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During the last few decades the concept of human rights has assumed importance globally and has international significance as every country is subject to international scrutiny by the world body which indicts member states for violations. While there is increasingly widespread concern for universal respect and observance of human rights, gross violation of internationally recognized norms continue unabated in almost all parts of the world. The overall situation has been characterized by large-scale breaches of civil and political rights as well as economic, social and cultural rights. The rights to life, to an adequate standard of living, to freedom of expression, to protection from torture and inhuman treatment, arbitrary arrest and many of the common standards of achievements for all people and all nations are far from realization now as ever. The obligations set out in the course of *international conventions and multilateral treatise for the promotion and protection of human rights* and accepted by most of the governments are flouted by them with impunity.

The press reports of the United Nations Human Rights Commission at Geneva carry the reflection of the alarming situation <sup>1</sup>. For the first time in the history of the members of the Human Rights Commission, the United Nations highest body on Human Rights, the policies and practices of a permanent member of the Security Council had been put to vote. The country's human rights records, put to vote, was defeated by a margin of one. The resolution calling for freedom of expression, association and religious tolerance was tabled on behalf of

the European Union by France. It was checked by the United States of America and Japan as well as other fifteen other countries, mostly from members of the European Union. The Asian members of the United Nations Human Rights Commissions excluding Japan voted with China. The Russian vote swung the floor in favour of China.

The United Nations Human Rights Commission has unanimously adopted without any discussion, the resolution on the rights of the child<sup>2</sup>. Expressing deep concern at the existence of the practices of the sale of children, child prostitution and child pornography and the exploitation of child labour in many parts of the worlds as well as continuing reports of the streets children being involved in and affected by serious crimes, drug abuse, violence and prostitution and reaffirming the right to protection to children in situations of armed conflict the resolution said it was encouraged by the widespread commitment and political will shown by the unprecedented number of states that had become signatories and parties to the convention on the rights of the child. The United Nation Human Rights Commission released guidelines for aid to field workers to prevent and respond to sexual violence against refugees, a global outrage that is widespread<sup>3</sup>.

The United Nations Human Rights Commissioner's office was established in December 1993 following the recommendations at the Vienna Conference. As the official with principal responsibility for human rights activities within the United Nations, the high Commissioner has been given a mandate which spans the whole range of human rights concerns. In particular, the High Commissioner is charged with promoting the effective enjoyment by all, of all human

rights, promoting the realization of the right to development, providing advisory services to support actions and programmes in human rights, co-coordinating human rights education and public information services, contributing to the removal of obstacles in the enjoyment of human rights and preventing violations of human rights.

The United Nations Declaration calls upon all states to fulfil their obligations under the international law to refrain from organizing, instigating, assisting or participating in terrorists acts in other countries. The resolution co-sponsored by India on gross violation of human rights perpetrated by terrorist groups and expressing of solidarity with the victims of terrorism, was adopted by the United Nations Human Rights Commission. Internal displacement caused on the account of internal conflict, ethnic strife, forced relocation and gross violation of human rights is reported to be monumental crisis. United Nations Human Rights commission is feeling the need for improved protection and assistance for such persons and to address the human rights and humanitarian dimensions of the problem<sup>4</sup>. These developments are mentioned here for a proper understanding of the historical mechanism background the magnitude of the global problems and the mechanism within the United Nation's system for the protection of human rights.

From the inception of United Nations, there had been a tremendous surge in the development of international law of human rights. It was realized that only the international protection and promotion of human rights can achieve international peace and harmony. United Nation Charter in Article 55 declared to proclaim universal respect for and observance of human rights and fundamental

freedom for all without any discrimination on race, sex, language, caste, religion, etc, the United Nations Declaration of Human Rights in 1948<sup>5</sup> proclaims that all human beings are born free and are equal in dignity and rights and enumerated the basic rights and fundamental freedom. The declaration provides a common standard of achievement for all people and all nations. This has inspired the constitution of number of countries. To give binding legal effect to the declaration, the General Assembly adopted international conventions which defend and guarantee protection of human rights. The United nation's system has developed standards of human rights in diverse range of areas and can be regarded as providing a global human rights regime. The International Bill of Rights is normally defined as consisting of the declaration of Human Rights by the United Nation in 1948, the International Covenant of Economic, Social and Cultural Rights in 1966, the International Covenant of Civil and Political Right in 1966 and optional protocol thereto. At the regional level additional mechanism for human rights protection also occur through instruments such as the European, Convention for the Protection of human rights and Fundamental Freedom, 1950, the American Conventions of Human Rights, 1969, the African Charter on Human and Peoples Right of the organisation of African Unity , 1981<sup>6</sup>.

Human Rights programme has succeeded in the recognition of the relevance and importance of human rights value in may diverse areas. The adoption of Convention on Elimination on All Forms of Discrimination Against Women in 1979, the Convention against torture and other cruel, inhuman or degrading punishment or punishment in 1984, the Convention on the Rights of the Child and Declaration on

Right to Development constitute a major step forward<sup>7</sup>. The violation of human rights are denounced and condemned beyond the frontiers of the countries where they are committed. The stake in the fight of human dignity is widely perceived as universal. The subject of human rights is no longer one of exclusive domestic jurisdictions but rather of increasing international concern. There is a growing public awareness worldwide of the meaning and significance of the concept. This leads increased recognition by the governments of their internal accountability to the people they govern and also to the need for international legitimating to conform and supplement their political legitimacy at home. The increasingly frequent reference to human rights in political negotiations reveal the global consciousness of human rights. Despite existence of mechanism for making states accountable for the treatment of their nationals what really matters is the degree to which they harmonise with and are reflected into the domestic laws, regulations and administrative provisions and practices which impact daily on the lives of the millions people particularly those who may be regarded as the vulnerable, the weak, the oppressed or the exploited group.

India is a secular democratic country and has ratified the two International Covenants but not the Optional Protocol I. The framers of Constitution of India had even prior to the preparation and adoption of the two Covenants enshrined in the Constitution nearly all the human rights enumerated in the Covenants<sup>8</sup>. The Constitution and laws enable the courts in India to protect and enforce the several facets of human rights. Despite extensive constitutional safeguards, there continues to be significant human rights abuses in the country due to

the lack of awareness, sensitivity and strong policy. The level of awareness of human rights and sensitivity even among the elite is very poor. Reports of the custodial deaths, violence against women, exploitation of women, children, and excesses by police, army and other security forces are pouring in daily. In the list of countries where large-scale abuse of human rights occurs, India has been included by the world famous Non Governmental Organisation called Amnesty International. Other human right groups have listed several instances of such violations, though exaggerated and sometimes distorted. The United States of America in its report in 1994 has revealed that political killings by both Government forces and militants, terrorists continue at a higher level particularly where insurgency continues. Human rights groups and press, report cases in which police and para military forces have used torture during interrogation. They also report use of excessive force and violation of humanitarian law by the army and para military forces. While Non Governmental Organisations are critical of terror tactics used at random by misguided youth battling against the establishment, they are concentrating more on state terrorism<sup>9</sup>.

