CHAPTER VII

MACHINERY FOR PROTECTION AND PROMOTION OF HUMAN RIGHTS

As already discussed in the previous chapters, human rights of women enshrined in the various international instruments can be enforced only if those norms are incorporated into the domestic law through legislation and if there is proper machinery for their enforcement. The International Covenant on Civil and Political Rights 1966 required the State Parties to take effective steps for the protection and promotion of human rights. The Member States undertake to respect and ensure to all individuals within the territory, the rights recognised in the Covenant without distinction as to race, colour, sex, language, religion, place of birth etc. Member States also undertake to ensure equal rights of men and women in the enjoyment of all civil and political rights set-forth in the Covenant.

All international instruments cast an obligation on the Member States to establish national institutions for the effective implementation of the human rights. At the international level there are six committees for the implementation of human rights. They are:

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1 International Covenant on Civil and Political Rights, 1966, Article 2.
2 id. at Article 3.
The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 also requires the Member States to implement the principles contained in the convention. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 required the States to adopt measures for the implementation of human rights.
(1) Human Rights Committee for the implementation of the provisions of the ICCPR, 1966.

(2) The Committee on Economic, Social and Cultural Rights, 1966 for the implementation of International Covenant on Social, Economic and Cultural Rights, 1966.


(4) The Committee on the Elimination of Racial Discrimination.

(5) The Committee Against Torture

(6) The Committee on the Right of the Child.

The Member States are under an obligation to report to the respective committees the legislative, administrative and judicial measures taken by them to implement the rights enshrined in the respective instruments. In order to provide machinery for the effective implementation of human rights, the Economic and Social Council established a Human Rights Commission. The main objective of the Human Rights Commission is to study and to investigate into human rights violations and to codify international norms. It is also concerned with violations of human rights of women especially those situated in vulnerable situations and persons belonging to religious and linguistic minorities and indigenous people.
A Commission on the Status of Women was constituted by the Economic and Social Council to formulate recommendations on promoting the human rights of women. The main function of the Commission on the Status of Women is to collect information regarding violations of human rights of women and forward recommendations to the appropriate authorities for effective implementation. It is also concerned with the implementation of the principle of equality between man and woman set forth in the various articles of the charter.

There are also a number of other United Nations Programmes specifically dedicated to the protection, promotion and empowerment of women. The International Research and Training Institute for the Advancement of Women (INSTRAW) was established in 1976 by the Economic and Social Council which is mainly concerned with the promotion and training of women in various fields. Its periodical programmes help many women activists to receive training.

The Division for the Advancement of Women (DAW) has also played an important role in the protection and promotion of the human rights of women. The Division for Advancement of Women (DAW) is also concerned with the improvement of status of women in the world and the achievement of equality between man and woman. It envisages equal participation of women in all aspects of life especially in sustainable development, peace and security. It

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also provides support to the organisations in mainstreaming of gender perspectives in all policies and programmes.\(^4\)

Within the United Nations system the United Nations High Commissioner for Refugees (UNHCR), the World Health Organisation (WHO) and the International Labour Organisation (ILO) have also played an active role in the protection and promotion of human rights of women. The United Nations Children’s Fund (UNICEF) is also concerned with the rights of mothers and other gender based issues. It also takes active step in the elimination of sexual exploitation of girls by providing employment counselling for girls.\(^5\)

Implementation of International Treaties

In order to give effect to the international treaties, Article 253 of the Constitution of India declares that Parliament shall have exclusive power to legislate for the implementation of treaties even if they relate to a subject falling in the State list. Till such law is made, it has only a persuasive effect.

Article 51(c) of the Constitution obligates the State to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. In spite of Article 51(c), international law to which India is a party becomes part of municipal law only if the Indian legislature enacts appropriate law for its implementation. Even though India is a party to various


\(^5\) ibid.
conventions protecting human rights no legislation was enacted to give proper legal effect to them. This situation compels the Supreme Court to interfere by way of judicial activism in its eagerness to protect the rights of the people.

The power to legislate in respect of treaties lies with the parliament under entries 10 & 14 of list 1 of seventh schedule of our Constitution. Making law under that authority is necessary when the treaty or agreement operates to restrict the rights of the citizens or others or modifies the laws of the State. If the right of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to this agreement or treaty. Until the municipal law is changed to accommodate the Covenant, what binds the court is the former, not the latter. The court relied on Article 11 of the international Covenant on Civil and Political Rights in Jolly George’s case. The Court observed:

“The covenant bans imprisonment merely for not discharging a decree debt unless there be some other vice or mensrea apart from failure to foot the decree, international law frowns on holding the debtor’s person in civil prison, as hostage by the court. India is now a signatory to this covenant and Article 51 (c) of the constitution obligates the State to “foster respect for international law and treaty obligations in the dealings of

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*Supra* Chapter 2 n.49.

*Supra* Chapter 2 n.50 at p.473.
organised peoples with one another”. Even so until the municipal law is changed to accommodate the covenant what binds the court is the forever, not the latter.”

The court further reasoned

"Equally meaningful is the import of Art.21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21 read with Article 14 and 19 obligates the state not to incarcerate except under a law which is just, fair and reasonable in its procedural essence.”

In *Rudul Sah v. State of Bihar and another*, the court awarded compensation to the victim for the fault of the State in keeping the person in custody beyond the period for which he was to be confined. However, the court did not offer justification for developing this remedy.

