

All about Protection of Human Rights Act, 1993

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INTRODUCTION-

India is a party to International covenant on civil and political rights and the International Covenant on Economic, social and cultural rights adopted by the general assembly of United Nations on 16 December,1966.

India is a signatory to the aforesaid conventions and the human rights embodied in the said conventions are substantially protected by the constitution. However, there has been growing concern about issues relating to Human Rights in India and abroad and having regard to the changing social realities and emerging trends in the nature of crime and violence, Government has been reviewing the existing laws and system of administration of justice.

Wide ranging discussions were held at various fora such as the chief minister's conference on Human Rights and seminars were organised in various parts of the country. As a result of which the President promulgated the protection of human rights Ordinance,1993 under article 123 of the Constitution of India on 28th September ,1993 and further, it was replaced by Protection of Human Rights Bill,1993 in the Lok Sabha which paved way for the present act.

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.

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

Q1-When did the Protection of Human Rights Act, 1993 came into force?

Ans. The Protection of Human Rights Act, 1993 was enforced on 28th January 1993. After having a deliberate discussion on the subject of Human Rights Commission Bill, 1993 was introduced in the Lok Sabha on 14.05.93 and was referred to the standing committee of Parliament on Home Affairs .In view of urgency of the matter, Protection of Human Rights Ordinance,1993 was introduced on 28.09.93 by the President of India. Later, on 8.01.94, the Protection of Human Rights Act was enacted which extends to whole of India.

Q2.What do you mean by the term “Human Rights?”

Ans. In terms of Section 2 of the Protection of Human Rights Act, 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.

Q3-What are the main objectives of The Protection of Human Rights Act,1993?

Ans. The main objective of protection of Human Rights Act 1993 is protecting human beings from violations. Without Human rights there would be either no if or a meaning less life. The rights relating to life, liberty equality and dignity of the individual as guaranteed by the constitution are also included in the category of “Human Rights”. Human Rights are the rights and freedoms of all human beings.

The purpose of securing human rights as such is to provide protection to these rights against the abuse of power committed by the organs of state to establish institution for the promotion of living condition beings and for the development of their personality and at the same time to provide effective remedial measures for obtaining redress in the event of those rights are violated. The act provides for establishment of National Human Rights Commission,State Human right Commission and Human Rights Courts which seeks to prevent and punish any gross violation of human rights.

Q4 Mention in brief the historical background of the Protection of Human rights Act, 1933?

Ans. The Western countries, America in particular, criticised India on the violation of human rights by Indian armed forces and para-military forces, especially, in the State of Jammu and Kashmir. In the early 1990's India , felt the need for establishing a ÿ commission as a positive response to the criticisms of the foreign Governments in the context of political unrest and violence in Punjab, Jammu and Kashmir, the North-East and Andhra Pradesh. Though it is now a well-recognised fact that terrorism is a serious violation of human rights. America, never missed the opportunity to criticize India, whenever Indian security forces sought to deal sternly with extremists and ultras.

In addition to the pressure from foreign countries, there was a strong demand from the domestic front as well for the creation of a National Hunian Rights Commission. All these led the Government to enact a law to establish a Human Rights Commission. The Government's proposal to establish the Commission was of course sudden and without due deliberations.

The President of India on September 27, 1993 promulgated an Ordinance for the creation of a National Human Rights Commission. Justice Ranganath Mislra, the former Chief Justice of India, was appointed the Chairperson of the Commission on October 12, 1993. Justice M.N. Venkatachaliah, the former Chief Justice of India assumed office on November 26, 1996 :IS the Chairperson after the retirement of Justice Rangnath Mishra. Justice J.S Verma, the former Chief Justice of India became the Chairperson on November 4, 1999 when Justice Venkatachaliah attained the age of 70 years. After the retirement of Justice J.S. Verma on January 16, 2003, the former Chief Justice of India Justice A.S. Anand was appointed the Chairperson of the Commission.

Q5-What are the key provisions of The Protection of Human rights act ,1993?

Ans. Under chapter II of the Act, the National Human Rights Commission is 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.