It is said dousing the flame lit by terrorists is certainly the responsibility of the government but matching crime with more monstrous crime against entire community is not something that could be ignored by mankind. The government bears enormous responsibilities in ensuring protection and promotion of human rights in all aspects. The burden can only be effectively discharged with a proper back-up from the relevant national institutions with specific mandates in the field. The Government of India has constituted the National Human Rights Commission for the protection and promotion of human rights

with powers to investigate and recommend policy changes, punishment and compensation<sup>10</sup>. The National Human Right Commission has the mandate to spread human right awareness and sensitivity in all means.

The statement of objects and Reasons of the November Bill made clear the purposes of the Act subsequently adopted. While noting that India was a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and cultural Rights, both of which were adopted by the United Nations General Assembly on December, 1966, and that the rights embodied in those Covenants stood substantially protected by the Constitution of India, the statement observed that there had been growing concern in the country and abroad about issues relating to human rights<sup>11</sup>. Having regard to this, and to changing social realities and emerging trends in the nature of crime and violence, it had been considered essential to review the existing laws and procedures and the system of administration with a view to bringing about greater efficiency and transparency- relating to human rights.

The proposal for National Human Rights Commission was contained in Human Rights Commission Bill, which was introduced in the Lower House of the Parliament; Lok Sabha on 14<sup>th</sup> may, 1993<sup>12</sup>. The Commission was ultimately established on October 12, 1993, when its chairperson along with two other members assumed office. Under the scheme of the Act, the National Human Rights Commission is an independent autonomous body and is not sub-servient to any state official or agency. National Human Rights Commission is charged with task of protecting and promoting human rights against the might of

state. It enjoys wide powers relating to inquiry and investigations regarding violations of human rights. It has wide range of functions under section 12 of the Act. It can inquire suo motu or on a petition presented before it by a victim or any person on behalf of the victim, into complaint of:

1. violations of human rights or abetment thereof;
2. negligence in the prevention of such violation by a public servant.

National Human Rights Commission can intervene in any proceedings involving any allegation of violation of human rights pending before the court. It can study jail conditions and suggest remedial solutions therein, it can also review any factor including the acts of terrorism that inhibits the enjoyment of human rights, important function of the National Human Rights Commission is to spread human rights literacy amongst various sections of the society and promote awareness of the safeguards available for the protection of these rights<sup>13</sup>.

National Human Rights Commission of India is one of the most effective Human Rights Commission in the world, which has established credentials as a statutory independent body within a short span of one year<sup>14</sup>. There is growing awareness in the society about human rights and the people want to seek redressal of various kinds of abuses including child abuse and custodial death. The commission has received more than 50000 complaints in 1999-2000. The daily average of complaints received by the Commission varied from 50 to 60. The



complaints coming in from all parts of the country; individuals and the institutions/organizations. The Government cannot wash away the recommendations made by the commission. The Commission's role might be a recommendatory, advisory, yet the Government considers the cases forwarded by it. The Human Right cannot be given by the Parliament or courts but human rights are inherent in the human beings themselves. The constitution does not give these rights but only reiterates the basic rights available to the human being and ensures their protection.

Established under the Protection of Human Rights Act of 1993, the National Human Rights Commission functions from New Delhi with jurisdiction all over India. It consists of a Chairperson, four full time members and other three ex-officio members.

### **Composition of National Human Rights Commission**

The Commission consists of <sup>15</sup>:

1. a Chairperson who has been, the Chief Justice of the Supreme Court;
2. one Member who is or has been a Judge of the Supreme Court;
3. one Member who is or has been the Chief Justice of a High Court;
4. two Members to be appointed by from the amongst persons having the knowledge of or

practical experience in matters relating to human rights.

The Chairpersons of National Commission for Minorities National Commission for Scheduled Castes and Scheduled Tribes and National Commission for Women will be ex-officio members of the Commission for discharging all functions enumerated in clauses (b) to (o) of section 12 of the Act. 4.

### **Secretary General**

The Commission is to have a Secretary General who is the Chief Executive Officer of the Commission.

### **Appointing Authority**

Although the Chairperson and other members are appointed by the President of India on a warrant under his hand and seal, it is made on the recommendation of a Committee comprising of-

- a. The Prime Minister - Chairperson
- b. Speaker of the House of People - Member
- c. Minister in charge of the Ministry of Home Affairs in 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

It seems that ordinarily no sitting judge of the Supreme Court and no sitting Chief Justice of High Court may be appointed and if such appointment is considered necessary it can be made only after consultation with the Chief Justice of India.

### **Terms of the Office Members**

The terms of the Office of the Chairperson and other nominated members is five years, from the date he enters upon the office or until he attains the age of seventy years, whichever is earlier. A member of the Commission is eligible for reappointment provided that he had not attained the age of seventy years, but the Chairperson is not eligible for a second term. In the event of the occurrence of a vacancy of the Chairperson on account of his death, resignation or otherwise, the President of India may appoint any Member to act as Chairperson till the vacancy is filled in<sup>16</sup>.

### **Removal of the Chairperson or Any Member**

The Chairperson or any other Member of the Commission can be removed from his office only by an order of the President of India on the ground of proved misbehavior or incapacity after the Supreme Court on reference being made to it by the President of India has, on inquiry held in this behalf. In any one of the below mentioned cases the President may order removal of the Chairperson or any other Member who:

1. is adjudged an insolvent, or
2. engages during his term of office in any paid employment outside the duties of his office, or

3. is unfit to continue in office by reason of infirmity of mind or body; or
4. is of unsound mind and stands so declared by a competent court; or
5. is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

### **Functions of National Human Rights Commission**

Statutorily, the national Human Rights Commission shall perform all or any of the following functions;<sup>17</sup>

- a. inquire, suo moto or on a petition, presented to it by a victim or any person on his behalf, into complaints of-
  - i. violation of human rights or abetment 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 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 of human rights and make recommendations for their effective implementation;
- g. 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, seminars and other available means;
- h. undertake and promote research in the field of human rights;
- i. encourage the efforts of non governmental organizations and institutions working in the field of human rights; and
- j. such other functions as it may consider necessary for the protection of human rights.