The conceptual foundation for it was however provided by the Court in the case of *Nilabati Behera alias Lalitha Behra v. State of Orissa*, wherein while awarding compensation to the mother of the deceased, who was tortured to death by the police, the court evolved the theory that it has the power to award monetary compensation in public law in order to make the relief

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8 ibid.
9 id. at. p. 475.
11 Supra Chapter 2 n.31.
meaningful and effective. The doctrine of sovereign immunity has been held to be inapplicable in the public law remedy against violation of human rights. The court drew strength for formulating this remedy from the Article 9(5) of the International Covenant on Civil and Political Rights.\textsuperscript{12}

The Supreme Court held award of monetary compensation is an appropriate and effective remedy for the redressal of grievances caused by infringement of fundamental rights of citizens by the public servants and State is vicariously liable for their acts. Relying on the reasoning of \textit{Nilabati}, Court declared that compensation could be awarded in cases of illegal detention.\textsuperscript{13}

Further in \textit{Chairman, Railway Board v. Chandrima Das}, The court reasoned:

"The word life has also been used prominently in the Universal Declaration of Human Rights, 1948. The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants on Civil and Political Rights and the Covenants on Economic Social and Cultural Rights to which India is a party, having ratified them, as set out by this court in \textit{Kubic Darusz v. Union of India}. That being so since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same

\textsuperscript{12} Article 9(5) Any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

meaning and interpretation as have been placed on that word
by this court in its various decisions relating to Article 21 of
the Constitution. 14

The court has always been strident in its efforts to humanise the law
particularly in the case of weaker sections of the society. In a case where sexual
harassment was alleged the court found no law to contain the crime. The court
relied on the Convention on the Elimination of All Forms of Discrimination
Against Women, 1979 and formulated guidelines and norms to prevent sexual
harassment of women at workplace. 15

The court justified its reliance on the Beijing Statement thus:

"The obligation of this court under Article 32 of the
Constitution for the enforcement of fundamental
rights, in the absence of legislation must be viewed
along with the role of judiciary envisaged in the
Beijing Statement of the principle of independence of
judiciary in LAWASIA region." 16

Also the court reasoned that it is possible to rely on the international
documents while interpreting the Constitution. The court reasoned thus;

"The meaning and content of the fundamental rights
guaranteed in the Constitution of India are of

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14 Supra Chapter 2 n.35.
15 Supra Chapter 2 n.36.
16 id. at p.3014.
sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic law."

The court thus issued guidelines under Article 141 to have the force of law till legislation is made by the legislature. The court again relied on the Convention on the Elimination of All Forms of Discrimination Against Women 1979, International Covenant on Social Economic and Cultural Rights, 1966 and the Beijing Declaration and observed:

"These international instruments casts an obligation on the Indian States to gender sensitize its laws and the courts are under an obligation to see that the message of the

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17 id. at p.3015.
18 id. at p.3016.
international instruments is not allowed to be drowned. The court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws more so when there is no inconsistency between them and when there is a void in the domestic law.\(^{19}\)

The Constitution of India was drafted nearly at the same time when the drafting of the Universal Declaration of Human Rights was in progress. Part III of the Constitution containing fundamental rights correspond to Article 2-21 of the UDHR and the Directive Principles of the State Policy in Part IV of the Constitution correspond to Article 22-28 of the UDHR. The International Covenant on Civil and Political Rights and the International Covenant on Social and Economic and Cultural Rights are further elaborations of these rights with machinery for enforcement.

The Constitution of India empowers the Supreme Court to issue any order or direction or writ including writs of *habeus corpus*, *mandamus*, *certiorari* and *quo-warranto* for the enforcement of fundamental rights. Article 32 itself is a fundamental right. Only if the matter falls under Part III, it can be

enforceable through Article 32. The Directive Principles are fundamental in the governance of the country though they are not enforceable through courts. Supreme Court has relied on Directive Principles to enlarge the scope and content of Fundamental Rights, indirectly bring them within the purview of justiciable rights.

Originally only the aggrieved person could approach the court. The court evolved the doctrine of public interest litigation to provide justice to the poor and underprivileged group of person. Now any member of the public, who has a bonafide interest, can approach the Supreme Court for the redressal of the grievances of a person unable to approach the court by reason of poverty, helplessness or disability. By liberalising the rule of locus standi, any public-spirited person, social activist, or organisation can bring issues of public interest before the court provided it is bonafide.

Justice Bhagavati has brought about the relevance of public interest litigation thus:

"The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letter from public spirited individuals seeking judicial
redress for the benefit of persons who have suffered a legal wrong or legal injury whose constitutional or legal right has been violated but who by reason of their poverty or socially disadvantaged position are unable to approach the court for relief."²⁰

His Lordship also held that public interest litigation would lie to the Supreme Court wherever there is a breach of any social legislation, since pieces of social legislation are passed to ensure fundamental rights to the weaker sections of the society.²¹ Any person who has a bonafide interest can approach the court for the protection and promotion of human rights of other persons and the Indian Judiciary had played a very important role in the enforcement of human rights. There are a number of cases where the concept of human rights has been given a new dimension through judicial activism.

