CHAPTER - I

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I. Introduction

Human rights are indivisible, inalienable, fundamental, basic and natural rights. Human rights are the rights which are possessed by every human being, irrespective of his or her caste, race, religion, sex, place of birth and nationality. Human rights are those rights which are inherent in our nature and without which one cannot live. The concept of human rights is not static but dynamic. That is the reason why the horizon of human rights is expanding day by day. It is a primary duty of a nation to protect its people. Initially, the activities of a nation were confined to law and order only. But due to civilization, the concept of welfare state has emerged; as a result socio-economic rights have stood in the same position with the individual rights. Therefore, it becomes a challenging task before a nation to set up balance between maintaining law and order and enforcement of human rights. To have a well balance between these two, a nation needs a mechanism, which is well organized, concrete and independent from government because most of allegations of violation of human rights are against the states. The principles adopted in Paris in 1991 are notable in this regard because these principles have emphasized to have an independent national institution for each and every nation for promotion and protection of human rights.

The role of national government in the realization of human rights is particularly significant. Human rights involve relationships among individuals, and between individuals and the states. Therefore, a state is primarily responsible for protecting and promoting human rights of its subjects within its territory. At the national level, rights can be best protected through adequate legislations, an independent judiciary, the enactment and enforcement of individual safeguards and
remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

India has shown her keen interest in establishing and strengthening a national institution for the promotion and protection of human rights before the Third Committee of General Assembly. It introduced a draft resolution wherein it emphasized the importance of the integrity and independence of such national institutions. In the draft resolution it also requested the Secretary General of the United Nations to submit a report to the General Assembly in two years regarding the functioning of various kinds of national institutions and their contributions towards implementing human rights instruments. The interest shown in the international forum by India in the establishment of national institution for promotion and protection of human rights was laudable. The interest shown in international forum implied that India was in favour of establishing such an institution. However, at that time no such institution was established.

The western countries and America, in particular, criticized India for violation of human rights by Indian armed and security forces especially in the state of Jammu and Kashmir. Though it is now well recognized that terrorism is a serious violation of human rights yet western countries especially America never lost an opportunity to criticize India whenever Indian security forces sought to deal sternly with extremists and ultras in Jammu and Kashmir, in North Eastern States and Andhra Pradesh. In addition to the pressure from the foreign countries, pressure was added from domestic front as well as for the creation of a National Human Rights Commission, because of the awareness among the people for protection of human rights.

In order to meet criticism from external and internal side, the government of India decided to establish a National Commission for the redressal of grievances of human rights violations. On 28th September 1993, the President of India
promulgated an ordinance which established a National Commission for Human Rights. Thereafter, a Bill on human rights was passed in the Lok Sabha on 18th December, 1993 to replace the ordinance earlier promulgated by the President of India. The Bill received the assent of the President of India on January 8, 1994. The National Human Rights Commission of India (NHRC) was established under the Protection of Human Rights Act 1993.

The National Human Rights Commission of India comprises of a Chairperson who is a former Chief Justice of the Supreme Court, and four other members, a present or former judge of the Supreme Court, a present or former Chief Justice of a High Court and two persons having knowledge of, or practical experience in, matters relating to human rights. The President of India appoints the Chairperson and other members of the Commission based on the recommendations of the Selection Committee comprising of Prime Minister of India, the Speaker of the Lok Sabha, Home Minister, the Leader of Opposition in Lok Sabha and Rajya Sabha and Deputy Chairperson of the Rajya Sabha. The Protection of Human Rights Act 1993 also calls for the establishment of State Human Rights Commissions in order to complement the functioning of the National Human Rights Commission of India as also to ensure that redress mechanisms are within easy reach of complainants across the country. The functions of the National Human Rights Commission of India and the powers that enable the effective discharge of its functions are important in this regard.

The National Human Rights Commission of India may inquire into and investigate complaints of human rights violations, their abetment, or the negligence in the prevention of such violations by a public servant. Such inquiry may be undertaken through its own initiative (suo motu) or based on petitions presented by a victim or any person on his or her behalf. These suo motu powers are particularly relevant in situations that involve persons belonging to the marginalized sections of society who do not have the financial or social resources to lodge individual
complaints. The National Human Rights Commission of India thus, has the power to take its own initiative and protect the rights of the people.