### **Powers of the Commission Relating to Inquiries / Investigations**

The Commission has been empowered to hear and inquire all complaints regarding violation of human rights<sup>18</sup>. All complaints received by the Commission are registered and a number is given. These are then placed for administration before a Bench of two members of the Commission within two weeks. The Commission shall, while inquiring into complaints, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. Ordinarily, the Commission will not entertain a complaint:

- a. on a matter that occurred more than one year earlier than the date of complaint.
- b. with regard to subjudice matters
- c. .with regard to vague, anonymous or pseudonymous matters.
- d. matters which are frivolous and
- e. matters which are outside the ambit of the Commission.

No fee is charged on complaints. While inquiring into the complaint, the Commission has all the powers of a civil court trying a suit under the Code of Civil Procedure and particularly in respect of the following matters.

- 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.

- e. issuing summons for the examination of witnesses or documents and
- f. any other which may be prescribed.

The Commission has power to enquire 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. The Commission may authorize any officer, not below the rank of a Gazetted Officer to enter into any building or place where the Commission has reason to believe that any document relating to the subject matters of the inquiry may be found, and may seize any such document or take extracts or copies there from. The Commission shall be deemed to be 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 statements 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<sup>19</sup>. All proceedings before the Commission are deemed judicial proceedings.

## **Investigation**

The Commission has also powers of investigation. The Commission has its own investigation machinery headed by an officer of the rank of Director General of Police who, is appointed by the commission itself. With the Director General of Police are associated a team of officers of different ranks on the pattern of police hierarchy. In investigation, the Commission has also the power to get outsiders associated. When exercising the power of investigation it may utilise the service 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<sup>20</sup>. When the officer or investigating agency is investigating into the matter as directed by the Commission, it has the powers to:

- a. summon and enforce the attendance of any person and examine him
- b. require the discovery and production of any document and
- c. require any public record or copy thereof from any office.

The Commission, in its discretion, accepts telegraphic complaints. The complaint may be filed in any language included in the Eighth Schedule to the Constitution. The Commission can initiate action suo moto. The Commission may ask the complainant to furnish further details or additional information and also ask him to file affidavits in support of the complaint whenever the Commission feels it is necessary to do so. Once a complaint is admitted for hearing, the Commission may either set down the matter of inquiry or investigation, as it may deem proper. The Commission may in its discretion give a personal



hearing to the complaint or to any other person on its behalf. No format of complaint has yet been prescribed. Till the format is laid down, the Secretary General has suggested that the letter or petition of complaint should contain the following details.

- a. Name, address, age, sex, relationship of the complainant with the victim ( if the complainant himself is not the victim)
- b. Details of victim: name, address, age, dependants, sex, whether belongs to scheduled caste or scheduled tribes.
- c. Details of violation of human rights; date location, state short description of the event leading to violation of human right, names of witnesses, if any
- d. Whether the matter is pending in any court of law, or any other forum.

The Commission is contemplating to have round the clock control room for the receipt of complaints. Protection is also accorded to a person making statement before the Commission. Such a person will not be subject to any civil proceedings or the criminal prosecution of account of the statement made by him before the Commission. The person likely to be affected prejudicially on account of inquiry has also been accorded an opportunity of being heard. During the year 1999-2000 the Commission has received more than 50000 complaints from different states in regard to the violation of human rights<sup>21</sup>.

### **Procedure for Inquiry into the Complaints**

The Commission while inquiring into the complaint of violation of human rights may,

1. call for information or report from the Central Government or any State Government or any other authority or organization 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 complainant and inform the complainant accordingly.
  
2. without prejudice to anything contained in clause
  - a. if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

The Commission will ordinarily hold its meetings at its headquarters in New Delhi, though in its discretion it may hold its sittings at any place in India if it considers to do so is necessary and expedient.

### **Action by the Commission**

When the inquiry commission comes to the conclusion that violation of human rights occurred, it cannot by itself take any step to get the wrong undone but may take following steps.

1. when the inquiry discloses the Commission or violation of human rights or negligence in the prevention of violation human rights by a public servant, it may recommend to the concerned Government or authority to initiate 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 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.

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

#### **Procedure- Inquiry and Steps After Inquiry**

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

1. call for information or report from the Central Government or any state Government or any other authority or organization 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.
2. without prejudice to anything contained in clause M, if it considers necessary having regard to the nature of the complaint, initiate an inquiry.

The Commission may take any of the following steps up on the completion of an inquiry, namely

1. When the inquiry discloses the Commission the violation of human rights or negligence in the prevention 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 Supreme Court or High Court concerned for such direction, 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 who 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.

### **Procedure with Respect to the Armed Forces**

While dealing with complaints of violation of human rights by the members of the armed forces, the Commission shall adopt the following procedure, viz;

- 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 to proceed with the complaint or as the case may be, make its recommendations to that Government.
- c. the Central Government shall inform the Commission action taken on the recommendations within three months or such further time as the Commission may allow
- d. the Commission shall publish its report together with its recommendations made to the Central Government and the action taken by the Government on such recommendations.
- e. The Commission shall provide a copy of the report published under sub section (3) to the petitioner or his representatives.

### **Role of National Human Rights Commission**

National Human Rights Commission has been playing a pivotal role in developing a culture for human rights in the country. It has built an edifice of human rights accountability on the foundations of

autonomy and transparency. While concentrating on immediate redressal and remedy of wrongs, it has taken up suo moto investigations and has established contacts with Central and state governments, authorities and human rights organizations in India and abroad. It has also struck a fruitful collaboration and co-operation with non governmental organizations both in India and abroad. The National Human Rights Commission has given priority to<sup>22</sup>;

1. protection of Civil Liberties
2. review of legislations repugnant to human right principles. Its role in opposing TADA was commendable.
3. reforms in civil and police administration to usher in human rights culture.
4. reducing, with a view to ultimately eliminating, custodial violence and rapes.
5. redressal of human rights grievances of scheduled castes and scheduled tribes.
6. concentration of human rights of women and children.

National Human Rights Commission after nine years in existence, had come to the conclusion that reforms in laws and treaties, rewards and punishment and even making structural and systems changes were not themselves sufficient to promote and protect the human rights. The nation requires vast programmes of social regeneration to deal with societal wrongs. An appropriate programme to reorient the citizen and to restrain the police and the bureaucracy are need of the hour. The establishment of the National Human Rights Commission has brought about a qualitative change in the observance

of human rights in the country. Now, for the first time, there is an independent organization, which looks into all complaints of violation and fixes the accountability. There is now a greater awareness of human rights principles among the police, the army and the security forces, since all excesses will come to the attention and notice of National Human Rights Commission and will be probed into thoroughly.

