



Subject :

Human Rights Law & Practice

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SUBJECT TOPICS

1. **DEFINITION AND GENERAL INTRODUCTION OF HUMAN RIGHTS**
2. **A BRIEF SUMMARY OF THE PROTECTION OF HUMAN RIGHTS ACT, 1993**
3. **THE PROTECTION OF HUMAN RIGHTS ACT, 1993**

What are human rights?

In order to live with dignity certain basic rights and freedoms are necessary, which all Human beings are entitled these basic rights are called Human Rights

Human rights demand recognition and respect for the inherent dignity to ensure that everyone is protected against abuses which undermine their dignity, and give the opportunities they need to realize their full potential, free from discrimination.

Human rights include civil and political rights, such as:

- # The right to freedom of expression
- # The right to freedom of religion or conscience
- # The right to property
- # The right to freedom of assembly
- # The right to privacy
- # The right to vote.

Human rights also cover economic and social rights, such as:

- # The right to an adequate standard of living
- # The right to adequate food, housing, water and sanitation
- # The rights you have at work
- # The right to education.

Human rights belong to everyone, everywhere, regardless of nationality, sexuality, gender, race, religion or age. The foundation of modern human rights is the Universal Declaration of Human Rights (UDHR). The 30 articles the Declaration were adopted in 1948 by the United Nations General Assembly, and over time these have been integrated into national laws and international treaties. The core values of the UDHR - human dignity, fairness, equality, non-discrimination - apply to everyone, everywhere.

A Legal framework about Child Prostitution: The United Nations Convention on the Rights of the Child, 1989: I defines „child prostitution“ as sexual exploitation of a child below the age of 18 for remuneration in cash or kind

Administration of Laws Against Trafficking In India:

the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2017 was drafted in order to bring new reforms and additions to the currently existing measures against trafficking. The bill is to identify various

“aggravated forms” of trafficking and bestows a 10 year imprisonment penalty for those indulging in such practices

Historical Development of Human Rights

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by all persons equally, universally, and forever. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Kant said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life. Human rights is a concept that has been constantly evolving through human history. They have been intricately tied to the laws, customs and religions throughout the ages. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you". The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities.

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully. In the field of biotechnology and medicine especially there is strong need for human rights to be absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering also brings with it the dangers of gene mutation and all the problems associated with cloning. In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine the welfare of the human being above society or science.

However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.

Women Rights are Human Rights: Is it a rhetoric?

The world has never yet seen a truly great and virtuous nation because in the degradation of woman the very fountains of life are poisoned at their source. ~Lucretia Mott

The Past:

As a gender and an integral part of Humanity, women have suffered much and without any fault of their own. They have toiled and contributed ceaselessly, they have laboured and produced continuously and they have been discriminated, invariably.

The history of this discrimination is as old as the history of civilization itself. The women have suffered so much for merely being women, from all recognized social institutions that have existed so far that if we dare write a book on the tortures and cruelty and biases they have faced, it may run in thousand volumes. If we try to trace the origin of this sorry state of affairs we will find that the discrimination has already started when the society was in its nascent stage. Patriarchal societies have a long history of treating women as inferior being though matriarchal societies have generally been found to treat women with a little bit more respect.

Primary reasons and instrument of implementing this bias has been the deprivation from the property and violence. At the dusk of tribal societies when the man first started to understand the nuances of private property, Man because of his stronger physique and because he had not to recluse himself from the production due to maternity became prime bread earner of the family. From this point of time started the formation and consolidation of the male dominated society as we see it. This consolidation continued till the dark ages and first rays of light in the dungeons of solitude and bereavement of the women begin to fall with renaissance. The industrialization with its craving for cheaper and abundant labour helped in making women more economically and socially powerful. It can not, however, be denied that all this progress would still have left women as the inferior sex had they not tenuously and vehemently fought for their own rights.

Gender inequality, which remains pervasive worldwide, tends to lower the productivity of labour and the efficiency of labour allocation in households and the economy, intensifying the unequal distribution of resources. It also contributes to the non-monetary aspects of poverty lack of security, opportunity and empowerment that lower the quality of life for both men and women. While women and girls bear the largest and most direct costs of these inequalities, the costs cut broadly across society, ultimately hindering development and poverty reduction, ~ Gen and Development Group -World Bank, from the report "Gender Equality and the Millennium Development Goals (2003).

Anti-Terrorism Laws: The Reality

What exactly is terrorism? Terrorism has often been understood variously as both a tactic and a strategy; a heinous crime and a holy duty; a reasonable response to oppression and an inexcusable abomination. Different organizations have different definitions to offer when it comes to explaining this term. The Code of Federal Bureau of Investigation (the FBI) in U.S.A defines it as "the illegal use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." The FBI further explains terrorism as either domestic or international, depending on the origin base, and objectives of the terrorists. On the other hand, the European Union defines "terrorism" as the aim of "destabilising or destroying the fundamental, political, constitutional, economic or social structures of a country. But ordinarily, it's understood as „an act of terror which influences an audience beyond the immediate victim". A terrorist attack is not only an attack on innocent individuals but it is an attack on our sovereignty, unity and integrity and our feeling of nationalism.

Unlawful Activities (Prevention) Act, 1967:

Some laws enacted due to Terrorism

Terrorist and Disruptive Activities (Prevention) Act, 1987:

Maharashtra Control of Organised Crime Act, 1999 # Prevention of Terrorism Act, 2002

Two years from the enactment of the POTA, a number of issues as to the possibilities of misuse of the provision of the anti-terror law including the targeting of minorities and using it against political opponents had arisen. In Gujarat, all except one of the POTA detainees are from the Muslim community and in Tamil Nadu and UP too, superficial anti-terror law has been abused to book, without lucidity and accountability, political opponents and underprivileged communities respectively - - Kritika

Right to Clean Environment: A basic Human Right

At present, all of us all over the globe face grave environmental problems. The continuing deterioration of earth's ecological reserves poses a serious threat to the pollution free environment. One of the most complex challenges facing our generation is to maintain a workable synergy between sustainable economic development and pollution free environment.

The factors which have contributed most directly to the excessive pressure on the environment and natural resources in India are:-

1. A doubling of the region's population over the past four decades.
2. A tripling of economic output, and
3. The persistence of poverty.