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. 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.

Q6. What is National Human Rights Commission and what are the main functions of this commission?

Ans. Sec 3 of the Act provides that the Central Government shall constitute a body known as the 'National Human Rights Commission' to exercise powers conferred upon and assigned to it under the said act. The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993 (TPHRA). The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants". The Commission shall, perform all or any of the following functions, namely:-

a) Inquire, on its own initiative or on a petition presented to it by a victim or any person on his behalf, into complaint of-

i) violation of human rights or abetment or

ii) negligence in the prevention of such violation, by a public servant;

b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living condition of the inmates and make recommendations thereon ;

d) review the safeguards by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

- e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- g) undertake and promote research in the field of human rights;
- h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- i) encourage the efforts of non - Governmental organizations and institutions working in the field of human rights;
- j) such other functions as it may consider necessary for the promotion of human rights.

Q7. Who all are the members of The National Human Rights Commission and what are its powers?

Ans. The NHRC consists of:

A Chairperson

One Member who is, or has been, a Judge of the Supreme Court of India

One Member who is, or has been, the Chief Justice of a High Court

Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights

In addition, the Chairpersons of four National Commissions of (1.Minorities 2.SC 3.ST 4.Women) serve as ex officio members.

Current Members

The current chairperson of the NHRC is K.G. Balakrishnan and the other members are:

Justice Shri Cyriac Joseph

Justice Shri D. Murugesan

Shri Sharad Chandra Sinha

Ex-officio Members:

Shri Wajahat Habibullah, Chairperson, National Commission for Minorities

Panna Lal (P.L.) Punia, Chairperson, National Commission for Scheduled Castes

Dr Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes

Mamta Sharma, Acting Chairperson, National Commission for Women.

Section 13 of the Act provides for the powers of the commission

- Powers of a civil court while trying a suit under the Code of Civil procedure,1908
- To require any person to furnish information on such points or matters subject to any privilege which may be claimed by that person under any law for the time being in force.
- Enter into any building or place where the commission has reasons to believe that any document relating to the subject matter or inquiry may be found and may seize any such document or make extracts or copies therefrom subject to the provisions of sec 100 of Criminal Procedure Code,1973.

Q7.What powers have been vested with the Commission relating to inquiries?

While inquiring into complaints under the Act, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular the following, namely;

- a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- b) discovery and production of any document;
- c) receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office;
- e) issuing commissions for the examination of witnesses or documents;
- f) any other matter which may be prescribed

Q8 .What are the types of complaints dealt by the commission and what is the procedure of handling such complaints ?

Ans. The commission from its date of inception has handled various types of complaints which include-

IN RESPECT OF POLICE ADMINISTRATION

- Failure in taking action
- unlawful detention

- false implication
- illegal arrest
- Custodial violation

OTHER POLICE EXCESSES

1. Custodial deaths
2. Encounter deaths
3. Atrocities on SC and ST
4. Child Labour
5. Dowry Demand
6. Abduction, rape and murder
7. Sexual Harassment and indignity to women
8. Exploitation of women

A complaint may be in English or hindi or any language from the eighth schedule of the constitution

Complaints are to be self-contained

No fee is levied on complaints

Complaints may be made by any means by letter, telegram or fax and also on the mobile number of the commission

- All complaints which are received in whatever form shall be registered and assigned a number and placed for admission as per the special and general directions of the chairperson not later than one week on receipt thereof.
- Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of the complaints, the Commission shall, however, entertain complaints in any language included in the Eighth Schedule of the Constitution. It shall be open to the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.
- The commission shall have power to dismiss a complaint in limine
- Upon admission of a complaint, the commission shall have power to inquire into the matter by it or that it should be investigated by any authority

- The secretariat shall call for reports or comments from the Government/authority concerned giving the latter a reasonable time therefore on every complaint on which the Chairperson of the Commission takes a decision to either hold an inquiry or investigation.