### **State Human Rights Commissions**

Since India is a vast country and it will not be possible for the affected to move National Human Rights Commission at Delhi without considerable amount of time and money. State Human Rights Commissions are being set up all over India to supplement the efforts of National Human Rights Commission. The Protection of Human Rights Act, 1993 envisages the setting up of the State Human Rights Commissions because, being nearer to the people of the respective states, they should be able to provide speedier and less expensive redressal of grievances. The national Human Rights Commission, for its part, has therefore been urging the early establishment of State Human Rights Commissions in all the states. Successive Chairpersons have, accordingly, both written to and spoken with the Chief Ministers of states impressing on them the need to setup Human Rights Commissions. On 31<sup>st</sup> March 2000, the position was follows<sup>23</sup>.

State Human Rights Commissions had been established in Assam, Himachal Pradesh, Jammu and Kashmir, Kerala, Manipur, Madhya Pradesh, Punjab, Rajasthan, Tamil Nadu and West Bengal.



The states of Bihar, Maharashtra and Orissa had issued notifications for constituting State Human Rights Commissions. Uttar Pradesh and Delhi have established Human Rights Cells.

The National Human Rights Commission meanwhile has continued to hold meetings with the chairpersons and members of existing state Human Rights Commissions with a view to developing healthy conventions in the functioning of various commissions and to ensure that, in their effort to promote human rights in the country, they work together smoothly and to the maximum benefit of all the people of this country. The National Human Rights Commission has observed once again, that it is disappointed with the slow pace of state governments acting to constitute State Human Rights Commissions. It has also noted that not all the State Human Rights Commissions that have been established, are being appropriately supported through the provision of adequate financial and manpower resources. It strongly recommends, that those state governments, which have not yet constituted Human Rights Commission do so at the earliest and that, wherever such commissions have been constituted, they be provided the backing that is essential to their proper functioning. Thus, the momentum is picking up and National Human Rights Commission is lending its full support to the process.

### **Human Rights Courts**

Human Rights courts are being set up all over India. To associate public and Non Governmental Organisations in the process of verifying allegations of violations, District Level Enquiry Committee are being set up. National Human Rights Commission is the first step to

translate Human Rights rhetoric into tangible action. India has truly joined the advanced nations in implementing human rights in letter and spirit. In a country of continental dimensions with great diversity of language, traditions, customs and practices, it will be unrealistic to expect overnight change in attitudes congenial to the enjoyment of human rights.

### **Human Rights Education**

In the human rights discourse, in recent times, human rights education has assumed critical significance as an instrument of awareness of human rights. The Third World War Congress on Human Rights, 1990 urges that human rights education should be understood as encompassing formal, non-formal and informal education, and should aim also to reach parents and policy makers. It aims at developing individuals awareness of the ways and means by which human rights can be translated into social and political reality both at national and international levels<sup>24</sup>.

It is proposed that in India the model of the human rights education at school level is developed by the National Council of Educational Research and Training (NCERT) with the help of National Human Rights Commission and be accepted as the standard and implemented in all states. The National Human Rights Commission is entrusted with the statutory responsibility of spreading human rights literacy among various sections of the society and focused the role of educational institutions in imparting human rights education among children. It is of the opinion that the courses be designed not only for the educated middle class but the poor and working sections, which of

course, has borne the brunt of attack on democratic rights. On the content, it is suggested that it should enumerate the rights the people have against the state and organizations. It should not only be incorporated in the formal curriculum as a separate subject but should also be integrated into the entire curriculum including the hidden curriculum ie. the culture of schooling and teacher training institutions and programmes, and human rights teaching materials should be produced in different forms, both written and audiovisual.

At the non-formal, primary and secondary levels, the focus shall be on inculcating an attitude of self-esteem, respect for ideas and beliefs of other people. There shall be no much specific curriculum on human rights rather than human rights dimensions can be integrated with existing curricula, to orient students on human rights. At the higher education level, specific human rights issues in social context are to be introduced with the assumption that the higher educated people, holding positions of responsibilities would better deal with human rights as well as its abuses. All the efforts however, are directed towards inculcation of human rights culture in young mind<sup>25</sup>.

At the higher education level, the broad contents of courses need to encompass the areas such as philosophical, cultural and historical perspectives, theories and movements linkages between human rights and democracy, development, peace and harmony. Besides, national perspectives dealing with historical context, protection regime especially for weak and marginalized groups, violation of human rights by the state and its agencies, violation by armed, political and dominant groups; the role of National and Statutory Commissions,

media and non-governmental organizations vis-à-vis protection and promotion of human rights; regional perspectives including features of region in which India located such as pluralism, poverty social structure, social instability, illiteracy, etc. and international perspectives including study of treaties and texts of international community for the protection of human rights, the role developed by societies and international institutions vis-à-vis human rights. The textual teaching materials is thought to be integrated appropriately with other materials making adequate use of local experiences and highlighting the ground realities.

With the present state of educational scenario, in the context of right to education there are lot of issues being coupled with our education system may effect human rights education. Can Human rights education come out of social machinery already generated by existing education system? The basic fundamental question is that can it be practical oriented curriculum where not only rights for education is highlighted rather what should be done if the rights are violated. Mere knowledge about human rights is not sufficient unless there is an understanding as to how human rights can easily become vulnerable to abuse of various structures and process of power and people and professionals are able for protection and enforcement of these rights. With the aims of sensitizing and changing the attitude of mind are creating a human rights culture, the role of teaching methods remain crucial in the achievement of objectives. So far this has been a neglected area in existing system of education. With the present state of teaching methodology, imparting education of the concern, would make human rights education more academic. It is important to have

practical oriented teaching bringing in field experiences in the classrooms and taking students to the community.

The University Grants Commission's Standing Committee on human rights in its meeting held on 13<sup>th</sup> March 1997 constituted a sub committee for drafting an approach paper for the University Grants Commission initiatives and define strategies in the Five year Plans to promote human rights education in higher education. The plan approach was approved by the commission in its meeting held on 21<sup>st</sup> May, 1998. The core of the approach was that respect and realization of human rights require evolving a culture that is more sensitive to the basic needs of every human being. Of course, this goal of ushering in human rights had been incorporated in the constitutional scheme, the culture has still remained a reality. A deliberate attempt is therefore made to use education as a key instrument for bringing changes in social and cultural attitudes in relation to human rights.