The preamble together with Part III and IV of the Constitution have been construed by the Supreme Court to give an interpretation to Article 21 by saying that the right to life under it includes the right to live with human dignity.²² In order to lead a dignified life there must be an end of all types of exploitation and violence against women on the ground of sex. Any action which violates a person’s right to live with human dignity is violative of his human rights.

²² Supra Chapter 2 n.21.
The Constitution of India empowers the State to make special provisions for the benefit of women. The Supreme Court explained it thus:

"The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15."\(^{23}\)

The Court reiterated the status of woman in India in *Charan Singh v. Union of India*\(^{24}\)

"In theory women form a class distinguished from men who form another class. In social, educational and economic spheres women have been far more backward than men. This is evident not only in India but in most parts of the world. The word 'backward' expresses essentially a relationship or


\(^{24}\) 1979 (2) Lab. L.J. 123.
comparison. It is only in relation to men or in the question of comparison with men that women as a class being backward can arise. In theory, therefore, one can say that women are backward class as compared to men.\textsuperscript{25}"

But one of the disadvantages of this reasoning is that women from the advanced section are likely to pick up the benefits of reservation and the really backward women may lose.

The Supreme Court has had enough occasions to examine the inequality suffered by women. It straightened the law wherever it found gender discrimination. The court declared that Rule 8 (2) of the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules 1961, which required women employees to obtain permission of the government before marriage and denial of employment to married women to be discriminatory and violative of Article 14.\textsuperscript{26} The court while upholding the principle of equality of status put the women employees at par with men employees. The court expressed the need to overhaul all service rules to remove the stain of sex discrimination by the government without waiting for adhoc inspiration from writ petitions or gender charity. Further the court detected that rule 46(1) (c) of the Air India employee's service regulations, which required an airhostess to terminate services on pregnancy, were declared unconstitutional by the court. The court

\textsuperscript{25} \textit{ibid.}
\textsuperscript{26} \textit{Miss C.B. Muthumma v. Union of India and others}, A.I.R. 1979 S.C. 1868.
held that such a provision is arbitrary, unfair and discriminatory and violative of Article 14 of the Constitution.\(^{(27)}\)

In the State of Uttar Pradesh lady teachers and other female employees doing administrative work were discriminated against male teachers doing the same kind of work. They were paid lower scale of salary with less avenues of promotion. When challenged the court held:

"Under constitutional arrangement there is no occasion for a differential treatment between male teachers and employees and lady teachers and employees in the educational department doing administrative business, when they are doing the same job. Nor do we find any justification for a preferential treatment in the matter of affording promotional avenues for the male teachers."\(^{(28)}\)

The court was of opinion that there is no justification for giving preferential treatment in the matters of affording promotional avenues to male teachers.

The Supreme Court in a number of cases has upheld the principle of equal pay for equal work without any distinction as to sex. The difference in pay scales to confidential lady stenographers and male stenographers in the


same company was held to be discriminatory on the ground of sex by the Supreme Court. The employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that women are not fit to do the work of male stenographers.29

To achieve equality between men and women the court at times resorted to positive discrimination in favour of women. In Sowmithri Vishnu v. Union of India and another,30 section 497 of the Indian Penal Code was challenged as discriminatory against women as it does not confer any right on the wife to prosecute the husband or the woman with whom husband has committed adultery. The court held that the offence of adultery as defined in section 497, is considered by the legislature as an offence against the sanctity of the matrimonial home, and the man who is responsible for the break of that sanctity is to be brought within the purview of law and hence there is no discrimination on the basis of sex.31 The law under this section does not envisage either of the spouses to prosecute each other for the purpose of maintaining the matrimonial tie and to safeguard the interest of the children and to save the women from the social stigma attached to her if she is sent to jail for adultery. Section 497 does not arm the two spouses to hit each other with the weapon of criminal law. That is why neither the husband nor the wife can prosecute the husband and send the other to jail. Thus reasoned the court saying

that there is no discrimination against woman in so far as she is not permitted to prosecute her husband.

Article 21 of the Indian Constitution guarantees right to life and personal liberty. Right to life is interpreted by the Supreme Court to include various rights including the right to live with human dignity and the court observed that rape is a crime against basic human rights, violative of the victim's most cherished fundamental rights namely the right to a dignified life contained in Article 21. With a view to assist rape victims the Supreme Court has laid down certain guidelines and the National Commission for Women was directed to evolve a scheme for providing adequate safeguards to these victims. The guidelines include legal assistance, anonymity of the victims, compensation and rehabilitation of the victims. In both the above cases the Supreme Court awarded compensation to the victims in a petition filed under Article 32 of the Constitution. The court again held that women and children couldn’t be compelled to work in unhygienic conditions and for nominal wages.

The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensure basic human dignity to the bonded labourers. Any failure of action on the part of the State in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution. It becomes the duty of the court to see that the legislative provisions regarding their

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rehabilitation are properly implemented and these poor and miserable persons are allowed to enjoy the benefit, which the Constitution of the land affords them.

