
H.O. Ward No. 1,  
Simbas, Tech R.S. Pura  
Jammu, J & K.

10. Karnataka

I. Human Rights Association

103, 2nd Floor

Old Madras Road Ulboor Bus Stand Bangalore

Karnataka 56008.

II. Akhil Karnataka Dr. Ambedkar People Organisation

Jamuraja Nagar (TA)

Mysore district

Karnataka 571313.

III. Dalit Voice

109 7th Cross Place Tower

Orchards, Bangalore

Karnataka.

11. Kerala

I. Kerala State Human Rights Protection VEDI

Konath House, College Road

Palghat, Kerala,

Pin 678001.

II. People's Council for Social Justice

Appu Soudhans, Ravipuram Road,

Valanjam Balam, Kochi

Kerala 682016.

III. The Centre for Human Rights Legal Aid and Research  
T.C. 2/3123, Court view Nagar  
Vanebiznor, Thiruvananthpuram  
Kerala.

12. Madhya Pradesh

I. Manavadhikar Samrakshan Sangathan  
Urmila Bhawan  
Near Shiv Mandir  
Mahamoi-ka-Bagh  
Bhopal,  
Madhya Pradesh.

II. Human Rights Foundation of India  
F 4/4 Professor Colony  
Bhopal,  
Madhya Pradesh 462002.

III. People's Union of Civil Liberties  
Malipuram P.O.  
Ernakulam Dist.  
Kerala 682511.

13. Maharashtra

I. Human Rights and Civil Protection Committee  
349, Jaikisan Wadi  
Jalgaon  
Maharashtra 425001.

II. Indian People's HRC  
104, Centre YMCA  
12, N. Parika Marg, Colaba  
Bombay,  
Maharashtra 406005.

III. Institute of Human Rights  
Jari Patika  
Nagpur  
Maharashtra 440014.

14. Manipur

I. Committee on Human Rights  
RMC Road South  
Lala Mbuns Makhons  
Imphal, Manipur.

II. PUCL  
Uripok Turgbam Leikai  
Imphal  
Manipur 795001.

15. Nagaland

I. Naga People's Movement for Human Rights  
Kohima  
Nagaland.

16. Orissa

- I. Human Rights World Peace Foundation  
Plot No. 4/237, IRC Village  
Bhubaneswar, Orissa.
- II. Naya Sahayak Samiti  
Sriram Niwas  
Pujariput, Koraput  
Orissa 764020.
- III. One World Foundation  
26, Cantainment Road  
Cuttack,  
Orissa 753001.
- IV. Ganatantrika Adhikar Suraksha Sangathana  
Patra Sahi, Station Bazar  
Cuttack  
Orissa 753003.
- V. Manabik Adhikar Sangathan (MAS)  
2/23, Sabarsahi Lane  
Bhubaneswar  
Orissa 751006.

VI. Ramarajya

S.C.I.I. Road  
Koraput,  
Orissa 764020.

VII. PUCL

B.B. Street  
Parala Khemundi  
Orissa 761200

17. Punjab

Movement Against State Repression  
314, Sector 44A,  
Chandigarh  
Punjab 160047.

18. Rajasthan

Human Rights Observers Group  
Jhalawar  
Rajasthan 32600.

19. Tamilnadu

I. Organisation for Civil and Democratic Rights  
7, Krishnaji Road  
Timpattur  
Northacrot,  
Tamilnadu 635601.

- II. PUCL  
21, Tamil Street  
Padmanabha Nagar  
Madras  
Tamilnadu 600094.
- III. Societal Developmeatul Trust  
10, Birds Road Cantonment,  
Tirachy  
Tamilnadu 626001.
- IV. Muslim Jamat Committee  
Thulukarpet  
Tamilnadu 627101.
- V. Centre for People's Movement  
J-146 MMDA Colony  
Arumbakkam  
Madras, Tamilnadu.
- VI. Human Rights Protection Organisation  
1/A-8, Railway Line, New Street  
Gidengel, Tindivanam Taluk  
Tamilnadu
- VII. Human Rights Education Movement of India  
46, Main Road (Butt Road)  
St. Thomas Mount, Madras Tamilnadu 600016.

**VIII.A Citizen's Association for Rights and Duties (CARD)**

**No. 4, Kuppuswamy Road**

**Madras, Tamilnadu 600031.**

**IX.Society for Comm Organisation Trust (Soco Trust)**

**Justice Bhagawati Bhawan**

**Cake View Road**

**K.K. Nagar Madurai**

**Tamilnadu 625020.**

**X. Citizen's Association for Rights and Duties,**

**CARD 64, American Street**

**Catnolil Centre, Madras**

**Tamilnadu 60001.**

**XI. Social Justice Security Movement**

**44, Sabramaniyan Street**

**Nelvayul Road**

**Dreamboor, Madras**

**Tamilnadu 60011.**

**XII. Gudalur Farmers' Association**

**Post Box No. 8, Gudakir Bazar**

**Gudaker**

**Tamilnadu 653212.**

**XIII.Indian People's Front**

**36, Rakkiappan Street**

**Mylapore, Madras**

**Tamilnadu 60004.**



20. West Bengal

I. Indian National Social Action Forum

P.D. Domohani Bazar  
Burdwan  
West Bengal 713334.

II. Humanity Protection Forum

Gautam Nagar, Maheshtala  
24, Parganas  
West Bengal 793352

III. PUCL

11-C, Nasiruddia Road  
Calcutta  
West Bengal 700017.

IV. Human Rights Cell

Institution for Motivating Self-employment  
244 Jodhpur Park 2nd Floor  
Calcutta  
West Bengal 700068.

V. PUCL

47, Moti Jheel Avenue  
Dum Dum, Calcutta  
West Bengal 700074.

21. Uttar Pradesh

I. Global Watch of Human Rights and Democracy

Rose Building

U.P. 202001.

II. Human Rights Wing

2/1-A Sir P.C. Bannerji Road

Allahabad, U.P. 211002.

III. PUCL

Durga Prasad Khaitan Marg

Padrauna, U.P. 274304.

IV. National Environment and Forest Protection Society

125, Manas Nagar, Agra

U.P. 282010.

Source: Mr. Y.S.R. Murthy, Information and Public Relation Officer,  
NHRC Office, New Delhi.