The National Human Rights Commission of India has been vested with the powers similar to those available to civil courts while trying a suit. This means that the Commission can summon and enforce the attendance of any person, examine under oath; require documents and items to be produced before the Commission, receive evidence on affidavits, requisition of any public record from any court or office and examine witnesses and documents. These powers allow for the effective functioning of the National Human Rights Commission of India as a quasi-judicial institution.6

Upon the completion of an inquiry, the National Human Rights Commission of India may make recommendations to the government or the authority concerned for the initiation of proceedings for prosecution or any other actions as it deems fit. It may also approach the Supreme Court or the High Courts for a direction, order or writ, as such courts may consider necessary. Recommendations may be made to the government or the authority concerned for a grant of immediate interim relief to the victim as is considered necessary, and a copy of the inquiry report with the recommendations may be sent to the authorities concerned. The National Human Rights Commission of India may intervene, with the court’s permission, in proceedings involving human rights violations.7

The National Human Rights Commission of India undertakes inspection and makes recommendations on living conditions in jails and other institutions. It may also monitor existing legal and constitutional mechanisms for protecting human rights and measures for their effective implementation, and suggest mechanism that ought to be instituted to better protect human rights.

The National Human Rights Commission of India is mandated to sensitize the government about its constitutional obligations to accede and honour international human rights treaties. The National Human Rights Commission of
India is also entrusted with spreading human rights literacy and awareness and encouraging the effort of non-governmental organizations and institutions working in the field of human rights. Since its inception, the National Human Rights Commission of India has registered number of cases, which mirrors the increasing awareness amongst the people about issues pertaining to human rights. Of late it has taken up issues relating to child labour, prostitution, and AIDS, thus making a shift from its focus solely on civil and political rights to economic and social rights.

An individual who has suffered human rights violations or any person on his or her behalf can approach the National Human Rights Commission of India to lodge a complaint, which may be done in any language. The complainant is required to approach the National Human Right Commission of India within one year of the commission of the alleged violation. Further the National Human Rights Commission of India cannot undertake inquiry of a matter that is pending before any other Commissions. No fee is charged for registering a complaint, hence removing all financial barriers that may have acted as a hindrance to grievance redressal. The National Human Rights Commission of India has prescribed a format in which the complaint must be submitted.

The efficiency of the National Human Rights Commission of India can be gauged by assessing the level of compliance with the basic standards set up by the Paris Principles. The ambiguous and restrictive definition of ‘human rights’ in the Protection of Human Rights Act 1993 restricts the rights enforceable to those provided for in the Constitution of India, the national laws of India and the International Conventions and excludes those other International Human Rights Instruments to which India is not a party.

The appointment process lacks absolute independence and is not free from political influence as recommendations to the President of India carry a pro-government overtone since the Prime Minister, the Home Minister, the Lok Sabha
Speaker and the Deputy Chairman of the Rajya Sabha are usually members of the ruling party and are able to form two-third majority in the Selection Committee.

The National Human Rights Commission of India's effectiveness is also undermined by the government, which has failed to carry out the National Human Rights Commission of India's recommendations. In its first annual report, the National Human Rights Commission of India called for amendments to the Protection of Human Rights Act 1993. The government did not act upon the recommendations and the powers of National Human Rights Commission of India are still limited to conducting inquiries into complaints and making recommendations.

The Commission's annual reports are the only source of information available to the public. However, these reports are published after significant delay and are neither comprehensive nor complete. The annual report of the National Human Rights Commission of India is submitted to the Central government. The Central government presents the report before each House of Parliament along with the memorandum of actions taken or proposed to be taken on the recommendations of the Commission and the reasons for non acceptance of recommendations if any, in accordance with Section 20, Para 2 of the Protection of Human Rights Act 1993. By the end of December 2008, the Commission has placed a number of recommendations for making the functioning of the Commission more effective for the promotion and protection of human rights.

II. Purpose of Study

The National Human Rights Commission of India is required to maintain impartiality, objectivity and integrity in discharging its duties. This role can be expected to be fulfilled only when the National Human Rights Commission of India is free from political pressure and becomes autonomous institution like other constitutionally established institutions. While investigating the composition, power and functions of the National Human Rights Commission of India it has
been found that certain provisions of the Protection of Human Rights Act 1993 are defective in nature. It has therefore, become essential to address the problems. Though the Act is amended, there is a feeling that these amendments do not go far enough to remove the fears and apprehensions of the people.

The investigator feels that such an investigation has a very effective role to perform in the protection and promotion of human rights in the country. Another important issue is the extent of its scope that the investigator feels need to be examined. In view of the above, an exhaustive study on the working of the Commission has been able to fulfil its mandate needs to be analyzed. However, no such extensive academic research evaluation in the opinion of the researcher has been undertaken till date. Hence, the present study is undertaken.