A writ petition was filed by women's organisation known as SAHELI on behalf of two women tenants who were severely beaten up and harassed by their landlord in collusion with the police. In the course of events a nine-year-old boy of one of the women was beaten up to death. The court held that the mother was entitled to get compensation for the death of her son from the State, which was responsible for the tortious acts of its employees.\(^\text{35}\)

The human rights of mentally ill patients were also protected in another public interest litigation, which secured release of these patients from jail in Bihar. Many of these patients were kept in jail from 20 to 30 years. Sending of lunatics and mentally ill patients to jail, the court observed, is not a healthy or desirable practice and the court directed the jail superintendent that a psychiatrist examine such mental patients at least once in every six months and submit a report to the district judge. The district judge has the power to release such persons if found fit. The court also directed the state government to meet the expenses of such released persons for a period of one week.\(^\text{36}\)

In a public interest litigation filed before the Supreme Court for the rehabilitation of the children of fallen women, the court appointed a committee known as Mahajan Committee to investigate into the plights of the children of

\(^{35}\) Supra Chapter 6 n.27.
prostitutes. The Committee apart from studying the right of the children of
prostitutes studied the root causes of prostitution and submitted the report. The
court issued directions to the State to take every effort to rehabilitate the fallen
women. The court identified that their rehabilitation and socio-economic
empowerment is the duty of the State. Regarding the children of fallen women,
the court directed the authorities, as interim measure, to have the children
admitted in general schools to make the children to overcome the disabilities
and stigma attached to them and to create a feeling of oneness and
desegregation. But Justice Wadhwa recorded his dissenting opinion about the
directions relating to eradication of prostitution as that issue has not been raised
and the parties have not been informed. As the two judges constituting the
bench differed, a review petition was filed before the Supreme Court and the
court allowed the review petition and set aside the directions of the court
regarding the prostitution and its amelioration. But the court observed that it is
left to the discretion of the government to formulate its own policies regarding
the measures taken to eradicate prostitution. The court also observed that
questions regarding directions in relation to prostitution, its eradication or
amelioration, would have to be placed before the larger bench if any directions
in this matter is required from the court.

Section 125 Cr.P.C. gives a summary and quick remedy to the women to
claim maintenance from her husband. The Supreme Court declared that a
destitute father also could claim maintenance under Section 125 from his

married daughter who is well off and has a separate source of income.\textsuperscript{39} The reasoning of the Court signifies that the Court treats an employed daughter and son as equals so far as their obligation to maintain the father is concerned.

Section 304 B and 498 A were introduced into the Indian Penal Code to protect the human rights of women. The court observed that taunting the women for not bringing dowry and calling her ugly amounts to mental torture. Further it was held that if there was a quarrel the day before her death that would amount to cruelty both within the meaning of Section 498 A and 304 B I.P.C.\textsuperscript{40} The harassment or cruelty must be of such a nature that they may force the women to commit suicide.

The court felt the need for ensuring and preserving the basic human rights even in jail. Realising the pathetic conditions of female prisoners, the court issued directions to the State Governments to improve their conditions.

Some of the directions issued by the court were:

(1) Female suspects should not be kept in police lock-ups in which male suspects are detained.

(2) Interrogation of female should be carried out only in the presence of female officers or constables.

(3) Arrested person should be informed of all rights available to her including the right to bail and right to legal aid.

When a person is arrested and brought before him, the magistrate should inform about the right to be medically examined under Section 54 of the Criminal Procedure Code.  

The object of establishing care homes is to provide at least minimum conditions to enable women to live with human dignity. The Yuva Adhivakta Kalyan Samithi drew the attention of the court to the pathetic conditions of female inmates of Patna care home. The court observed that care homes maintained by the State must provide at least the minimum conditions ensuring human dignity of the inmates. The Supreme Court directed the State of Bihar to take immediate steps for the welfare of the inmates of care home in Patna. The Supreme Court also directed the welfare department further to appoint a full time superintendent to take care of the home and to ensure that the doctor visited the home daily.

In the case of child prostitution, the Supreme Court has directed the State Governments, Union Territories, the law enforcing agencies etc., to take speedy action under the law for the purpose of eradicating child prostitution. It also directed to set up separate advisory committees to suggest remedies for the eradication of the prostitution and also to take steps to provide adequate rehabilitation homes manned by well qualified and trained social workers, psychiatrists and doctors.

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Women continued to be the victims of violence all times because of the lower status given to them in the society. As a positive step to promote gender equality, the Supreme Court of India gave women the same right as natural guardians of a minor. In a case wherein a mother's application for financial bonds in the name of her minor children had been rejected by the Reserve Bank of India on the basis of the Hindu Minority and Guardianship Act 1956, which regards the father and only after him the mother as the natural guardian of a minor. The Supreme Court ruled that the provision 'after' had to be read as 'in the absence of' as it violated gender equality. The court relied on the Universal Declaration of Human Rights, 1948 and Beijing Declaration.

Under Article 226 of the constitution, the High Court also could issue, directions or orders or writs for the purpose of protection of human rights of women and the various High Courts of India have exercised their powers for the protection of human rights.

Apart from the powers of the Supreme Court and the High Courts under Article 32 and 226 for the protection and promotion of human rights, national institutions are constituted for the effective enforcement of human rights. The main national institution for the protection and promotion of human rights are Ombudsman (Lokayukta) and the Human Right Commission. Generally a lawyer or judge or person with high reputation and integrity can act as ombudsman and their reports about violations can act as a check against mal-administration.

