## CHAPTER VII

### CONCLUSION AND SUGGESTIONS

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7.1 Introduction

The evolution, the development and the Constitutional and institutional framework of human rights in India in general and the role-played by the Kerala State Human Rights Commission in particular have been discussed in the foregoing chapters of the dissertation. The philosophy of ‘Human Rights’ in India has traversed a long way, yet the progress through the historical path has always remained gradual and never lost its link with the past. Indian history attests to the fact that human rights jurisprudence occupied a place of prime importance in India’s rich legacy of historical tradition and culture. The promulgation of the Constitution by the people of India on 26th January 1950 ushered in a heroic development of the philosophy of human rights in India. The concept of making India’s Constitution a viable instrument of the Indian people’s salvation, and securing to all persons the basic human rights, is implicit in the Preambular Promises, Fundamental Rights, Directive Principles and various other provisions in the Constitution. Most of the Articles of the Universal Declaration of Human Rights and the two International Covenants are the building blocks of our Constitutional framework.

In tune with the changing global scenario, the Government of India enacted the Protection of Human Rights Act in 1993. The Act provides for the Constitution of a National Human Rights Commission (N.H.R.C.) with jurisdiction all over India. The Government of Kerala constituted the Kerala State Human Rights Commission on 11th December 1998 as per the provisions of the said Act.

The concluding chapter attempts to provide a brief summary of the topics worked upon, the findings thereof and a few critical observations and comments on the working of the Kerala State Human Rights Commission.
The chapter also proposes a few suggestions for the betterment of the Kerala State Human Rights Commission.

As has already been pointed out, this dissertation entitled "Human Rights in India: With Special reference to the Role of the Kerala State Human Rights Commission" is divided into seven chapters including the introduction and the conclusion. A chapter-wise summary in brief is given below. The first chapter of the dissertation is an Introduction, which provides the contents of the study, its purposes and the hypotheses, and also the research methodology followed in the dissertation. The methodology followed has been historical, theoretical and analytical. The second chapter deals with "The Origin and Development of Human Rights in the Global Scenario." This chapter examines the International Declaration of Human Rights, the United Nations and Human Rights and the International Covenants of Human Rights. The third chapter "Human Rights in India - An Overview" elaborately discusses the origin and development of human rights in India and the Constitutional framework of human rights in India. The fourth chapter of the dissertation entitled, "The Protection of Human Rights Act, 1993 and the National Human Rights Commission" deals with the Protection of Human Rights Act and the role-played by the National Human Rights Commission for the protection of human rights. The Fifth Chapter "The Kerala State Human Rights Commission – Constitution, Powers, Functions and Activities" treats the origin, development, powers, functions and activities of the Kerala State Human Rights Commission. The sixth chapter entitled "The Kerala State Human Rights Commission – The Protector of Human Rights in Kerala" examines the activities and working of the K.S.H.R.C, its important
decisions, its recommendations and the summary of personal interviews. Chapter Seven "Conclusion and Suggestions" scrutinises the working of the Kerala State Human Rights Commission. This chapter evaluates the entire study and also proposes an agenda in the form of suggestions and recommendations.

The major hypotheses guiding the investigation are recapitulated below:

1. In modern times human rights are regarded as the most important rights.
2. The United Nations provides a good background for the development of human rights.
3. Human rights are found in ancient Indian thought.
4. The Indian Constitution itself contains ample provisions for the protection of human rights.
5. The Protection of Human Rights Act 1993 and the Constitution of National Human Rights Commission encourage protection of human rights. However, the N.H.R.C. is a weak body that suffers from inherent weaknesses.
6. The Judiciary in India has expanded the scope of Article 21 of the Constitution — "No person shall be deprived of his life or personal liberty except according to the procedure established by law."
7. The Supreme Court is the most important protector of human rights in India.

9. The Kerala State Human Rights Commission is a weak and powerless body that suffers from manifold inherent procedural and structural weaknesses.

The researcher has formulated nine hypotheses. The findings of the study are in conformity with the hypotheses.

7.2 Conclusion and Findings

1. Human rights are rooted in ancient thought and in the philosophical concepts of 'Natural Law' and 'Natural Rights' of man.

2. The United Nations has provided a fertile ground for the development and protection of human rights all over the world.


4. Human rights jurisprudence had occupied a place of prime importance in ancient India's rich legacy of historical tradition and culture.

5. Human rights have been synthesized in the Constitution of India by the preambular promises, the fundamental rights, the directive principles of state policy, the fundamental duties and other constitutional and institutional framework, though they are not referred
to by that name. Most of the rights enumerated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights have also found a place in the Indian Constitution.

6. The judiciary is one of the major protectors of human rights in India. Through its various historic pronouncements the Supreme Court of India has recognised the ‘Fundamental Rights’ as ‘Natural Rights or Human Rights.’