The movements are massive and legal maneuvers stupendous, but much appears to be yet in store. The children the layman have all become endowed with the consciousness for a halcyonic environment. However, positive results are not forthcoming. The prospects are murky and future is unsafe but pessimism is no cult to advocate an human dedication to combat pollution has to march ahead undaunted.

In this scenario, India needs a global war on environmental degradation that is as aggressive and well - funded as the war on terrorism. More than ever we need to take necessary steps to ensure that the environment remains at the top of our agenda. - - Aditi Singh

Science and Technology in human rights: An Indian perspective

The major historic milestones of the Indian Council of Medical Research reflect, in many ways, the growth and development of medical research in the country over the last nine decades. First meeting of the Governing Body the Indian Research Fund Association (IRFA) was held on November 15, 1911 at the Plague Laboratory, Bomba under the Chairmanship of Sir Harcourt Butler. At the 2nd meeting of the Governing Body in 1912, a historic decision was taken to start a journal for Indian Medical research. Between 1918--20, several projects on beriberi malaria, kala azar and indigenous drugs were initiated. In 1945, a Clinical Research Unit the first research unit of IRFA attached to a medical institution- was established at the Indian Cancer Research Centre, Bombay. In 1949, IRFA was re-designated as the Indian Council of Medical Research. Over next 60 years, ICMR established many national research centers in the fields of nutrition, tuberculosis, leprosy, viral disease, cholera, enteric disease, reproductive disorders, toxicology, cancer, traditional medicine, gas disaster, genetics, AIDS etc.- - Aditi Singh

Genocide In Modern Times

"Genocide" derives from the Greek "genos," meaning "race, nation, or tribe," and from the Latin "caedere," meaning "to kill." The Nuremberg trials (1945-1946) did not widely employ the term "genocide." It was one Raphael Lemkin first proposed the term "genocide" in his 1944 book Axis Rule in Occupied Europe. Within months of its origin, the word started being used widely. Raphael Lemkin was a Polish-Jewish lawyer whose family was decimated by the Nazis.

Jurists list the following examples of genocide: "the denial of ethnic Hawaiian culture by the American run public school system in Hawaii, government policies letting one race adopt the children of another race, African slaver whites, South African Apartheid, any murder of women by men, death squad murders in Guatemala, deaths in the Soviet gulag, and, of course, the Jewish Holocaust." The following actions have also received the label "genocid "'race mixing' (integration of blacks and non-blacks); drug distribution; methadone programs; the practice of birth control and abortions among Third World people; sterilization and 'Mississippi appendectomies' (tubal ligations hysterectomies); medical treatment of Catholics; and the closing of synagogues in the Soviet Union. Justice Rob Jackson in his planning memorandum which he distributed at the beginning of the London Conference in 1945 outlined the evidence he planned to adduce in the trial. Referring to "proof of the defendant's atrocities and other crimes," he included, "genocide or destruction of racial minorities and subjugated populations by such means as methods as (1) underfeeding; (2) sterilization and castration; (3) depriving them of clothing, shelter, fuel, sanitat medical care; (4) deporting them for forced labor; (5) working them in inhumane conditions. - - Meera Mathew

Women and housing rights in Human Rights

Housing is now recognised as a fundamental human right of all human beings in many international human right instruments. The most significant instrument on right to housing is Article 11(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR). According to it, "The State

Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate

food, clothing and housing and to the continuous improvement of living conditions”

A comprehensive understanding of the right to housing has been established over the years through several efforts made both within and outside the UN mechanisms towards interpreting and substantiating the legal concept of housing.

In December 1991, the UN Committee on Economic, Social and Cultural Rights adopted its General Comment N on the right to housing, stressing on its adequacy. This is the first General Comment adopted on a specific right contained in the Covenant and indicates the importance given to the right by the Committee. The Committee urges State Parties not to interpret the right to housing narrowly or restrictively as “merely having a roof over one’s head or as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity (para. 7 reflects both the holistic conception of the right and the value it gains from the aspect of adequacy.

Realization of Human Rights and Role of NGO

Human rights as the „Rights relating to life, liberty, equality, and dignity of individuals guaranteed by the constitution or embodied in international covenants and enforceable by the courts in India“

The term non-governmental or, more accurately non-profit is normally used to cover the range of organizations which go to make up civil society. Such organizations are characterized, in general, by having as the purpose of their existence something other than financial profit. However, this leaves a huge multitude of reasons for existence and a wide variety of enterprises and activities. NGOs range from small pressure groups on, for example, specific environmental concerns or specific human rights violations, through educational charities, women's refuges, cultural associations, religious organizations, legal foundations, humanitarian assistance programs. The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

NGOs have a vital role to play in the promotion and protection of human rights specially in the developing countries. India has the largest number of NGOs whose activities are spread in different fields for the welfare of human beings including the promotion and protection of human rights.

Why Must Human Rights Be Protected by the Rule of Law

Human Rights have a projection of universality but as a matter of ground reality they are not the same for all peoples and societies. For some, especially the well-advanced west, they are predominantly matters of civil and political liberty while for others, the developing and under-developed Asian, Africa and Latin America, predominantly they are also matters of survival. Human Rights are therefore about being citizens of the earth, being part of an earth family. Human Rights in my view are exercised to their fullness through participating in earth democracy—the democracy of all life. And as earthlings, our human duties to protect the earth and all her beings are the ground from which Human Rights emerge.

"All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all others. I cannot detach myself from the wickedest soul." Mahatma Gandhi

Tribal Laws in India & Tribal Conventions on Rights of Indigenous People Worldwide

India’s population includes nearly one hundred million tribal people. These numbers are matched only by the remarkable diversity of India’s tribes.

Children In Armed Conflict: Indian Perspective

The Hague Conventions (1899-1907) consisted of laws governing war on land were better defined with respect to both civilians and soldiers.

But after the atrocities of the Second World War, the international community felt a pertinent need to protect civilians from the horrors of future wars. Thus were developed treaties that specifically protected civilians. Two treaties now exist, which explicitly provide for the protection of children in times of war.

- 1) The Geneva Conventions and
- 2) The Convention on the Rights of the Child.