\textsuperscript{44} Supra Chapter 6 n.243.
National Commission for Women

National Commission for Woman is one of the most important statutory institutions for the Protection of Human Rights of Women. As already stated, the Indian Constitution and various other legislations contain provisions for the protection and promotion of human rights of women. The National Commission for Women is constituted under the National Commission for Women Act, 1990, to protect the human rights of women, is a timely step to ensure the steady and even development of women.45

The National Commission for Women shall consist of a chairperson nominated by the government and five other members to be nominated by the central government from amongst persons of ability, integrity and standing who have had experience in law or legislations, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations including women activists, economic development, health, education and social welfare. At least one member shall be from amongst persons belonging to scheduled caste and scheduled tribes.

An expert in the field of management, organisational structure or sociological movement or an officer who is a member of civil service of the union or of an All India Service or holding a civil post under the union can be nominated by the central government as the member secretary.46

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46 National Commission for Women Act. 1990 Sec.3.
The Commission may appoint committees to deal with special issues taken up by it from time to time.\textsuperscript{47}

The Commission has been entrusted with the work of conducting investigation and examination of all matters relating to the safeguards provided for women under the Constitution and other laws\textsuperscript{48} and presentation to the central government annually and at other times report upon the working of those safeguards.\textsuperscript{49} It is the duty of the Commission to provide or suggest measures to improve the conditions of women situated under various circumstances.

The Commission can take suo motu notice in matters relating to deprivation of women's rights. It can also examine whether there is any non-compliance with the policy decisions or instructions or guidelines ensuring the welfare of women. In such cases it can take up the issues arising out of such matters with appropriate authorities.\textsuperscript{50} The Commission can also conduct special studies and investigations into specific problem or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.\textsuperscript{51} It can also undertake promotional research and to participate and advice the government on the planning process of the socio-economic development of women under the union and the states. Inspection of jails, remand homes, women institutions or

\textsuperscript{47}id. at Section 8.
\textsuperscript{48}id. at Section 10(1)a.
\textsuperscript{49}id. at Section 10(1)b.
\textsuperscript{50}id. at Section 10(1)f.
\textsuperscript{51}id. at Section 10(1)g.
other places of custody of women, giving funds to litigation involving issues affecting a large body of women and to make periodical reports to governments etc; are some of the other functions of the Commission.

The reports presented to the central government under Section 10(1) (b) shall be laid before each house of Parliament along with the action taken or proposed to be taken on the recommendation of the union and the reasons for non-acceptance, if any of such recommendations. If the reports or any part of the recommendation relates to any matter in which any State Government is concerned, the report or that part may be sent to the state government which shall be laid before the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State. If any of the recommendations is not accepted, then the reason for the non-acceptance must also be stated.

In investigating the matters referred to in Clause (a) to clause (l) of section 10(1), the Commission shall have the powers of a civil court with regard to summoning and enforcing the attendance of any person from any part of India and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavit, requisitioning any public record or copy from any court or office, issuing Commissions for the examination of witnesses and documents and other matter which may be prescribed. The Act

52 id. at Section 10(1)(i to n).
53 id. at Section 10(2).
54 id. at Section 10(3).
55 id. at Sec. 10(4).
authorises the Central Government to make rules for carrying out the provisions of the Act.\textsuperscript{56}

It is to be mentioned that the National Commission for women proposed certain bills for enactment where the existing provisions were found inadequate. It proposed the Criminal Law Amendment Bill, 1994 regarding child rape and suggested amendments to I.P.C., Cr.P.C. and Evidence Act.\textsuperscript{57}

As per the decision of the Supreme Court in Delhi Domestic Forum Case\textsuperscript{58}, the Commission has drafted a scheme for compensation. It also drafted a code of conduct for women at work place as per the decision of the Supreme Court in Vishakas case.\textsuperscript{59} In order to provide speedy justice to women and to create awareness among women about their rights a project known as Mangalam project was planned in 1994 in the Union Territory of Pondicherry, to impart knowledge to women in every branch of law.\textsuperscript{60}

The Commission has found on studies that creating awareness and making women economically independent would to some extent help to prevent violence against women. The Commission with this objective has launched several schemes.\textsuperscript{61} A legal awareness campaign against dowry was launched, titled "Dehej Mukthi Abhiyan," to sensitize women about the harmful image, dignity and empowerment of women.\textsuperscript{62}

\textsuperscript{56} id. at Sec. 17.
\textsuperscript{58} supra n.33.
\textsuperscript{59} supra n.57 at p.25.
\textsuperscript{60} ibid.
\textsuperscript{61} id. at p.37.
\textsuperscript{62} id. at p.69.
The Commission was very much appreciative of the vulnerable situations of women in prostitution and suggested several recommendations to improve their situation. In its annual report of 1992-1993 the Commission reported that child prostitution is on the increase in the city of Bombay and there is an urgent need to save the women from the vicious practices of the trade. The Commission was of opinion that areas prone to trafficking must be identified and must be put under strict surveillance to prevent minor girls and innocent women falling into the hands of pimps. It also suggested for the amendment of the Juvenile Justice Act for the protection of children and prostitutes.63

In its annual report of 1998 the National Commission has suggested several measures such as old age pension, vocational training and employment opportunities and loans to improve the living conditions of old and destitute women. It also suggested for the establishment of special schools, special hostels etc., for physically handicapped women.64 In order to prevent child marriages the Commission recommended for the compulsory registration of marriages.65

In September 2000, the NCW launched an ambitious college student empowerment programme called 'preparing the women for tomorrow' with the object of information, education and capacity building in adolescent girls of

63 id. at p.79.
64 id. at p.127.
65 id. at p.154.
today to face the challenges of tomorrow with conviction and confidence.\textsuperscript{66} In its various interactions, the Commission realised that in most of the cases the provisions of the Equal Remuneration Act, and the Minimum Wages Act, has not been observed. The National Commission for Women urged the need for setting State Human Right Commission and requested all the States to set up Commission for Women.