In the perspective of human rights education, it is believed that the goal of evolving human rights culture requires operating at various levels such as<sup>26</sup>-

1. Spreading awareness amongst masses, of and about these rights and also their duties for respecting the rights of others.
2. Imparting capacities and confidence amongst the weaker sections and vulnerable groups to stand for protection and preservation of other rights,

3. Requiring many to shed away their prejudices and reform the attitudes which are derogatory to others dignity,
4. Creating different kind of knowledge, methodologies and normative regimes and imparting new skills and competencies so that policy making, its enforcement and realization become more sensitive to the demands of human rights culture,
5. Establishing new structures of accountability and making them more effective to make the state and its agencies and personnel responsible for human rights violations on one hand and to internalize respect for these rights on the other.

It is believed that a social order which ensures full and free development of the potentialities of every member of society and which cares and respect each other's distinct identity can only be created on the basis of total commitment to fundamental human rights. The human rights education can imbibe the under stating tolerance and respect for differences and diversities in pluralistic society like India. It can address the need for evolving new structures of knowledge and accountability among holders of power, and be the catalyst in bringing about attitudinal changes amongst members of civil society, helping them internationalizing more human and egalitarian approach in their social relations. When much talk revolves around formulation of appropriate curricula, there is hardly any doubt that human rights education would be more in formal mode than other. The question is how to introduce the new curricula at various levels. It is obvious that one more subject can not be added to already overloaded curricula at the primary level,

showing a new kind of violation of human rights that young minds should not be burdened with more contents. So it needs integration with existing curricula. But what and how much to be integrated is really a difficult task. This task for the selection of issues which a child at school age should know. It may be desirable to introduce some of the core rights under the umbrella of ethical aspect and relating it to individual and social needs and problems. While at secondary level, a special paper covering core as well as secondary rights may be introduced as per existing foundation courses for students of all disciplines, at the higher level, it needs both specialization for preparing resource persons or expects mainly on social sciences and integration with subjects in all disciplines with emphasis on ethical aspects of a profession in socio-cultural setting.

In the present system of education there are few to be considered as the resource persons for human rights education especially at the higher level of education. Majority of the teachers at all levels are not aware of their human rights and duties. The simple answer is that teachers are to be given training on content as well as pedagogy, material preparation, curriculum development, initiating students activities and most important is effective communication as they are going to be role model in whole human rights education processes. With the present state of teacher training programme where teachers are expected to enrich their knowledge of content and pedagogy and teacher's attitude towards training, the effectiveness of training of an action oriented educational programmes such as human rights education where teacher is to be knowledge giver as well as an actor, look hard to relies. The point is also that there is a need of

resources persons or experts for teachers general mass at grass root level who are denied basic education, and state and private agencies who are expected to play a vital role not only in knowledge dissemination but also enforcement. In other words there are three groups general mass (mainly marginalized members and illiterates) , student mass and the educated elite including law enforcement officials, leaders in society and members of social organizations. It is thus, required to deal with three phenomenally diversified groups one being at deep sea, the second one at floating boat and third one, to say problem shooter. If the former two groups are required to be educated and oriented; the later one to be re-educated and reoriented. The promotion of awareness of human rights should not be diluted with enforcement of human rights, rather be integrated and enacted with proper supervision from institutionalized agencies. The problem of the human rights is spread over a wide canvas, but two dominate factors emerge one relate to the issue of accountability and the other more basic to the loss of dignity on account of physical violence<sup>27</sup>. This relates to the work of all law enforcing agencies. So the human right education extends to all agencies of government also. The human rights education thus, remains a matter of concern and not a subject of academic. There is need to fight institutional and bureaucratic apathy. Knowledge of the provisions of the convention among common public is no doubt prerequisite for effective implementation, but here the knowledge alone will not ensure its implementation rather a sense of personal involvement and commitment on the part of individuals in society is highly required.



Thus, the promotion of human rights literacy in a society as complex and textured as ours is a task that is, at once both daunting and crucially important. It is also a task that calls for great perseverance, for it requires a deep and lasting commitment. Indeed there is no easy way to create a culture of human rights. All sections of the society have a role to play an ideal to sustain, if the cause of human rights is to take root and flourish against the cruel odds of social injustice and inequality, the problems of poverty and fanatical destructiveness of terrorism. Soon after the implementation of National Human Rights Commission, it addressed letters to the Presidents of Political Parties represented in the Lok Sabha, the Rajya Sabha or in the state Legislatures for the effective implementation of human awareness programme to all sections of the society especially for weaker sections. The Commission observed the political parties by their behaviour and the ideas that they propagate and can create the most powerful force for the promotion and protection of human rights of all the citizens of the nation<sup>28</sup>.

### **Non-governmental Organisations**

The responsibilities entrusted to the National Commission under the Protection of Human Rights Act, 1993 cannot be adequately discharged without the development of close and co operative ties between the National Commission and non-governmental organizations- the eyes and ears of the people of India. For the National Commission, it is not just a statutory obligation, under Section 12 (i) of the Act ' to encourage the efforts of the 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 national 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 non-governmental organizations and the national Commission can bring to bear in their mutual interaction and growing relationship. To this end, the national Commission has from time to time invited leading human rights activists and non-governmental organization representatives over for discussions and advice and sought their help in practical ways. In addition, in every visit to state, the national Commission has made it a point to benefit from the experience and knowledge of non-governmental organizations whose contacts at the grass roots level give strength and meaning to the human rights movement where it matters most.

There are three areas in which non-governmental organizations can be of particular assistance to the National Commission. Firstly because of their grass root contacts, they can most effectively identify human rights violations, articulate them and seek redress. The National Commission sees a most positive role of non-governmental organizations in bringing about complaints to its notice. Secondly, given the rapport that they have established with public at large, the assistance and co-operations of the non-governmental organizations can be of great value in the investigation of the more serious cases that come to be looked into by the National 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 National Commission in accordance with its Regulation

No.18, in addition to using its investigating staff, may choose to associate non-governmental organizations actively in investigation work. Thirdly the high level of expertise of individual non-governmental organizations in specific areas of human rights work can be a source of benefit to the National Commission as it studies and makes recommendations on specific issues and problems. There would thus be a role for non-governmental organisations in the research and studies programme of the National Commission at this develops.

In the development of this working relationship, the National Commission is particularly grateful to non-governmental organizations for coming forward with complaints regarding violations of human rights. Analysis of the complaints received by the National Commission indicates that over 200 non –governmental organizations were involved in the submission of such complaints and these complaints were received from all parts of the country. This clearly illustrates itself concerning the range of non-governmental organizations in the country and their interest, simultaneously in rectifying wrong and in using the mechanism of the National Commission<sup>30</sup>.

In order to derive a fuller awareness of the range and capacities of non-governmental organisations in the country, the National 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. Such information can be of immense help to the National Commission as it seeks the association of non-governmental organizations, for instance,

in the making of inquiries into the complaints that are received from various parts of the country.