In case of armed conflict, either international or non-international, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Geneva Conventions of 1949 (hereafter GCIII and GCIV) and their Additional Protocols of 1977 (API and APII) lay down a series of rules according to their special protection. Children who take direct part in hostilities do not lose that special protection. The Additional Protocols, the 1989 Convention on the rights of the child and its recent Optional Protocol, in particular, also set limits on children's participation in hostilities.

§ The Geneva Conventions provide various protections to civilians, but Geneva Convention IV (1949) is specifically designed to protect children and civilians in times of war. Additional Protocols I and II (1977) provide children with special protection and, for the first time, deal with their participation in hostilities. Most of Geneva Convention IV and Additional Protocol I apply during international armed conflicts. Common Article 3 to the Geneva Conventions and Additional Protocol II apply during non-international armed conflicts.

Protective Discrimination

Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged sections of society, most commonly women. These are affirmative action programs, most visible in both the United States and India, where there has been a history of racial and caste discrimination. The practice is most prominent in India, where it has been enshrined in the constitution and institutionalized.

Corruption in Governance: Human Rights Dimensions

Corruption threatens the rule of law, democracy and human rights; undermines good Governance, fairness and social justice; distorts competition, hinders economic development, and endangers the stability of democratic institutions and moral foundations of society. The Preamble of the Council of Europe Criminal Convention on Corruption.

Human Rights Day

Human Rights Day is marked every year by celebrating the anniversary of the Universal Declaration on 10 December

The National Human Rights Commission

Section 3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

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

(3) The Chairperson of the National Commission for Minorities, [the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes] and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission [except judicial functions and the power to make regulations under section 40 B], as may be delegated to him by the Commission or the Chairperson as the case may be.

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

The Rights of the Disabled:

Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.

The Rights of Scheduled Tribes:

The Scheduled Tribes are various officially disadvantaged groups of historically disadvantaged people in India. The terms are recognized in the Constitution of India and the various groups are designated in one or other categories. Dr. B. R. Ambedkar in Drafting Committee drafted Constitution of India in 1950.

Denying Health Insurance Based on Genetics is Unconstitutional:

Stated that the availing of health insurance was an integral part of the 'Right to Health and healthcare' under the Constitution, Hon'ble Justice Pratibha M. Singh held that the clause in the insurance policy excluding a person with "genetic disorder" from availing its benefit was "discriminatory" and contrary to public policy.

Rehabilitation of Trafficked Children in India:

Child trafficking is widely a threat of global proportions. In India, almost 20,000 children and women were victims of human trafficking in 2016, a rise of nearly 25 percent from the previous year, government data released on Thursday showed.

Immoral Trafficking of Minor Girl Child in India & Laws to protect them:

In the light of that, I am delighted to share this article on the Child Trafficking in India especially minor girl. As we all know sound evidence, hard facts and statistics should underpin action and this article aims to do just that.

Protection of Children's Human Rights in India:

Children are the future custodians of sovereignty, rule of law, - justice, liberty, equality, fraternity and finally international peace and security. They are the potential embodiment of our ideals, aspirations, ambitions, future hopes.

Towards Equality from declassification to decriminalization, LGBT:

This article aims to throw light upon the prevailing discrimination against the people belonging to a lesbian, gay, bisexual, transgender or a queer community and mind set of the society perceived from the pre-colonial period onwards which needs to be liberated so as to have progressive laws for a better India.

Sexual Violence In Armed Conflicts- A Violation of International Humanitarian Law:

International Humanitarian Law seeks to mitigate the effects of war. However sexual violence was an aspect which was widely prevalent during armed conflicts and the trend still continues.

Why Must Human Rights Be Protected By The Rule of Law

Human rights confer rights on the human being. Human Rights are inherent to all human beings, whatever our nationality, residence, language, origin, sex, color and any other status. We are all equally entitled to human rights without discrimination.

General secretary of United Nations Ban ki moon represented a view that, protection of all Human rights and implementation of effective counter terrorism measures are complementary and mutually reinforcing the objective of human rights.

Domestic Violence as a Human Rights Issue

Freedom not only from violence but also from the threat of violence is the first indicator of rise in women's capacity for survival and empowerment.[1] The United Nations Declaration on the Elimination of Violence Against Women states in its Preamble that violence against women is a product of the "unequal power relations" that characterize gender relations in all parts of the world. Violence against women is a universal reality but at the same time it is invisible. The UNDP's gender development index ranks India 108 among 174 countries in terms of gender equity. It is no coincidence therefore, that countries ranking highest on this index rank India 108 among 174 countries in terms of gender equity.

Can Human Rights be Universal & Have Respect for Cultural Relativism?

Right give expression to how all humans participate fully in civil society. Defining the idealized norms against which a society may be measured. As expression of civic values that operate within any society, rights derives from the marriage of religious, philosophical, and legal

principle that address social justice in the context of worldwide struggle to combat oppression and inequity. The do out of an underlying, deep rooted respect for human life, dignity, and diversity.

Human Rights Violation

The Founding Fathers of the Indian Constitution had a vision of the Indian society, which they wanted to realize through the Constitution. That vision was primarily reflected in the Preamble, the chapters on Fundamental Rights and Directive Principles of State Policy is the product of human rights movement in the country. It is the duty of the State to guarantee what is said in the Constitution. But the shocking evidence that the State is itself the culprit, according to Mr. J.S. Verma, the former chairman of the NHRC. According to a statement made by him on Jan. 15, 2003, just a few days before his demitting the office: It is often the State which is violator of Human Rights in maximum cases in the country. But the maximum responsibility to protect and safeguard the rights of its citizens also lies with the State - - Deepesh Mittal

Legal Aspects of the Bhopal Gas Tragedy

The MIC in the Union Carbide Plant was primarily used for the production of carbaryl, which is a pesticide. It is alleged that most of the safety systems were not functioning and that most of the safety valves were in poor condition around the time the incident took place. During the night of December 2-3, 1984, large amounts of water entered into the tank numbered 610 which contained about 42 tonnes of methyl isocyanate. At the time, workers were cleaning out pipes with water, and some claim that owing to bad maintenance and leaking valves, it was possible for the water to leak into tank 610. This resulted in an exothermic reaction which caused the temperature and the pressure inside the tank to increase. Due to this urgent venting of pressure, large volumes of MIC gas were released into the atmosphere. The gases flooded the city of Bhopal, causing great panic as people woke up with a burning sensation in their lungs. Thousands died immediately from the effects of the gas and many were trampled in the panic. The long term health effects of the gas include visual impairment, blindness, respiratory difficulties, immune and neurological disorders, lung injury, female reproductive difficulties and birth defects among children born to affected women.