**Human Rights Commission**

Protection of Human Right Act, 1993 was enacted by the Parliament establishing National Human Right Commission, State Human Right Commission and Human Rights Court for the protection of individual against discrimination and implementation of human rights as it is practically not possible for the ordinary courts to go deep into the violations of human rights.

On the recommendation of the Commission on the status of women in its 25\textsuperscript{th} report, the Government of India constituted a committee on the status of women in 1971. The committee recommended for the constitution of a National and State Human Rights Commissions and accordingly the Protection of Human Right Act, 1993 was passed. The Protection of Human Right Act defines human right as the right 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.\textsuperscript{67} The Human Rights Commission can investigate complaints about violation of human rights and report the

\textsuperscript{66} *id.* at p.171.

\textsuperscript{67} The Protection of Human Right Act, 1993, Section 2(d).
matter to the legislature. The function and powers of the Commission is to be
determined accordingly to the law by which they are established.

The main objective of the Act is to constitute National and State Human
Rights Commission and a Human Rights Court for the better protection of
human rights and incidental matters. Now in India we have the National
Human Rights Commission and 13 State Human Rights Commissions. State
Human Rights Commissions are functioning in the States of Assam, Kerala,
Manipur, Andra Pradesh, Madhya Pradesh, Tamil Nadu, Chattisgarh, Punjab,
Uttar Pradesh, Jammu & Kashmir, Maharashtra, Rajasthan and West Bengal.

The Human Right Commission can investigate complaints about
violation of human rights and make recommendation to the government or
authority that violate the human rights to take legislative or administrative
measures to prevent human rights violations.

The National Human Rights Commission consists of a chairperson and
four other members. The chairperson who is or has been the Chief Justice of
the Supreme Court, one member who is or has been a judge of the Supreme
Court, one member who is or has been the chief justice of the High Court and
the other two members to be appointed from amongst persons having
knowledge or practical experience in matters relating to human rights.\(^6^8\).

Apart from this, the chairperson of the National Commission for
Minorities, the National Commission for Scheduled Castes and Schedules

\(^6^8\) *id.* at Section 3(2).
Tribes and the National Commission for Women shall be the ex-officio members of the Commission.

The chairperson and other members of the Commission can be appointed by the President on the basis of recommendations of the Committee comprising the Prime Minister as the Chair Person, the Speaker of the Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairperson of the Rajya Sabha as members.

The National Human Rights Commission is not competent to entertain complaints filed after the period of one year or if the matter is pending before a state Commission. If the complaint is vague, anonymous or frivolous in nature, or pertains to service matters then also the Commission cannot entertain the complaints.69

For the effective discharge of the functions of the Commission, the Commission is given the powers of the civil court with regard to summoning of the witnesses, production of documents, receiving affidavits, issuing Commission for examination of witnesses70 etc. For the purpose of investigation, the Commission is given wide powers. It can utilise the service of any officer or agency of the Central or State Governments for the purpose of conducting an investigation.71 Such officer is required to submit a report to the Commission within a period to be specified by the Commission.

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69 Section 36 read with Section 8 of the National Human Rights Commission (Procedure) Regulation, 1994.
70 id. at Section 13.
71 id. at Section 14.
The Commission also has the power to receive information from any person acquainted with the violation of human rights. The proceeding before the Commission is deemed to be judicial proceeding.

Section 10(2) of the Act empowers the Commission to regulate its own procedure. The National Human Rights Commission has made the National Human Rights Commission (Procedure) Regulations, 1994 that have come into force with effect from 1st March 1994. Normal sitting of the Commission shall be the first and third week of every month and special sittings can be conducted in case of urgency.

The Human Rights Commission can hear individual complaints, which can be brought before it either by the victim or his/her representative, third parties, by non-governmental organisations, associations, trade unions or any other representative organisations etc. The complaints received by the Commission ranges from custodial death and rape, torture, bonded labour, case of disappearance, special problems of the minority community, environmental issues affecting right to life, dignity etc. The Commission disposes of most of the complaints with the observation to the effect that the remedies were more appropriately available in another forum and that the complainant shall seek remedies from them.

When a complaint is filed and if there is no substance in the complaint it is dismissed in-limine, otherwise the complaint is admitted. If admitted, after

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numbering the complaint it is placed before a bench consisting of two members within a period of two weeks from the receipt of the complaint. Once admitted, the secretariat calls for reports or comments from the governments or authority concerned within a reasonable time and if within that time report is not received, the Commission could investigate the complaint on its own. If the information is received within the time specified, the Commission prepares a detailed note on the merit of the case. If the Commission feels that no further enquiry is needed then it may not proceed further with the complaint and the matter is intimated to the complainant. After the investigation of the case is completed, the Commission may take any of the following steps.

If after the completion of inquiry the Commission feels that there is violation of human rights or there is negligence on the part of the authority to prevent violation of human rights, it can recommend the government or the appropriate authority to take action against the person concerned.

The Commission can also approach the appropriate court (High Court & Supreme Court) for such directions, orders or writs, as court may deem necessary.

