

LL.B VI SEMESTER

Subject- Law of Human Rights

Topic- NHRC, Under The Protection of Human Rights,1993

INTRODUCTION

A human being is a living creature, and in the same manner, humanity is a living and constantly evolving concept. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights.

On 10th Dec. 1948, UN adopted the **Universal Declaration of Human Rights** and subsequently adopted two more covenants (one on **Economic, Social and Cultural Rights** and Other on **Civil and Political Rights**) on 16th Dec 1966 and they came into force on 3rd Jan 1976 and 23rd March 1976 respectively.

On 3rd March 1978 heinous crime happened in Patna, the Patna police brutally lathi-charged a demonstration of backward classes in front of the Assembly House. On 31st March 1978, police opened fire without warning in Raghunathpur Bazaar, Bhojpur District, killing four persons on the spot. On July 13, 1991, in Pilibhit District of U.P. 10 Sikh pilgrims were killed by U.P. police in false encounters.

In the context of violence in Punjab, Jammu & Kashmir, North-East and Andhra Pradesh, the pressure from the foreign countries and the awareness among the people for the protection of human rights led to the creation of a National Human Rights Commission. All these factors made the government to decide and to enact a law on human rights.

The world conference on Human Right in 1993 realizing the importance of such an institution or commission stated that “the world conference on Human Right urges Government to strengthen the national structure, institutions, and organs of society which play a role in protecting and safeguarding Human Rights.”

On May 14th, 1992, the **Human Right Commission Bill** was introduced in the Lok Sabha and the bill will refer to the Standing Committee of the Parliament on Home Affairs. The pressure from the foreign countries and the domestic front created and urgency for the commission.

On Sep 27th, 1993 the president of India promulgated an ordinance for the creation of the National Commission on Human Rights (NCHR) and commissions a state level. After certain amendments, the protection of **Human Rights Bill** was passed by both the houses of the Parliament to replace the ordinance. On January 8th, 1994 the bill became an Act after receiving the assent of the President, which is known as the **Protection of Human Right Act**.

Section 2(d) of the Act defined the expression human rights by stating that “**human right means the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India**”.

The above definition limits the scope of the functioning of NHRC and the act set up a National Human Rights Commission and the state Human Rights Commission in the state and the Human Rights Courts in the districts

Composition of NHRC:SEC-3

NHRC comprises of a chairman and four members. The chairman should be a retired chief justice of India. The other members should be

- (i) One Member who is, or has been, a Judge of the Supreme Court of India
- (ii) One Member who is, or has been, the Chief Justice of a High Court
- (iii) two Members to be appointed from among persons having knowledge of, or practical experience in, matters related to human rights

Apart from these members, the Chairpersons of National Commission for Minorities, National Commission for SCs, National Commission for STs and National Commission for Women serve as ex officio members.

President appoints the chairperson and members of the NHRC on the recommendation of a six member committee consisting of

- (i) The Prime Minister (chairperson)
- (ii) The Home Minister
- (iii) The Speaker of the Lok Sabha
- (iv) The Leader of the Opposition in the Lok Sabha
- (v) The Deputy Chairman of the Rajya Sabha
- (vi) The Leader of the Opposition in the Rajya Sabha

FUNCTIONS OF NHRC

The National Human Rights Commission in its 15 annual reports has shown deep concern over the increasing incidents of custodial deaths and torture in the criminal administration. The commission has continued to act with determination to end the

terrible occurrences of custodial death, rape, and torture that has hampered the order apparatus of our country. The commission has suggested several measures. The commission supported the insertion of **section 114 (b) in Evidence Acts**, as recommended by the Law Commission in its 113th report. Also, in section 197 of **Code of Criminal Procedure, 1973**, to relate the necessity of governmental sanction for the prosecution of a police officer where *prima facie* case has been established in an inquiry conducted by a Sessions Judge.

The various functions performed by NHRC are to:

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into a complaint of

1. violation of human rights or abetment thereof or
2. 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 organizations and institutions working in the field of human rights;

(j) Such other functions as it may consider necessary for the protection of human rights

Working of the NHRC

Headquarter of the commission is located at Delhi.

- The commission is vested with the power to regulate its own procedure.
- It has all the powers of a civil court and its proceedings have a judicial character.
- It may call for information or report from the central or any state government or any other authority subordinate thereto.

However, the commission has its own staff to investigate into complaints of human rights violations. It is also empowered to utilize the services of any officer or investigating agency of the central government or any state government for the purpose. The commission also cooperates with various NGOs for the information regarding human rights violations.

The commission can look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

1. It may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
2. It may recommend to the concerned government or authority the initiation of proceedings for prosecution or any action against the guilty public servant;
3. It may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
4. It may approach to the Supreme Court or the high court concerned for the necessary directions, orders or writs.

In order to make NHRC more effective, its powers could be increased in various ways to increase its effectiveness and efficiency in delivering justice to the victims. The commission should be empowered to provide interim and immediate relief including monetary relief to the victim. In addition, the commission should be empowered to punish the violators of the human rights, which may act as deterrent to such acts in the future. The interference of the government and other authorities in the working of commission should be minimum, as it may influence the working of commission. Therefore, the NHRC should be given power to investigate into the cases related to human rights violation by the members of the armed forces.