Anti-Terrorism Laws

The first law made in independent India to deal with terrorism and terrorists activities that came into force on 30th December 1967 was-The Unlawful Activities (Prevention) Act 1967. This was an act to provide for the more effective prevention of certain unlawful activities of the individual and associations and for matters connected there with. The UAPA Act is particularly vile, and will have the effect of turning India into a virtual police state. The myth of UAPA Act is that it containing a number of draconian clauses. On 14 May, 2007 a prominent doctor and human rights defender Dr Binayak Sen was arrested under this act by Chhattisgarh government.

Liability for Psychiatric Injury

Initially psychiatric injury was called „nervous shock“ because it was treated as a response to an extremely traumatic event. But this was gradually replaced by „mental injury“ due to the expansion in law as to what came under its ambit to claim damages. Most mental injury though comes under the category of Post Traumatic Stress Disorder (PTSD). At the outset damages could not be claimed for psychiatric damage unaccompanied by physical damage though now claims can be filed for psychiatric injury without physical damage. Damages can also only be

claimed if the mental injury gives rise to a recognized psychological disorder and not for normal grief and sorrow experienced on the demise of a person.

Commercial Surrogacy

Commercial Surrogacy has become so rampant in India that it has now been nicknamed the „rent-a-womb“ capital and the surrogate mom capital of the world, where high-class women „hire“ a womb on „rent“ to carry their child to full term.

This essay examines whether issues arising out of commercial surrogacy can be adequately addressed by contract law, the different and distinct questions posed by commercial surrogacy agreements, the evolution by Courts of a "best interest of the child" test, and the case for regulation of commercial surrogacy.

Whistleblower Protection In India

A bill for protection of Whistleblowers was first initiated in 1993 by Mr. N. Vittal (the then Chief Vigilance Commissioner). In December 2001, Law Commission recommended that in order to eliminate corruption, a law to protect whistleblowers was essential and submitted its report on „Public Interest Disclosure Bill“ to Mr. Arun Jaitley (then Minister of Law, Justice and Public Affairs) along with the draft bill. In January 2003, the draft of Public Interest Disclosure (Protection of Informers) Bill, 2002 was circulated.

THE IMPACT OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS ON REGIONAL AND DOMESTIC LEGAL SYSTEMS –

In the wake of a devastating world war, which had witnessed some of the most barbaric crimes in history, the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly on December 10, 1948 by a unanimous vote, represented the first international recognition that human rights and fundamental freedoms are applicable to every person. In the words of Eleanor Roosevelt,“ the Declaration stands out as the international Magna Carta for mankind everywhere” but she also went on to say that it is not and does not purport to be a statement of legal obligations, it is instead a common standard of achievement for all peoples of all nations, a shared vision of a more equitable and just world. Today it is more than just a compilation of freedoms. It affects people's lives and inspires human rights legislation all over the world. In 1966 with the adoption by the General Assembly, of two instruments of general scope, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) - a mechanism was provided for the implementation of the UDHR. Conventions relating to specific problems such as genocide, torture (1984), racial discrimination (1965), discrimination against women (1979) and children’s rights (1989) and conventions under the auspices of the International Labour Organization (ILO), on the abolition of forced labour, on equal pay for men and women, on a minimum standard of social security, all designed to defend workers’ rights and to promote social justice, were also adopted. In the lesser developed Asian and African countries which have acceded to these Covenants and to the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), the theoretical impact of the UDHR on Regional and Domestic legal systems is substantial.

In South Asia in particular, Pakistan, India, Bangladesh, and Sri Lanka all contain integrated and robust framework of laws which feature the essential tools for safeguarding Human Rights, but

there is a dichotomy of law and practice at both regional and domestic levels. The biggest disappointment with these impressive legislative structures is that their implementation has not risen to anyone's satisfaction. Many of these countries have signed these multilateral treaties with reservations. This is particularly true in respect of CEDAW. Many Muslim countries have reservations in respect of those provisions which they perceive as being in conflict with Islamic injunctions. The Organization for Islamic Conference (OIC comprising states with Muslim majority population) has drawn up a parallel declaration of Islamic Human Rights in 1990 called The Cairo Declaration. The vast majority of the Member States of the OIC are signatories to the UDHR. By adopting the 1990 Cairo Declaration these States have expressed their reservations to 2 those provisions of these treaties which they perceive as violative of human rights in Islam. This is considered by some European and American States as an attempt to limit the rights enshrined in the UDHR and the International Covenants.

On Human Rights Day, 10 December 2007, the Ambassador of Pakistan, addressing the Human Rights Council on behalf of the OIC stated that the Cairo Declaration of Human rights in Islam: "is not an alternative, competing worldview on Human Rights. It complements the Universal Declaration as it addresses religious and cultural specificity of the Muslim countries".

Responsibility for the effective guarantee of human rights set forth in so many international conventions lies first with the individual State. However, experience and history have taught us that States may not only promote human rights, but also dig their grave. Hence the necessity for additional protection in the form of international control mechanisms. Most of the international treaties dealing with human rights have put such mechanisms in place. They are founded on the idea that States must be accountable to the international community for their behavior in the matter of human rights. At the regional level, important treaties have come into being. The advantage of regional systems is their ability to address local complaints more efficiently. They also tend to be more sensitive to cultural and regional concerns. Europe has gone a considerable way towards the international guarantee of human rights by putting in place, through the Council of Europe, powerful instruments and mechanisms, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