The Commission can also require the appropriate government or the authority concerned to grant interim relief to the victims or the members of the family. The Commission is required to send the report to the concerned authority and is required to give its comment on the report including the action taken or propose to be taken, thereon, to the Commission. The Commission is
required to publish the enquiry report together with the comments of the concerned government or authority and action taken or propose to be taken by the government or authority within the period of one week.73

The Commission is also required to submit an annual report to the Central Government and the State Government. The Central Government and the State Government shall place the annual report and special reports of the Commission before each house of Parliament or the State Legislature respectively.

Though the Commission was constituted for the purpose of effective protection and promotion of human rights, the Commission has no power to decide the violations or grant the redressal of grievances of the aggrieved person. The Commission can only make recommendations to the government or appropriate authority and such recommendations are also not binding. Though it has only a recommendatory character it helps to create a culture of human rights throughout the country by creating mass awareness about human rights.

The main functions of the Commission are:

(1) Making inquiries
(2) Review of laws, implementation of treaties and other international instruments on human rights.
(3) Improving the jail conditions

73Regulation 16 of the (Procedure) Regulation 1994 and Section 18 of the Act 1993.
(4) Promotion of human right literacy and awareness among various sections of the society.

(5) Undertaking and promoting research in the field of human rights.

It is interesting to see how the Commission has been working with reference to some of these items of functions:

Inquiry into Complaints

The Commission considered complaints regarding maternity leave to the employees of private schools in West Bengal. The Secretary, Department of Education, West Bengal submitted a report as per the directions of the Commission and the Commission found that there was no uniformity in rules. The Commission directed the Government of West Bengal to review the existing rules to bring about uniformity and also to incorporate the provision to grant 120 days maternity leave to teaching and non-teaching women employees of various educational institutions. The Commission also stated that it is the discretion of the State Government to restrict the facility of maternity leave to two-child birth if it thought necessary and appropriate. This decision of the Commission is to give effect to the mandate of Article 10 of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.74

The Commission took cognizance of a complaint received from Juvenile Rights Forum, Hyderabad, Andra Pradesh. The complaint disclosed that a girl

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with bleeding was admitted in the Juvenile Observation Home in Hyderabad on 10th July 1998 and the officials did not provide her with any medical treatment. On 11th September 1998 she was admitted at Nilofer Hospital and doctors found that she was raped brutally. Though the police registered a case, proper investigation was not conducted. The Commission sought report from the Government of Andhra Pradesh and on consideration of the report, the Commission directed the State of Andhra Pradesh to complete the investigation as expeditiously as possible and directed the State of Andhra Pradesh to pay an interim compensation of Rs.50,000 to the parents of the girl.75

In another alleged rape case relating to two Jain ‘Sadhvis’ the Commission has asked the Madhya Pradesh Government to take cognizance of and to start investigation. The Commission further held that though the victims of rape cases are reluctant to come to the court, it is the duty of the police to set the law in motion. Upon the intervention of the Commission the Madhya Pradesh police in this matter has now registered a case.76

The Commission took suo motu action in the case of alleged rape of Bhanwari Devi by certain villagers of Rajasthan for her campaign against child marriage, and the acquittal of the accused by the District and Sessions Court, Rajasthan. The Commission directed the State of Rajasthan to file appeal against the acquittal by the District and Sessions Court.77

75 ibid. 76 ibid. 77 ibid.
Compensation of Rs. 1 lakh was recommended by the Commission to the State of Rajasthan in an alleged rape case of 9 minor girls in a school at Rajasthan. The Commission took cognizance of the case on the recommendations of ‘Sakshi’ a Delhi based non-governmental organisation.  

Review of existing Laws, Implementation of Treaties and other International Instruments on Human Rights

Section 12(d) of the Protection of the Human Rights Act, 1993 empowers the Commission “to review the safeguards provided by or under the Constitution or any other law for the time being in force for the protection of human rights and recommend measures for their effective implementation.” In view of this section the first area of concern of the Commission was the review of Terrorist and Disruptive Activities (Prevention) Act, 1985. The Commission then concentrated on the area of child labour and later legislations affecting the rights of women. The National Commission for Women constituted under the National Commission for Women Act, 1990 has also assisted the Human Right Commission in the task of reviewing the legislations.

Improving Jail Conditions

In view of the power given to the Commission to visit jail, the Commission visited various jails and made suggestions to improve the conditions in jail especially those of women prisoners. The Commission suggested measures to reduce the overcrowding in jails, to take steps to

\[\text{\textit{ibid.}}\]
improve the skills of the inmates of jails and rehabilitation of those who were released from jails. The Union Department of Child Development has constituted an expert committee on “custodial Justice for Women”, under the Chairmanship of Justice V.R. Krishna Iyyer to aid and advice the commission to enquire into the conditions of women in jail and the report of the committee states that:

“Womanhood and childhood even in criminal wrappings and behavioural aberrations deserve to be nursed in dignity and restored to working normally using all the material, moral and spiritual, resources at the society’s command”79

Promotion of Human Rights Literacy and Awareness

The Act casts a responsibility on the Commission "to spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, through media, seminars and other means."80

Human right education plays an important role in promoting human rights of women as more than half of the population in India is illiterate. The Commission conducted many seminars, literacy classes, workshops etc; to impart knowledge to the common people about various human rights enshrined in the Constitution and the national laws and the various other international

79 supra n.57 p. 104.
80 Protection of Human Rights Act, 1993, Section 12 (h).
documents. The Commission also recommended the inclusion of human rights in the syllabus of the universities and colleges.