In a country as large and diverse as India there is always the problem of being unaware. The extent of talent and commitment amongst groups and individuals often are far removed from the nation's capital but heroic in their devotion to principles and often in their accomplishments. Through the information regarding number of non-governmental organizations involvement in protection and promotion of human rights, the National Commission is seeking advice from them that have already established a reputation for probity and commitment.

### **Follow Up Action**

The working of National Human Rights Commission since its inception in 1993 reveals that it has successfully devised many ways to handle cases, using to the full the various possibilities open to it under its statute, in order to achieve the greater goal of promoting and protecting the human rights nation-wide. On November 1, 1993, the National Commission suo moto took cognizance of the press reports about the death of 60 persons in and around Bijbehara in Jammu and Kashmir, as a result of firing by security forces operating in the area and called for reports from the Ministry of Defence and Ministry of Home Affairs as also the Government of Jammu and Kashmir and made the Commission to make recommendations to the Central Government which were accepted by the government and consequently relief was provided to the aggrieved<sup>31</sup>.

During 1995 India made significant progress in resolving human right problems. The Terrorist and Disruptive Activities (Prevention) Act TADA Special security legislation under which thousands of persons had been held for prolonged periods without charges, was allowed to lapse. The International Committee of the Red Cross (ICRC) and the government reached at an agreement to permit prison visits in Kashmir. The ICRC made its first visit to prisoners in October. In Punjab the insurgent violence of the past years has largely disappeared and there is visible progress in correcting patterns of abuse by police. The assassination of Punjab Chief Minister at the end of August is an isolated exception to the resorted civil peace in the state, resulted in neither a widespread crack down nor a break down of order. The national Human Rights Commission continues to play a useful role in addressing patterns of abuse, as well as specific abuses and is consolidating an attitudinal shift towards acknowledgement of human rights problems as it seeks to create a Human Rights Culture through educational programmes<sup>32</sup>.

A meeting of the core group on child prostitution was organized by the National Commission in New Delhi on 30<sup>th</sup> January 1997, in which Chairperson expressed serious concern over the problem and termed it a failure of humanity. Chairperson called for co-coordinated efforts by police, Non Governmental Organisations, the Centre and State Governments and the Commission for urgent and conscientious interventions. The National Commission has also shown keen interest to highlight the need of setting up of a statutory board of prevention of trafficking and a sustained media campaign. The need for free and compulsory education for children was stressed in this context as also

in the wider context of ending all norms of child labour<sup>33</sup>. Further the National Commission has also sought changes in the conduct rules to prevent employment of child labour by government servants. In this regard, the National Commission has recommended to the Centre Government to certain essential steps to prevent government servant from employing the children below the age of 14 years as domestic help<sup>34</sup>.

The National commission has always shown keen interest in reminding us of the fact that unless human rights are accepted as Fundamental to civil society and there is rule of law, we would sooner or later create situations where certain extreme political philosophies like the one that was manifested in the demolition of the Babri Masjid would take over. Or would have the kin of situation, which is to be seen in its most naked form in Bihar. Other states are not exempt from this process at work. One sees evidence of it in Andhra Pradesh, Orissa, Uttar Pradesh on the occasions even in states like Gujarat and Maharashtra and so on. The National Commission has seriously observed on many occasions that without having a more accommodating political system and a better strategy of development so that inequalities can be removed, the country would never be able to progress as it ought to progress<sup>35</sup>.

A meeting of the National Commission held in New Delhi on 22<sup>nd</sup> January 1997 discussed various issues including the state of juvenile homes, the matter of child prostitution, human rights as a subject in the educational curriculum and elimination of child labour in the glass factory in Ferozabad. Other important topics discussed in the meeting

were Model Prison Bill on which considerable work done by the national Commission, the Armed Forces (Special Powers) Act, 1958 and research on various human rights subjects<sup>36</sup>.

Keeping in view the prevailing circumstances the National Commission has made some observations and suggestions so as to create an environment where the philosophy of human rights becomes a living reality. These are<sup>37</sup>,

1. The Human Rights can best be served where peace and transparency prevail and that they are worst served where terrorism and secrecy reign. Acting on the promise National Commission has urged the renunciation of terror, the rule of the gun and all forms of violence in the settlement of disputes, particularly since constitutional possibilities provide peaceful ways of resolving disputes in a democratic country such as ours. Further, as the security forces are generally called up on to assist the civil administration in areas affected with terrorism or insurgency, the National Commission has repeatedly recommended that these forces must act in close co-ordination with the civil administration. It has been the National Commission's experience that violations of human rights are far less likely to occur when the role and responsibility of the civil authorities under the law are fully respected not least in respect of cordon and search operations, arrest, interrogation and detention.

2. The National Commission has also been keen to ensure that the rights of the victims of terrorism and armed militancy are not neglected and that they are assisted by all appropriate means.
3. The National Commission has seriously viewed that the mechanism of reporting of the incidents concerning violation of human rights be strengthened vigorously so that follow up action is initiated against violators actively. The National Commission has laid emphasis on adequacies of investigative agencies so that appropriate remedies are made available to the aggrieved.
4. An efficient, honest police force is the principal bulwark of the country against violations of human rights. The National Commission is strongly in favour of improving the quality of the police and restoring its prestige and lustre in the eyes of the nation. The National Commission has strongly proposed a number of critically needed remedial measures to prevent interference with and misuse of the police by illegal or improper orders or pressure from political, executive or other extraneous sources. National Commission further urges a statutory tenure of office for the chief of the police in the states, observing that the 'Damocles's word of transfer' should be removed from over their heads.



5. The National Commission also suggests certain prison reforms to improve the situation in the jails of the country. In particular, it has been essential to stress the need for special arrangements for women and juveniles and for over crowding in jails.
  
6. The National Commission is of the view that there is need for the leaders of all sections of the society to reflect on various causes of violence in their country. National Commission is seeking to engage their attention in this endeavour, which is intrinsic to the Commission's effort to create a culture of human rights in the country that is based on tolerance and sustained respect for the dignity and worth of human person.
  
7. Even after the lapse of the TADA, 1987 on 23<sup>rd</sup> May ,1995 many thousands of under trials remained in jail in various states and union territory of Chandigrah under the provisions of TADA and their situation was in danger of being forgotten. The National Commission therefore started gathering the data regarding the same. The National Commission urged that the review committees be set up in individual states meet regularly, as had been directed by the Supreme Court, and interact with those states where the periods of detainees were the largest, urging and increasing in the number of trial courts.