The American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969) and The African Charter of the Rights of Man and Peoples (1981), address human rights issues in these regions. However, no regional or sub-regional group in Asia has any collective Human Rights Convention or officially constituted statutory body. Most countries and regional groups, in Asia attempt to justify their failure in adopting a uniform HR Charter and enforcing an official mechanism on the grounds that: 1. Human Rights issues are an internal matter 2. International Human Rights treaties are in conflict with certain religious norms, cultural values, customs and practices 3. National security and economic considerations must prevail over rights of individuals 4. A common regional or sub-regional human rights official forum or mechanism is not advisable in view of diversity on many issues among member states of the regional alliances. Despite these reservations among the Asian countries, the need for regional human rights mechanisms cannot be ignored. Ten members of the Association of South East Asian Nations (ASEAN) after debating this issue have deferred the final decision to establish an ASEAN Human Rights Commission. In the meantime, at the domestic level, some of the ASEAN Countries have established official statutory human rights institutions such as the

Philippines Commission on Human Rights (1987), The Indonesian National Commission of Human Rights (1993), the National Human Rights Commission of Thailand (1999) and the Human Rights Commission of Malaysia (1999). These Commissions have the powers to entertain and examine 3 complaints and petitions of individuals or private organizations against human rights violations, and, if necessary, to conduct detailed hearings, enquiries, and trials and to direct remedial measures.

Although public opinion, both internationally and locally, is increasingly pressing for the establishment of regional mechanisms to protect and promote human rights in South Asia, the basic objective to establish a common Human Rights Charter and effective mechanism to protect human rights on regional basis among the countries in South Asia has not yet materialized. The respective governments of the countries of the South Asian Association for Regional Cooperation (SAARC). Member countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka), are not so far willing to consider adoption of a uniform Human Rights Code or Convention and to provide any common forum or mechanism to supervise adherence to and implementation of the same. These countries have already signed several conventions on Food Security and specific social issues, which require concerted and coordinated actions for the effective realization of their objectives such as combating smuggling of narcotics, trafficking in women and children for prostitution and promotion of child welfare. In the 12th SAARC Summit held in 2004 at Islamabad, a Social Charter was signed which spells out laudable goals and objectives, such as poverty alleviation, promotion of the status of women, education, human resource development, welfare of children, population control, promotion of tolerance, pluralism, human dignity, social justice, protection of the rights and interests of minorities elimination of discrimination in all forms, but it stopped short of adopting a uniform human rights convention to create a regional institution for implementation of international human rights treaties signed by the member countries.

In Pakistan, India and other SAARC countries, relief is usually provided to victims of Human Rights abuses by the ordinary courts. However, they have almost no jurisdiction on collective human rights violations. Their jurisdiction is limited to specific violations of any particular legal right or constitutional provision in their respective countries. Generally, they exercise jurisdiction only on a complaint filed by an aggrieved party and the grant of relief or compensation by the courts is critically dependent upon the quality of evidence in each case. The concept of public interest litigation or representative action is restricted to the superior judiciary. The ordinary courts of law, in any case, are unable to dispense inexpensive justice expeditiously simply because they are already overburdened with millions of cases, pending for many decades. In these countries, the Supreme Court has original jurisdiction to directly entertain, adjudicate and decide public interest matters or human rights issues. Unfortunately, few victims or groups have the means to invoke the jurisdiction of the Supreme Court in a serious and effective manner. Expeditious and inexpensive justice from the ordinary courts is still a far fetched dream for the oppressed people in South Asian countries. At least three of the SAARC countries: India (1993), Nepal (1997) and Sri Lanka (1997) have established independent statutory National Commissions for Human Rights, to provide relief to their citizens. The Protection of Human Rights Act of India in particular, provides for establishment of not only a National Human Rights Commission at the Federal level, but also establishment of State Human Rights Commissions

and Human Rights Courts. Other member 4 states must establish the same without further delay to provide the first effective edifice for the protection and promotion of human rights in the region. In Pakistan the need for such an independent, statutory body was felt by the government of former Prime Minister Benazir Bhutto, which established in 1994 a separate Ministry of Human Rights with wide powers to check and monitor compliance with international conventions and relevant provisions of the constitution and local laws and to promote awareness about Human Rights both in the administrative machinery and in society at large. In 1996, it established a Tribunal for Disadvantaged Persons and a Fund for Women in Distress, to provide legal and financial assistance to women victims of Human Rights violations.

Unfortuna 5 immovable property and the law of limitation would not operate as a bar to her claim, (PLD 1990 SC 1, Ghulam Ali vs. Mst Ghulam Sarwar Naqvi) such affirmative action was also extended by the Supreme Court for women's right to education. (PLD 1990 SC 295, Shirin Munir vs. Government of Punjab) The Court observed that if girl students qualified for admission to Medical Colleges on the basis of merit for a higher number of seats, the provision of special seats for female students was not to limit their number. In 2001 the Lahore High Court declared that the Pakistan Citizenship Act 1951 was ultra-vires Art. 25 of the Constitution of Pakistan to the extent that it provides that the foreign spouse of a Pakistani male is eligible for acquiring Pakistan nationality but the foreign male spouse of a Pakistani female citizen is not entitled to this benefit. This obviously discriminates on the basis of sex. The Lahore High Court has also held that consent of a sui juris woman is a sine qua non for a valid marriage, which if contracted under coercion is no marriage in law. (PLD) 1999 Lahore 494, Mst. Humaira Mehmood vs. The State etc.) In another case the Court declared that a murder in the name of honour is not merely the physical elimination of a man or a woman. It is at the socio-political level a blow to the concept of a free, dynamic and egalitarian society. (PLD 2002 Lahore 444, Muhammad Siddique vs. The State) Fourteen years ago the Supreme Court of Pakistan delivered a landmark judgment (PLD 1994 SC 693, Shehla Zia and Others v WAPDA) in which it held that the right to life guaranteed by Article 9 of the Constitution of Pakistan, 1973 included the right to a healthy environment. Through this judgment, the Supreme Court accorded environmental rights the highest status in Pakistani law, a constitutional legitimacy, an almost sacred imperative that articulates the most fundamental values of a society. (This judgment can be better appreciated when it is borne in mind that the protection of rights can only be read into some documents through a process of interpretation that regards the wide language of fundamental rights not as a mechanism for fossilizing the law but as living tissue from which legal principles can be created to meet the needs of an evolving society.)