7. The substantive contribution of Indian judiciary to human rights jurisprudence has been two fold: a) The Expansion of Article 21 of the Constitution and (b) the procedural innovation of “Public Interest Litigation.” The expression ‘Life or Personal Liberty’ in Article 21 was given a broad and liberal interpretation by the Supreme Court of India. The term “personal liberty” covers a wide gamut of rights, which are contained in the International Covenant on Civil, and Political Rights, which are available to the citizens of India despite the fact that they are not specifically mentioned in the Constitution.

8. The Protection of Human Rights Act 1993 (Act 10 of 1994) and the Constitution of the National Human Rights Commission under the Act advance the protection of human rights in India. It creates a sense of human rights awareness among the people of India, despite the fact that the N.H.R.C. is a weak and powerless body, with only recommendatory powers.

9. The narrow and limited definition given to the term ‘human rights’ under the Protection of Human Rights Act 1993 restricted the scope, meaning, ambit and operation of human rights in India. As per Section 2(d) of the Act ‘human rights’ means “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenant and enforceable by courts in India.”
10. The Kerala State Human Rights Commission constituted on 11th December 1998 under the Protection of Human Rights Act 1993 has been rendering valuable services to the society in curbing human rights violations and inculcating a sense of human rights in the people of Kerala. As a consequence, people's faith in K.S.H.R.C is gradually increasing.

11. Unlike ordinary courts the procedure and functioning of the K.S.H.R.C. are simple, transparent and speedy. No court fees are to be paid, and 'Rules of Evidence' is not strictly adhered to. The petitioners can directly approach the K.S.H.R.C. for the redress of their grievances regarding human rights. Legal counsels are not necessary, either. The members of the Commission maintain a friendly and cordial relation with the petitioners. The Kerala State Human Rights Commission has effectively utilised the power granted to the Commission by Section 12(a) of the Protection of Human Rights Act many times, taking cognizance of various petitions suo-motu. The Commission rendered its recommendations to the Government for granting immediate interim relief to the victim of human rights violations or members of his/her family as stipulated in Section 18(3) of the Act. The recommendations of the K.S.H.R.C. regarding the appalling conditions of jails, hospitals and mental asylums are praiseworthy and the Government of Kerala implements many of its recommendations.

12. The K.S.H.R.C. can inquire into violations of human rights related to any of the entries in List II and III in the Seventh Schedule of the Constitution only. Thus, it is patent that the Commission is not in a position to inquire into violations of human rights in respect of matters pertaining to any of the entries in List I.
13. As per Section 18 (1) of the Protection of Human Rights Act 1993, the State Human Rights Commission is only a recommendatory and investigative body. If the enquiry discloses the Commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the appropriate authority or Government to take action against the person who has violated human rights or to initiate proceedings for prosecution or any such action as the Commission may deem fit.

14. It is a fact that K.S.H.R.C. is a weak body with no powers of prosecution or the enforcement of its orders. A Commission without the power of enforcing its decisions is absolutely irrelevant and meaningless. In this sense the K.S.H.R.C., does not have a "teeth to bite." It is often ridiculed as an 'impotent body.'

15. K.S.H.R.C. has a paucity of staff. The Chairperson and each member of the K.S.H.R.C. constitute a 'Bench.' The number of sanctioned posts of Assistants is only six of which three are engaged for 'Bench' duty. The number of petitions that come up before the Bench is so large that a single Assistant alone cannot do the work.

16. Annual reports of the K.S.H.R.C. have not been published so far. Monthly bulletins, the only source for the general public to know the activities of the Commission, are yet to be published.

17. Owing to shortage of staff, the library of the K.S.H.R.C. remains closed for the entire day and the documents are not made available for perusal to researchers.

18. The quality and efficiency of the investigation carried out by the 'Investigation Team' of the K.S.H.R.C. are not up to the expected standard, even though an Inspector General of State Police heads
the investigation. Since the 'Investigation Team' is a part of the State Police force, it cannot withstand political and administrative pressures. The investigative team is also suffering from shortage of staff.

19. The K.S.H.R.C. is very often in grave financial straits. Moreover, the headquarters of the Commission is housed in a rented building which does not have even the minimum facilities.

20. The K.S.H.R.C. is overburdened with work such as hearings on petitions, camp sittings, jail and hospital visits, site inspections, conduct of seminars and conferences on human rights. The number of pending cases before the K.S.H.R.C. is alarming. In the year 2002 the Commission was able to dispose of only 2422 petitions out of a total of 4136 petitions received. Even a single 'member' is not available in the Office of the K.S.H.R.C. at Thiruvananthapuram on many of the working days.