8. Upon making an analysis of the Child Marriage Restraint Act, 1929, The National Commission and National Commission for Women are of the view that the Act needs to be amended in a number of respects in order to make it more effective. Furthermore, the highest importance should be accorded to the introduction of a system requiring the compulsory registration of marriages, as this could impede the practice of child marriage. The National Commission recommends early action on the new Marriage Draft Bill prepared by the National Commission for Women and Department of Women and Child Development, as it has a substantial impact in reducing the incidence of child marriage.
  
9. The National Commission remained consistently mindful of the commitments of the country under the treaties to which it was a party as also of the more general principles of conduct relating to human rights which had been elaborated in international forums with full participation of India. The National Commission recommends that well coordinated steps be taken to act up on the declaration and programme of action adopted at the Fourth United Nations Conference on Women held in Beijing and also to oversee the implementation of the commitments of India under the convention of the Elimination of All Forms of Discrimination against Women, a matter to which the national Commission attaches the highest importance.

10. In recent times there has been a growing awareness in the country of menacing dimensions and implications of child prostitution. This awareness is not, however, always reflected in the work of official agencies or recorded in their data. The National Commission is of the view that realities should be faced and that the law and the actions of the state should be made more relevant to the remedying or problems, especially when fundamental issues relating to human rights are at stake.
11. The National Commission has continued to monitor closely the problem of child labour. While recognizing the value of present governmental schemes, the implementations of which is most important, the National Commission remains of the view that the problem of child labour will persist including possibly in hazardous industries until the reality of free and compulsory education for all up to the completion of the age of 14 years is realized. The National Commission feels that the time has come for a serious debate in the country on this issue, for on it can depend the future of our children and indeed of the country itself.
12. The National Commission recommends the enforcement of human rights education drive and suggest the National Council for Education Research and Training (NCERT) to include the subject of human rights in the schools. As regards to the university level the Chairperson of the

National Commission wrote to all Vice-Chancellors asking them to include the subject on human rights in the curriculum at the under graduate and post graduate levels and promote the research, seminars, discussions and publications on human rights. The National Commission also welcomes the involvement of distance education for propagation of human rights literacy.

13. In a vast, pluralistic country such as India, the redress of grievances must be swift and near to home, to save time, money and energy and also better services rendered if state level human rights commissions are established, as the Protection of Human Rights Act, 1993 envisages. Many of the states have taken initiative in this regard by establishing Human Rights Commission as in West Bengal, Himachal Pradesh, Madhya Pradesh, Assam, Jammu and Kashmir, Kerala, Manipur, Punjab, Rajasthan, and Tamil Nadu. The states of Bihar, Maharashtra and Orissa had issued notifications for constituting State Human Rights Commission. The National Commission hopes that other states may also follow the same. The National Commission also recommends the establishment of Human Rights Courts all over India. The National Commission welcomed the creation of district level committees, in which Kerala provided the lead, as a further means for the redressal of human rights grievances and attending to them expeditiously and sensitively at the local level. The

National Commission recommends that other states and Union Territories should proceed in the same way.

It is also disclosed from the above-mentioned paragraphs that the Government of India is quite eager to promote and safeguard the human rights of the Indian masses and is busy to enact welfare legislations. More than 90 per cent of the legislations in India have been enacted to cherish the philosophy of human rights. The Government of India has brought into force the Protection of Human Rights Act, 1993 for better protection of human rights and for matters connected therewith or incident thereto<sup>38</sup>. Further, it is also amply clear from the inception of National Human Rights Commission has done a great deal of work in the direction of protection and promotion of human rights and enabled to great extent Indian masses to lead a life of dignity, equality and freedom as enshrined in our supreme law of land. Thus, the idea to bring National Human Rights Commission, State Human Right Commissions, Human Right Courts, Human Right Cells into existence is to give practical shape to the entire gamut of human rights philosophy by executing the intention of legislatures manifested in different social legislations in consonances with the philosophy enshrined in our constitution. The continuing action initiated by the National Human Rights Commission stands as a strong testimony to the effect that is actively engaged in making the people aware of their rights and sparing no stone unturned to protect them against all forms of exploitation. For understanding the human rights in more details, it is necessary to incorporate the Human Rights Act, 1993<sup>39</sup>. It is given below.

The Protection of Human Rights Act, 1993  
(Act No. 10 of 1994)

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**Preliminary**

1. Short Title, Extent and Commencement.
2. Definitions.

**Chapter II**  
**National Human Rights Commission.**

3. Constitution of Human Rights Commission.
4. Appointment of Chairperson and other Members.
5. Removal of a Member of the Commission.
6. Term of office of Members.
7. Members to act as Chairperson or to discharge his functions in certain circumstances.
8. Terms and conditions of service of Members.
9. Vacancies, etc, not to invalidate the proceedings of the Commission.
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21. Constitution of State Human Rights Commissions.
22. Appointment of Chairperson and other Members of the State Human Rights Commission.
23. Removal of a Member of the State Human Rights Commission.
24. Term of office of the Members of the State Human Rights Commission.
25. Member to act as Chairperson or to discharge his functions in certain circumstances.
26. Terms and conditions of service of Members of the State Commission.
27. Officers and other staff of the State Commission.
28. Annual and other Special Reports of the State Commission.
29. Application of certain provisions relating to National Human Rights Commission to State Commissions.

**Chapter VI**  
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30. Human Rights Courts.
31. Special Public Prosecutor.

**Chapter VII**  
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32. Grants by the Central Government.
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36. Matters not subject to jurisdiction of the Commission.
37. Constitution of special investigation teams.
38. Protection of action taken in good faith.
39. Members and Officers to be public servants.

40. Power of Central Government to make rules.
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**The Protection of Human Rights Act, 1993  
(Act No. 10 of 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 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 the State.



(3) It shall be deemed to have come into force on the 28<sup>th</sup> day of September, 1993.

## **2. Definitions -**

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

- (a) "armed forces" means the naval, military and air 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;
- (d) "Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;
- (e) "Human Rights Court" means the Human Rights Court specified under section 30;
- (f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December, 1966;
- (g) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;

- (h) "National Commission for Minorities" means the National commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992'
  - (i) "National Commission for the Scheduled Castes and the Scheduled Tribes" means the National Commission for the Scheduled Castes and Scheduled Tribes referred to in article 338 of the Constitution;
  - (j) "National Commission for Women" means the National Commission for Women constitution under section 3 of the National Commission for Women Act, 1990;
  - (k) "notification" means a notification published in the Official Gazette;
  - (l) "prescribed" means prescribed by rules made under this Act'
  - (m) "Public Servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code'
  - (n) "State Commission" means a State Human Rights Commission constituted under section 21.
- (2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to the State, be construed as a reference to a corresponding law, if any, in force in that state.