The efforts of courts in other countries in the region deserve recognition in their own right. The monumental judgment of the Sri Lankan Supreme Court ([2000] Volume 7 No. 2 South Asian Environmental Law Reporter, Bulankulama vs. The Secretary, Ministry of Industrial Development) contains significant pronouncements on sustainable development and the incorporation of international treaties in domestic law,. The judiciary of South Asia leads the world as guarantors of legal protection to sustainable development. It is not just in the field of substantive rights that this leadership is evident. It is also shown in an equally robust approach to procedural constraints that may prevent access to the courts. The twin hallmarks of this judicial approach are thus a sensitivity and a willingness to build bridges whereby all citizens, and not

just the strong, may approach the courts for vindication of their rights. In the words of Robinson, “we see [in South Asia] that the quest for sustainable development is part and parcel of the judiciary’s older quest for the pursuit of justice”. These judgments cleared the way for the Environment Protection Act, 1997 (Pakistan), the Environment Protection Act 1986 (India), the Bangladesh Environment Conservation Act, 1995, and the National Environmental Protection Act (Sri Lanka). (Source: Dr. Parvez Hassan & Azim Azfar, Securing Environmental Rights through Public Interest Litigation in South Asia). 6 Of the number of NGOs in Asia active in the field of human rights, the Asian Human Rights Commission (AHRC) established in 1986 is prominent. Its main objective is to promote greater awareness of human rights in Asia, to investigate human rights abuses and to mobilise Asian and international public opinion to obtain relief and redress for the victims of human rights abuses. About 20 NGOs prepared a draft Asian Human Rights Charter proclaimed in South Korea in 1998 which may finally lead to an Asian Commission on Human Rights in the future. I would like to conclude by pointing out that the single Super Power, instead of being a role model in the enforcement of Human Rights, is encouraging and coercing weak, underdeveloped nations like Pakistan to help them in preying on those who cannot retaliate at the state level and are thus constrained to hit back at state terror with individual suicidal terrorist attacks, which are direct consequences of their deprivation of Human Rights. While I do not condone terrorism in any form, I may observe that such acts will not cease until and unless the Super-power changes its policies.

The US troops in Iraq and Afghanistan particularly, on the pretext of war against terror, have committed massive human rights violations, killing innocent civilians through carpet bombing and maiming children with daisy cluster bombs, which resemble food packages. In Pakistan, more than hundred thousand people have become internally displaced persons in their own country because of attacks on civilians by the previous authoritarian military government of Gen. Musharraf at the bidding of the US. Thousands of families are exposed to the vagaries of the elements in Waziristan and Swat due to bombing of their villages. They have neither food nor shelter; education and health are a far cry. Yet their blood is as red as that of any American or European man, woman or child. How can we justify such atrocities while we celebrate 60 years of the adoption of the UDHR? From the South Asian perspective, the West has used the issue of violation of human rights as a tool against regimes it does not like such as the former Soviet Union, Afghanistan, Iraq, Darfur etc. The western interpretation of Human Rights and their violation is fundamentally flawed. So far as the mass of under-privileged people are concerned, is the denial of social mobility and realization of basic human potential not a serious violation of human rights? If in a nominally democratic country the state neglects education and keeps 50% of the population illiterate is that not a massive denial of human rights? If the apparatus of the state is used systematically to direct scarce resources, income and property to privileged groups such as a feudal class or a military junta and perpetuate their dominance, despite the facade of a modern and democratic state, is that not an egregious violation of human rights? So as issues change we need constantly to review and revise the definition and mechanics of the violation of human rights.

Presently, the issues are governance, institutions, accountability and, above all, education. The US has supported the subversion of human rights in Pakistan by sabotaging the lawyers’ movement for an independent judiciary which was a spontaneous movement of the black coats unprecedented in world legal history. It was also supported by civil society in large numbers.

Although this movement succeeded in ousting the military dictator after the holding of free elections, the US government colluded with some of the elected elements to sabotage the restoration of a free and independent judiciary to achieve their own ends. It is ironic that while The National Law Journal selected Chief Justice Iftikhar Chaudhry as jurist of the year 2007, the New York City Bar granted Justice Chaudhry honorary membership of the Association in November 2008 and Harvard Law School awarded its highest honor, the Medal of Freedom to Chief Justice Iftikhar Chaudhry which has earlier been awarded only to Justice Thurgood Marshall and President Nelson Mandela, the US govt. is colluding with the Zardari government to keep him out of the Court. Justice Chaudhry's main fault or drawback was that he took suo moto notice of financial corruption and human rights abuses by the military government and ordered the recovery of missing persons.

The present government distrusts him because of his penchant for weeding out corruption (He suspended the operation of the National Reconciliation Ordinance, 2007 (NRO) which gives blanket protection to all those who had committed corruption and malpractice over a certain period which includes many present public representatives who had been charged with malpractice and misappropriation of public funds.) This issue was resolved by Musharraf in November 2007 by imposing Martial Law, removing Justice Chaudhry and his independent minded colleagues and appointing a Chief Justice and judges of his choice, who promptly performed their duty by validating Musharraf's election as President and validating the NRO. The US Patriot Act and Homeland Security Act, 2002 are prime examples of the gross abuse of Human Rights by the US Government. What kind of role model is being shown to poor, developing countries? If these are measures to eliminate the spread of terrorism, why does the Superpower not look for the causes of Terror? Its continued support of the occupation by Israel of Arab territories, its own invasion and occupation of Afghanistan and Iraq on the pretext of the quest for Osama Bin Laden and possession of weapons of mass destruction, which incidentally have been used against humanity only by the same Super Power. The smoldering disputes in Kashmir, Chechnya, Darfur, and continued abuse of HR in these areas require UN attention but are neglected for extraneous considerations. Let us hope that a change of leadership in the United States at the helm of affairs will also bring about a change in the climate of ideas and action by the US throughout the world. The climb will be steep...but America.. as a people can get there. In the words of Jimmy Carter: "A strong nation like a strong person, can afford to be gentle, firm, thoughtful and restrained. It can afford to lend a helping hand to others. It's a weak nation, like a weak person, that must behave with bluster and boasting and rashness and other signs of insecurity."

A brief summary of the Protection of Human Rights Act, 1993

The Protection of Human Rights Act, 1993 was enforced on 28th January 1993. The National Human Rights Commission in India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. "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. The national Human Rights Commission is in New Delhi.