21. A sizable number of petitions received by the K.S.H.R.C. are against the Police, jail authorities, and other interrogatory agencies of the State. The Commission has submitted a number of recommendations after inquiry to the Government to take appropriate action. It seems that the Government is least interested in taking action against its civil servants, especially against the interrogatory agencies of the State. The Kerala Government shows little interest in executing the recommendations of the Commission though some unimportant recommendations are implemented by it.

22. Section 18(2) of the Protection of Human Rights Act 1993 clearly lays down that the Commission has the power to approach the Supreme Court and the State High Court, for such directions, orders, or writs, for implementing the recommendations of the K.S.H.R.C. after the completion of the
inquiry held under the Act, for the protection of human rights. But it is a disturbing fact that the K.S.H.R.C. so far has not invoked this provision.

23. It seems that the K.S.H.R.C. does not encourage non-governmental organisations and shows little interest in promoting researches in the field of human rights, though such steps are envisaged in Section 12 (g) of the Protection of Human Rights Act 1993.

24. The differences of opinion among the members of the Commission sometimes create problems in the smooth functioning of the K.S.H.R.C. The judicial arrogance and superiority complex of the 'judicial members' of the Commission as against the 'non-judicial member' also seriously affect the activities of the Commission.

25. The non-availability of a retired Chief Justice of a High Court as the Chairperson is a serious problem encountered by the Kerala State Human Rights Commission. The 'non-judicial member' of the K.S.H.R.C. is appointed by the Government of Kerala simply on religious, caste and political considerations ignoring his/her legal or human rights knowledge or practical experience as envisaged by Section 21(2) (d) of the Protection of Human Rights Act 1993.

26. The armed forces including the navy, army, the air force and para military forces are exempted from the purview of the National as well as the State Human Rights Commissions.

27. The Police and other interrogatory agencies are the main violators of human rights in Kerala. The majority of petitions received by the Commission are against the Police, jail authorities and other interrogatory agencies of the State.
28. As stipulated under Section 30 of the Protection of Human Rights Act, the Kerala Government has not notified a Court of Sessions in each District as a 'Human Rights Court' in order to try the offences connected with human rights violations.

29. Since the Commission has its headquarters at Thiruvananthapuram, which is at the southern extremity of the State, accessibility to it for the people of North Kerala creates severe hardships.

7.3 Recommendations and Suggestions

This study reveals that the Kerala State Human Rights Commission has by and large played its role quite effectively and has always upheld the basic principles of human rights by promoting, protecting and implementing human rights. It has investigated a number of cases involving serious human rights violations, and submitted reports to the Government with a number of recommendations suggesting measures to be taken to curb such human rights violations. However, the work of the Commission is least effective, and is far from satisfactory. The following suggestions are made in order to ensure the efficacy and efficiency of the Kerala State Human Rights Commission. If these recommendations are conceded, it will strengthen K.S.H.R.C. so that everyone can live with dignity and honour in our society. With the said avowed goal in mind the researcher would like to propose the following suggestions and recommendations.

1. To remove the weaknesses and shortcomings of the Kerala State Human Rights Commission, the Protection of Human Rights Act 1993 requires urgent modification and amendment. The Government of Kerala may submit recommendations for effecting amendment in the Act and prevail upon the Union Government to effect the amendment immediately in order to strengthen the K.S.H.R.C. The recommendations are listed below.
a) Like a regular court: the power of prosecution or order enforcement power may be granted to the K.S.H.R.C.

b) The narrow interpretation and limited definition given to the term 'human rights' in Section 2(d) of the Protection of Human Rights Act 1993 may be amended so as to include those rights enshrined in the Universal Declaration of Human Rights and in the International Covenants within the ambit of the term 'human rights' so that the K.S.H.R.C. can function as an effective body.

c) Provision may be made to grant financial and administrative autonomy to the Commission, so as to enable it to grant compensation to the victims of human rights violations or his/her family members from its own fund or to realise the amount from the person or persons who are responsible for the violation of human rights.

d) Considering the non-availability of retired Chief Justices of High Courts to be appointed as Chairperson of a State Human Rights Commission, under Section 21(2) (a) of the Protection of Human Rights Act 1993, the provision may be amended to enable the appointment of a retired High Court or Supreme Court Judge as Chairperson of the Commission.

e) Armed forces and paramilitary forces may be brought under the purview of the National as well as State Human Rights Commissions.

f) The provision for appointment of the non-judicial ‘members’ in the State Human Rights Commission as stipulated in Section 21(2) (d) of the Protection of Human Rights Act may
be amended so as to appoint persons with legal qualifications and special knowledge or practical experience in the field of human rights as members. It would be advisable to include a woman also among the five members.

g) In order to ensure an independent and impartial investigation into the alleged violations of human rights without fear or favour, the investigation team of the State Human Rights Commission may be headed by a retired judge.

h) More powers should be accorded to the National Human Rights Commission and the State Human Rights Commission so as to make them function more effectively.