## **Chapter II**

### **The National Human Rights Commission**

#### **3. Constitution of a National Human Rights Commission –**

- (1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers

conferred up on, and to perform the functions assigned to it under this Act.

(2) The Commission shall consist of-

- (a) a Chairperson who has been a Chief Justice of the Supreme Court,
- (b) one Member who is , or has been a Judge of the Supreme Court;
- (c) One Member who is or has been the Chief Justice of a High Court;
- (d) Two Members to be appointed from amongst persons having knowledge or practical experience in matters relating to human rights.

(3) The Chairpersons of the Commission for Minorities, National Commission for the Scheduled Caste and Scheduled Tribes and The National Commission for Women shall be deemed to be the Members of the Commission for the discharge of functions specified in clauses (b)to (j) of Section 12.

(4)There shall be a Secretary General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(4) The headquarters of the shall be at Delhi and the Commission may, with previous approval of the Central Go9vernment establish offices at other places in India.

#### **4. Appointment of Chairperson and other Members-**

1. The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal;

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

- |  |               |
|--|---------------|
| a. the Prime Minister  | - Chairperson |
| b. Speaker of the House of 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 Supreme Court or sitting Chief Justice of 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 misbehavior 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, authorize 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, authorize 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 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 authorized by the Chairperson in this behalf.

**11. Office 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 of 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 the Police and such other officers and staff as many be necessary for the efficient performance of the functions of the Commissions.
- (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 may be prescribed.

### **Chapter III**

#### **Functions and Powers of the Commission**

##### **12.Functions and Powers 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 in 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.
  
- (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized 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 there from subject to the provisions of section 100 of the code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the commission shall be deemed to be a civil court for all the purposes of section 195 and chapter XXVI of the code of Criminal Procedure, 1973.

#### **14. Investigation –**

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize 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 utilized 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 utilized 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 utilized 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:

- (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.
- (c) 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 or 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, order 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 take 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 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 important 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 Commission**

### **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 Chairman 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;
- (4) 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.
- (5) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.
- (6) 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      |
| © 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 the 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 misbehavior 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 as 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
- (e) is of unsound ;mind and stands so declared by a competent court; or

(1) 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 seventy years, which 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, authorize 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, authorize 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 Government.
- (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. Applications of certain Provisions relating to National Human Rights 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) reference to “Commission” shall be construed as references to “State commission”
- (b) in section 10, in sub-section (3), for the words “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. Human Rights Courts-**

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 central government may think fit for being utilized for the purpose of this Act.

(2)The Commission may spend such sums as it thinks fit for performing the functions under this act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

### **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 utilized 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 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 generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

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 other Member thereof or any other 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 there under 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 authorized by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**40. Power of Central Government to make rules-**

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
  
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-
  - (a) The salaries and allowances and other terms and conditions of service of the Members under section 8;
  
  - (b) The conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;
  
  - ©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 House agree that 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 modification 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.



## References:-

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1. A.P. Vijapur- The UN Mechanisms and Procedures for Promotion and Implementation of Human Rights, Indian Journal of International Law Vol.3-4, 1985, pp576-621.
2. Dewan Nazrul Qadir, The Practice of Child Labour and Human Rights in Brahmaputra Valley in Assam. 1996.
3. Susan Harley (Ed) – On Human Rights, The Oxford Amnesty Lectures, 1993.
4. Kannan Gahrana, 'Human Rights- A Conceptual Perspective' Indian Journal of International Law, 29. No.3 &4, July- Dec, 1989.
5. Abdul Rahim P. Vijapur, The United Nations at Fifty- Studies in Human Rights (1996), pp22-24.
6. United Nations Briefing Papers- Human Rights Today, New York, 1998, p.v.
7. United Nations Briefing Papers- Human Rights Today, New York, 1998, p.v.
8. S.N. Dhayani- Fundamental of Jurisprudence- The Indian Approach (1992) p. 41.
9. S.Subramanian. Human Rights- International Challenges (1997) P.3.
10. James Chiriuan Kandath- India and Human Rights, Concepts and Texts (1994). P.50.
11. D.D. Basu- Human Rights in International Law (1994) P. 29.
12. Indian Institute of Human Rights- 1999. p.72.
13. Abdul Rahim P. Vijapur and Kumar Suresh (Ed) Perspectives in Human Rights, (1999), p.282

14. S. Subramanian- Human Rights- International Challenges (1997) p.457.
15. See . Protection of Human Rights Act, 1993.
16. See . Protection of Human Rights Act, 1993
17. P.C.Mehta and Neena Mehta, Human Rights under the Indian Constitution, (1999), pp 52.53.
18. In an Institute of Human Rights- Role of National Human Rights Commission (1999). P.78.
19. S. Subramanian Human Rights – International Challenges (1997). PP 455-461.
- 20 S. Subramanian Human Rights – International Challenges (1997). PP 371-72.
21. Annual Report- National Human Rights Commission , 1999-2000.
22. Text of Protection Human Rights Act, 1993.
23. Annual Report- National Human Rights Commission , 1999-2000.
24. Hindustan Times News Paper (Delhi Edition)- Education on Human Rights Stressed, on March 15, 1995.
25. Saksena. K.P. (Ed) Human Rights Perspectives and Challenges, (1994), PP. 87-110.
26. University Grants Commission, Ninth Plan Approach to Promotion on Human Rights Education in Universities and Colleges, Institute of Objective Studies Bulletin, Vol.1. No.2 PP15-20, 1998.
27. Hindustan Times News Paper (Delhi Edition) – Human Rights in School Curricula , March 12, 1995.

28. Annual Report – National Human Rights Commission, 1998-1999.
29. S. Subramanian – Human Rights in International Challenges Volume II, (1997), PP 395-96.
30. Annual Report – National Human Rights Commission, 1994-1995.
31. S. Subramanian – Human Rights in International Challenges Volume II, (1997), PP 543-44.
32. S. Subramanian – Human Rights in International Challenges Volume II, (1997), P. 331.
33. The Tribune (News paper) dated October 28, (1997), P. 8 and Human Rights News Letter Volume. No.4. No.2. February, 1997, P.1.
34. Human Rights News Letter Volume. No.4. No.2. February, 1997, P.1.
35. Amrik Singh- Human Rights and Rule of Law, Mainstream, Volume no.34, No.22. April 22, 1995. P.10.
36. Human Rights News Letter Volume. No.4. No.2. February, 1997, P.1.
37. Amrik Singh- Human Rights and Rule of Law, Mainstream, Volume no.34, No.22. April 22, 1995. PP.10-11.
38. See Text of protection of Human Rights Act, 1993.
39. Act Published in Gazette of Government of India, dated 10<sup>th</sup> January, 1994, Part II, S.1.