"Commission" means the National Human Rights Commission defined under section 2 sub clause (c) and established under section 3 of the Act. The Commission shall be constituted of members as laid under provisions of section 3 sub clause (2) which lay that there shall be a Chairperson who shall be a retired chief justice of India, 2 members who have been a judge in the Supreme Court and other member shall be chief Justice of a High Court apart from this there shall be two other members who have worked in the field of human rights. Apart from the Commission there shall be a National Commission for minorities and National Commission for women. The members of Commission shall be appointed by the President after obtaining recommendations from Prime Minister for appointment of chairperson and the members shall be appointed in consultation with Speaker of the House of the People, Minister in-charge of the Ministry of Home Affairs, Leader of the Opposition in the House of the People, Leader of the Opposition in the Council of States and Deputy Chairman of the Council of States. The Chairperson shall hold office till a period of five years or till obtaining seventy years of age, whichever is earlier and the members shall be hold office for five years and shall be eligible for reappointment. The act also regulates the conditions of services, salaries, allowance and appointment of additional staff under chapter II of the Act.

Chapter III of the Act deals with powers and functions of the Commission dealt in sections 12 to 16. The commission is granted powers to suo-motu look into matter concerning violation of human rights. The commission shall also take action in cases where victim has filed an application for violation of human rights. Apart from this the commission may look into court

proceedings pending for violation of human rights, keep a check on jails, spread human rights literacy, and encourage non-governmental organisations to work in the field of human rights. The Commission under section 13, while inquiring into complaints under the Act shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. It shall have power to receive complaints, issue summons, receive evidence, examine witness and requisition any public document where after the Commission shall forward the matter to Magistrate who shall further try the matter. Every proceeding before the Commission shall be a judicial proceeding under sections 193, 228, and 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. The Commission is bestowed with investigation powers while taking help of government officer"s under section 14.

Chapter IV deals with the procedure after a complaint has come into notice of Commission. The Commission shall after receiving a notice of violation of human rights shall inquire into the matter. The State or Central Government shall inform commission of any such violation incase there is no such notice from the Government the Commission shall suo-motu look into the matter. Where the inquiry discloses the commission of violation of human rights or abetment thereof by a public servant it shall notify the government and demand compensation to complainant and initiate proceedings against such officer. The commission may also approach Judicial courts for any directions such as writs, orders etc. Recommend government authorities to look into the matter and initiate relief to victims. The commission shall make a report on inquiry and send the same to concerned authority. Commission under section 19 is granted special powers with respect to human right violations made by armed forces.

Section 21 of the act provides for establishment of state Human Rights Commission headed by Chairperson who shall be retired Chief justice of a High Court, there shall be one other member who shall be a judge either in High Court or district Court. The State Commission shall inquire only into matters listed in List II and List III of seventh schedule. The chairperson of commission shall be appointed by the Chief Minister, the members shall be appointed by speaker of legislative assembly, minister in charge of department of home and leader of opposition. The members shall be appointed for a period of five years. The state shall appoint other officers as it

deems necessary. The State Commission from time to time submits report on matters of concern and urgency.

Human Rights court is also established under section 30 of the Act for the purpose of providing speedy trial of offences arising out of violation of human rights. The State Government, 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. A special public prosecutor shall also be appointed to try such cases.

The Central and State government shall provide the commission with grants of which the state and the national commission shall maintain proper accounts which shall be audited by auditor general. The Commission shall not inquire into matters pending in State Commission. The State and Central from time to time shall make rules of regulation for the commission.

The Act is legislated to establish the National and State Human Rights Commission. The act gives immense powers to the Commission in furtherance of prevention of violation of human rights.

NHRC (Constitution, Power and Function)

1. Constitution:-Sec 3-11 of **the** Protection of Human Rights Act, 1993.
2. Power and Function: -Sec 12-16 of the Protection of Human Rights Act, 1993.

SHRC (Constitution, Power and Function)

Sec 21-29 of the Protection of Human Rights Act, 1993.

The Protection of Human Rights Act, 1993

[As amended by the Protection of Human Rights

(Amendment) Act, 2006-No. 43 of 2006]



The Protection of Human Rights Act, 1993

[As amended by the Protection of Human Rights
(Amendment) Act, 2006–No. 43 of 2006]



National Human Rights Commission

Faridkot House

Copernicus Marg

New Delhi - 110 001

Website : www.nhrc.nic.in

National Human Rights Commission

Republic of India as follows :

** As amended by the Protection of Human Rights (Amendment) Act, 2006–
No. 43 of 2006.*

THE PROTECTION OF HUMAN RIGHTS ACT,

1993*

No. 10 of 1994

(8th January, 1994)

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the forty-fourth year of the

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PRELIMINARY

1. Short title, extent and commencement

- (a) This Act may be called the Protection of Human Rights Act,

1993.*

- (b) It extends to the whole of India.

Provided that it shall apply to the State of Jammu and Kashmir only

in so far as it pertains to the matters relatable to any of the entries

enumerated in List I or List III in the Seventh Schedule to the Constitution

as applicable to that State.

It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions

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

- (a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
 - (b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
 - (c) "Commission" means the National Human Rights Commission 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 16th
-

* Amended vide Protection of Human Rights (Amendment) Act, 2006 (No. 43 of 2006).

THE NATIONAL HUMAN RIGHTS COMMISSION

December, 1966 [and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify]]¹ ;

- (g) "Member" means a Member of the Commission or of the State Commission, as the case may be²;
- (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" means the National Commission for the Scheduled ⁴³ of 2006 Castes referred to in Article 338 of the Constitution;
- (ia) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled ⁴³ of 2006 Tribes referred to in Article 338A of the Constitution² ;
- (j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known

as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the

Supreme Court;

(b) one Member who is or has been, a Judge of the Supreme

Court;

(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;

20 of 1990

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

1. Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

(c) one Member who is, or has been, the Chief Justice of a

High Court;

(d) two Members to be appointed from amongst persons

having knowledge of, or practical experience in, matters

relating to human rights.