Undertaking and Promoting Research on Human Rights

The Commission is also entrusted with the responsibility to undertake and promote research in the field of human rights. The Commission has taken up research studies with regard to abolition of child labour in the safety matches and firework industry in Tamil Nadu, abolition of child prostitution, prevention of female infanticide and foeticide among other subjects.

Though the Commission cannot issue binding orders, the method of appointing its members, their fixity of tenure and the financial autonomy provided under Section 32 of the Act shows its independence and integrity.

The transparency of functioning of the Commission is reflected in the statute and regulations framed thereafter. The Commission has laid its annual report before the parliament and it encouraged the co-operation of non-governmental organisations, human rights activists, the media and the public while enforcing human rights.

During the year 1995-96, the Commission examined two reports about female foeticide and infanticide and the Commission has for this purpose sought the assistance of the National Commission for Women and department of women and child development.

81 id. Section 12 (g).
Realising the misuse of sex determination to commit female foeticide, the Commission approached the medical council of India and the medical council has decided to suggest amendments to the regulations governing the code of medical ethics, in order to enable the undertaking of disciplinary proceedings against doctors who misuse the Act.83

Regarding child prostitution the Commission has decided that the issue has to be considered by a group consisting of the National Commission for Women, the Department of Women and Child Development, Government of India selected NGO's and UNICEF. The group shall consider the inadequacy of the existing law, and shall suggest amendments to the existing laws to prevent child prostitution.84 As the National Human Rights Commission lacks authority and no power to eradicate violations of human rights, the Supreme Court in some cases has resorted to Constitution and various other provisions in the Criminal Procedure Code. With the help of the Universal Declaration of Human Rights and other international instruments, the Supreme Court could evolve a new human right jurisprudence as mentioned earlier.

The Supreme Court directed the Human Rights Commission to enquire into the alleged violations of human rights by the officers of the Punjab Police and negligence of the government servants in preventing human rights violations.85 The order was made by the Supreme Court in exercise of its

84 id. at p.501.
power under Article 32 of the Constitution of India. When the Supreme Court makes such order, the Commission was not functioning under the provisions and the limitation of powers under the Act and that the Commission has no power to investigate into complaints after the expiry of one year has no application in this case. The Supreme Court therefore designated the Commission as a body *sui generis* to carry out the functions and to determine the issues as entrusted to it by the Commission. From this case the lack of power, independence and inadequacy of the Commission for the protection of human right violation can be inferred. A large body with adequate powers can be necessitated to eradicate violations of human rights. The members of the Commission shall also include persons who are human right activists, who have been working for along time for the protection and promotion of human rights. Exchange of staff with that of similar bodies of foreign countries shall be desirable to improve the administrative and technical knowledge of the functioning of the Commission.

The Protection of Human Rights Act also envisages the constitution of State Human Rights Commission and a Human Right Court.

**State Human Rights Commission**

The Act empowers the State Government to constitute State Human Rights Commission to enquire into human rights violation in respect of matters, which are related to any of the entries enumerated in list II, and III. The procedure and powers conferred on the Commissions are also similar to those conferred on National Human Rights Commission.
The main defect of the Commission is the lack of adequate power and authority to enforce the human rights, irrespective of the presence of high dignitaries in its Constitution. The main function of the Commission is to collect information and to undertake studies and submit report to the government about the alleged violations of human rights and to take action, creating awareness about violation of human rights is also another function of the Commission. In fact the scheme of protection of human rights does not give any power to the Commission. If it has to initiate action, it should be through the Sessions Court, which will be declared as Human Rights Court.

Section 30 of the Act declares, for the purpose of providing 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 notifications, specify for each District a Court of Session to be a Human Right Court to try the said offence provided that nothing in this section shall apply if.

(a) A court of session is already specified as a special court.
(b) A special court is already constituted for such offences under any other law for the time being in force.

As the National Human Rights Commission lacks authority and power to eradicate violations of human rights, the Supreme Court in some cases has resorted to the Constitution and various provisions in the Criminal Procedure Code. With the help of the Universal Declaration of Human Rights and other international instruments, the Supreme Court could involve new human rights jurisprudence as mentioned earlier.
The Family Court Act, 1984

The Family Court Act, 1984 was passed for the protection and promotion of human rights of women. The object of the Act is reconciliation and resolving of disputes relating to marriage, maintenance and custody of children etc. In family courts appointment of women is preferred as they are very much acquainted with the problem faced by women. Associations engaged in social welfare will also be associated with conciliation and settlement of disputes.\textsuperscript{86}

The legislature has passed several legislations to protect and promote the human rights of women, to enable them to live with dignity, to eliminate discrimination against women, to protect their health to enable them to participate in the decision-making and developmental process as envisaged under the various international instruments.

The National Human Rights Commission and the National Commission for Women are playing their roles to protect human rights of women. Even then there are serious flaws in enforcing the rights of women due to the lethargy of various enforcement agencies. Adequate measures, including creating of awareness are required for the effective implementation of the various rights guaranteed by our Constitution, other legislations and various international documents.

\textsuperscript{86} The Family Court Act, 1984 Sec.5.