Regulation 8 of the National Human Rights Commission (Procedure) Regulations, 1994

lays down the following procedure for dealing with complaints of alleged violation 'human rights':

1. All complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a bench of two members constituted for the purpose not later than two weeks of receipt thereof. Ordinarily complaints of the following nature are not entertainable by the Commission:

- a) in regard to events which happened more than one year before the making of complaints.
- b) with regard to matters which are sub-judice
- c) which are vague, anonymous or pseudonymous
- d) which are of frivolous nature; or
- e) those which are outside the purview of the Commission

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. 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.

Q9. What is the state human rights commission? How is it constituted?

Ans. 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.

State Commission from time to time submits report on matters of concern and urgency. 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, 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.

Q10.What is the work of Human rights court under sec 30 of the act?

Ans. 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 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.

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.

Q11 How does the central and state government facilitate the work of the Human rights Organisation?

Ans. 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.

Q12. Who is the Comptroller and general of India? What is his role in NHRC and State Human Rights Organisation?

Ans. The **Comptroller and Auditor General (CAG) of India** is an authority, established by Article 148 of the Constitution of India, which audits all receipts and expenditure of the Government of India and the state governments, including those of bodies and authorities substantially financed by the government. The CAG is also the external auditor of Government-owned corporations and conducts supplementary audit of government companies, i.e., any non-banking/ non-insurance company in which Union Government has an equity share of at least 51 per cent or subsidiary companies of existing government companies.

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. 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.

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.

Q13 Critically analyze the work of NHRC and the recommendations made by commission to the government in December 2010.

Ans. By the end of December 2000, the Commission submitted seven reports to the Government along with a number of recommendation^{^^} suggesting steps to make the functioning of the Commission more effective for the promotion and protection of human rights. Some of the recommendations are: 1. The Commission recommended amendments to the Protection of Human Rights Act, 1993 to ensure more autonomy to the Commission so that it can grant relief to the victims or to their family members.

2. The Commission recommended ratification of the 'Convention against Torture and other Forms of Cruel, Inhuman and Degrading Treatment or Punishment' adopted by the United Nations In December 1984, which came into force in June 1987.

3. The Commission recommended for making reforms and educating the Police. It recommended that serious action be taken on the second report of the Police Reforms Commission, 1979 including those that suggest the insulation of the investigative function of the Police from political pressure

4. Custodial crimes are particularly heinous and revolting as they reflect betrayal of trust by a public servant against defenceless persons. The Commission recommended that the Indian Prison Act of 1894 should be revised. The Commission has prepared a new 'All India Jail Manual' for making reforms in the prison system. The Commission in its 1999-2000 report recommended that in order to bring about qualitative improvement in prison administration officers of proven integrity and competence should be selected.

5. The Commission expressed the view that to make people aware of their human rights there is the need for an effective movement which unfortunately is not in force, in spite of the existence of a large number of N.G.Os.

6. The Commission stated that one of its priorities relating to human rights is to improve the status of the Scheduled Castes and Scheduled Tribes and the minorities. The Commission opined that the nation requires a vast programme of social regeneration to deal with ancient societal wrongs

7. The Commission suggested that the dialogue between policy makers, the security forces, and human rights proponents be sustained. This can contribute greatly to clarity of thought and action in dealing with insurgency and terrorism.

The National Human Rights Commission has earned considerable prestige and reputation by its suo motu action. In fact its very first action related to the Bijbehara Incident (in Jammu and Kashmir) in which there were press reports of death of about 60 civilians as a result of firing by the security forces.

In the first meeting of the Commission held on 17 November 1, 1993, it issued suo- motu notice to the Government of India seeking a report on the incident. The Commission has also handled some cases on alleged custodial deaths in such an effective manner that it has inspired the confidence of the people. For example, with regard to the case of the alleged

custodial death of Madan Lal in Delhi, the Commission took cognizance of this case suo motu and appointed Sri. R.C. Chopra, a member of higher judicial services to investigate the matter.

Even though the Commission can neither render decisions like a regular court nor can its decisions be enforced like judgements, nevertheless the National Human Rights Commission cannot be branded as a weak body and is quite successful in solving major human right violations.