45 of 1860

(3) The Chairperson of the National Commission for Minorities,

¹[the National Commission for the Scheduled Castes, the National Commission

for the Scheduled Tribes] and the National Commission for Women shall

be deemed to be Members of the Commission for the discharge of functions

specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief

Executive Officer of the Commission and shall exercise such powers and

discharge such functions of the Commission² [except judicial functions and

the power to make regulations under section 40 B], as may be delegated

4. Added by Act 43 of 2006

5. Subs. by Act 43 of 2006

2

to him by the Commission

or the Chairperson as the case may be.

¹ Subs. by Act 43 of 2006 for "The National Commission for the Scheduled Castes and Scheduled Tribes.]"

² Subs. by Act 43 of 2006 for "as it may delegate to him.]"

3

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

4. Appointment of Chairperson and other Members

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

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

- (a) The Prime Minister – Chairperson
- (b) Speaker of the House of the People – Member
- (c) Minister in-charge of the Ministry of Home Affairs in the Government of India – Member
- (d) Leader of the Opposition in the House of the People – Member
- (e) Leader of the Opposition in the Council of States – Member
- (f) Deputy Chairman of the Council of States – Member

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any [vacancy of any member in the Committee referred to in the first proviso to sub-section (1)]².

5. Resignation and removal of Chairperson and Members³

(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by

¹ Subs. by Act 43 of 2006 for "other members"

² Subs. by Act 43 of 2006 for "vacancy in the Committee"

³ Subs. by Act 43 of 2006

the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such 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 Chairperson and 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

¹ Subs. by Act 43 of 2006

President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Chairperson and Members

The salaries and allowances payable to, and other terms and conditions of service of, the¹ [Chairperson and] Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of² [the Chairperson or] a Member shall be varied to his disadvantage after his appointment.]

9. Vacancies, etc., not to invalidate the proceedings of the Commission

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure³.

¹ Inserted by Act 43 of 2006

² Inserted by Act 43 of 2006

³ Subs. by Act 43 of 2006

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission:

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-

- (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court]¹, into complaint of
 - (i) violation of human rights or abetment thereof; or
 - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c)² visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

- (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;

¹ Inserted by Act 43 of 2006

² Sub. by Act 43 of 2006

- (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 protection 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 authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

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

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

(6)¹ Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

¹ Inserted by Act 43 of 2006

(7)¹ Every complaint transferred under sub-section(6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

1 Investigation

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

For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission:-

- (a) summon and enforce the attendance of any person and examine him;
- (b) require the discovery and production of any document; and

- (c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

¹ Inserted by Act 43 of 2006

PROCEDURE

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement:-

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard If, at any stage of the inquiry, the Commission:-

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

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 during and after inquiry,

[The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

(i) to make payment of compensation or damages to the complainant

¹ Subs. by Act 43 of 2006

or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) 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;

(f) 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.]¹

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

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

¹ Subs. by Act 43 of 2006

19. Procedure with respect to armed forces

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

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

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

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special reports of the Commission

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

STATE HUMAN RIGHTS

COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2)¹ [The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;
- (c) one Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.]¹

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

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

¹ Subs. by Act 43 of 2006

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.

(6) [Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

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

to in sub-section(1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.]¹

22. Appointment of Chairperson and [Members]² of State Commission

(1) The Chairperson and [Members]² 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

¹ Subs. by Act 43 of 2006

² Subs. by Act 43 of 2006 for "other Members"

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

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of [any vacancy of any Member in the Committee referred to in sub-section(1)].¹

23. [Resignation and Removal of Chairperson or a Member of the State Commission]²

³[(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office

(1A) Subject to the provisions of sub-section (2), the Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member, as the case may be, ought on any such ground to be removed.]

(2) Notwithstanding anything in sub-section (1A), the President may by order remove from office the Chairperson or any [Member]⁴ if the Chairperson or such [Member]⁵, as the case may be –

- (a) is adjudged an insolvent; or
-

¹ Subs. by Act 43 of 2006 for "any vacancy in the Committee"

² Subs. by Act 43 of 2006 for "Removal of a member of the State Commission"

³ Subs. by Act 43 of 2006

⁴ Subs. by Act 43 of 2006 for "other member"

⁵ Subs. by Act 43 of 2006 for "other member"

- (b) engages during his term of office in any paid employment outside the duties of his office; or
- (c) is unfit to continue in office by reason of infirmity of mind or body; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of [Chairperson and], Members of the State Commission

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

¹ Inserted by Act 43 of 2006

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. [Terms and conditions of service of Chairperson and Members of the State Commissions

The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and 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 the Chairperson or a Member shall be varied to his disadvantage after his appointment.]¹

27. Officers and other staff of the State Commission

- (1) The State Government shall make available to the Commission
 - (a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
 - (b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under subsection (2) shall be such as may be prescribed by the State Government.

¹ Subs. by Act 43 of 2006

28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

- (a) references to "Commission" shall be construed as references to "State Commission";
- (b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;
- (c) in section 12, clause (f) shall be omitted;
- (d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;

HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

31. *Special Public Prosecutor*

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

FINANCE, ACCOUNTS AND AUDIT

32. *Grants by the Central Government*

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

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

33. *Grants by the State Government*

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

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

34. *Accounts and Audit*

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

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

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded 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 or any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally

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

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

MISCELLANEOUS

36. *Matters not subject to jurisdiction of the Commission*

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. *Constitution of special investigation teams*

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. *Protection of action taken in good faith*

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which

is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

39. *Members and officers to be public servants*

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission

to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely :-

- (a) the salaries and allowances and other terms and conditions of service of the [Chairperson and Members]¹ under section 8;
- (b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

- (c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;
- (d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and
- (e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

¹ Subs. by Act 43 of 2006 for "members"

40 A. Power to make rules retrospectively—The power to make rules under clause (b) of sub-section (2) of section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

¹ Inserted by Act 43 of 2006

² Inserted by Act 43 of 2006

Power of Commission to make Regulations¹

²**[40(B)** (1) Subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (a) the procedure to be followed by the Commission under sub-section(2) of Section 10;
- (b) the returns and statistics to be furnished by the State Commission;
- (c) any other matter which has to be, or may be, specified by regulations.

(3) Every regulation made by the Commission 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 or the successive sessions aforesaid, both Houses agree in making any modification in the regulations or both Houses agree that the regulation should not be made, the regulation 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 regulation.]

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the salaries and allowances and other terms and conditions of service of the Chairperson and 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.