2. For the better protection of Human Rights the researcher proposes certain amendments to the Indian Constitution

   a) The Indian Judiciary feels handicapped in the matter of further development and a liberal interpretation of the “Right to Life” laid down in Article 21 due to the presence of the term “Procedure Established by Law” whereby the Indian courts can only check the ‘fairness of the procedure’ and not ‘substances of the law’ in the strict sense of the term. To curb human rights violations the expression ‘Procedure Established by Law’ in Article 21 may be replaced by ‘Due process of Law.’

   b) The Indian Constitution may be amended so as to include all human rights strictly in accordance with the Universal Declaration of Human Rights and the International Covenants.
3. The Government of Kerala may provide adequate staff for the smooth functioning of the K.S.H.R.C. including three Assistants, one Public Relations Officer, one Librarian and at least two supporting staffers for the Finance Officer.

4. The vacancies existing in the investigation team of the K.S.H.R.C. may be filled immediately.

5. For the better protection of human rights a separate 'Human Rights Department' with independent charge of a Minister may be created by the Government of Kerala.

6. In order to reduce the workload of K.S.H.R.C. the members of the Commission may be increased from three to five as stipulated under Section 21(2) of the Protection of Human Rights Act 1993.

7. Non-judicial members of the K.S.H.R.C. may be appointed strictly on the basis of merit. Persons having legal qualifications or special qualifications in the field of human rights may be appointed as non-judicial members. Political, religious, and caste considerations may be abandoned.

8. At least one 'member' of the K.S.H.R.C. may be made available in the headquarters of the Commission at Thiruvananthapuram on all working days. The harmonious relationship among the 'members' of the K.S.H.R.C. is a desideratum devoutly to be wished.

9. For providing better convenience to the general public two additional Benches of the Kerala State Human Rights Commission may be constituted, one at Kochi and the other at Kozhikode. If the number of 'members' of the Commission is increased from
three to five, the additional two 'members' can be given charge on
the 'Kochi' and 'Kozhikode' Benches respectively.

10. The Commission may be housed in its own building with all basic
amenities. The Government may take necessary steps to ensure
it and provide financial help for the smooth functioning of the
Commission.

11. The K.S.H.R.C. may invoke the provision of Section 18(2) of the
Protection of Human Rights Act 1993, which entitles the
Commission to approach the Supreme Court and the State High
Court for implementing its recommendations after an enquiry held
under the Act for the protection of human rights.

12. The members of the K.S.H.R.C. may inspect the Police Stations
and lockups. They may verify the records of arrest and check
whether the arrest is in accordance with the directions issued by
the Supreme Court in D.K. Basu's case. If not, the Commission
may recommend action immediately to the Government.

13. Human rights awareness education may be given to all civil
servants including Police.

14. 'Human rights' may be included in the School syllabi from the 5th
standard.

15. The K.S.H.R.C. may promote non-governmental organisations and
encourage researches in the field of human rights as stipulated by
the Protection of the Human Rights Act.

16. Inculcating public awareness is a categorical imperative for
the effectual implementation of the human rights programme.
Mass media should be utilised to the maximum in this regard. To encourage human rights awareness among the general public at least one seminar may be organised by the K.S.H.R.C. in collaboration with non-governmental organisations in all Colleges, Panchayats, Municipalities and Corporations once in a year.

17. The Kerala Government may constitute Human Rights Standing Committee of the State Legislative Assembly for the better protection of human rights. The Leader of the Opposition may Chair the committee.

18. Human rights standing Committees may be constituted in all Panchayats, Municipalities and Corporations. The Chairperson may be the Leader of the Opposition.

19. Annual reports of the K.S.H.R.C. may be published regularly. The Commission may take steps to publish a monthly bulletin to make the general public aware of the activities of the Commission.

20. The Government may take immediate steps to implement the recommendations of the K.S.H.R.C.

21. As provided in Section 30 of the Protection of Human Rights Act, 1993 for the purpose of speedy trial of offences arising out of violations of human rights the Kerala State Government may Notify for each District a court of Sessions as a 'Human Rights Court.' The K.S.H.R.C. may submit recommendations to the Kerala State Government for the speedy notification of Human Rights Courts in all the Districts.
In India the full realization of human rights with international standards is a distant dream. 'Human Rights', the basic natural rights of man should be protected at any cost. So Human Rights Commissions at National as well as State level are to be strengthened with more powers. It will be an added merit to our democracy and legal system.

7.4 Scope for Further Research

1. The possibility of a comparative study with other State Human Rights Commissions.