In analyzing the working of the National Human Rights Commission of India, the investigator emphasizes to analyze the extent to which the Protection of Human Rights Act 1993 provides for a proper definition of human rights, the proper pattern of working of the Commission, the effectiveness of the reports submitted to the government, the legal effect of concluding observations of the Commission, the difficulties faced by the Commission, the nature of technical and procedural requirements that are to be adopted to make it more effective and in tune with other International Human Rights Bodies under the treaty system.

III. Structure of Study

The investigator has made an attempt to find out the short comings of the very statute under which the National Human Rights Commission of India comes into existence and tried to find out the probable remedies which can make the Commission effective. The investigator also has made an attempt to transform the National Human Rights Commission of India from a recommendatory body to a body having constitutional status for its better effectiveness.

For this purpose, the investigator has divided the research work into eight Chapters. In his Chapter I, entitled “Introduction” the investigator has made an
attempt to give an introduction of the National Human Rights Commission of India, the purpose of study, the structure of study and the research methodology adopted. In his Chapter II, entitled “Evaluation of Human Rights” has made an attempt to draw an outline of original development of human rights. Human Rights are basic rights. They are indivisible rights. These rights are essential for intellectual, moral and spiritual development of a human being. The concept of human rights originated in Greece first. The people of Greece were very much aware of human rights and they recognized human rights as natural rights. The Greek play “Antigone” is the remarkable example, which showed how the people of Greece recognized human rights. After Greece, the people of Rome respected human rights. The people of Rome were very systematic and practical. They studied the law systematically and divided the law into two categories namely “jus civili” and “jus gentinum”. While the former was applicable to the citizens of Rome, the later was applicable to all citizens of Rome as well as to non citizens of Rome. In the middle ages, the theory of natural law was analyzed and it was shown that the theory of natural law and reasons were interrelated to each other and natural law as a higher principle of law was to be derived from reasons. In middle ages, some prominent scholars namely Augustine and Thomas Aquinas took the responsibility in development of natural law. During the classical period (16th and 17th centuries), the social contract theory entered into the arena of natural law theory and individuals rights were considered in respect of society. Thus the natural law theory got a new dimension from the prospective of human rights. The promoters of social contract theory established human rights as natural rights. In the 19th centuries, John Rawls and Ronald Dwokin took the charge of development of human rights.

The Magna Charta paved the way of development of human rights through a new dimension. After Magna Charta, it was Bill of Rights which set forth human rights as guaranteed rights. During these periods, human rights were enjoyed and
respected by many religions, particularly Hindu and Muslim. Further, the French and American Revolutions shaped the human rights in consolidated form.

During 20th century, particularly after the 1st and 2nd World War, there was a great consciousness among the states to protect and promote human rights. It led to the formation of United Nations under the United Nations Charter. The adoption of United Nations Charter was a milestone in the development of human rights. After that United Nations has been taking steps for protection and promotion of human rights by adopting various International Instruments like Universal Declaration of Human Rights, International Covenant on Political and Civil Rights, International Covenant on Economic, Social and Cultural Rights, and Convention Against Torture.

India being one of the largest democracies in the world always pays high respect to human rights. She has shown her interest in establishing and strengthening a national institution for the promotion and protection of human rights. That is why the National Human Rights Commission of India has been established under the Protection of Human Rights Act 1993 and is in conformity with the Paris Principles adopted at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991. The Commission is an embodiment of India's concern for the promotion and protection of human rights. In early 1990s India felt the need of establishing a Commission as a positive response to the criticisms of the foreign governments in the context of political unrest and violence in Punjab, Jammu Kashmir and North-Eastern states. Indeed the National Human Rights Commission of India has become the focal point for enforcement of new generation of human rights protecting social order, integrity and security of the country.

In his Chapter III entitled "Protection of Human Rights-A Challenge to the World Community" the investigator has made an attempt to show the importance of protection and promotion of human rights in the world and the institutions under various legal systems of the world and how far these are able to protect and
promote human rights. The primary responsibilities for protection and promotion of human rights lies on the United Nations and its agencies, particularly on Charter based bodies and Treaty based Bodies of United Nations. The Charter based bodies are classified into two groups. The first group consists of principal bodies like Security Council, General Assembly, the Secretariat, the Human Rights Council and the Commission on Status of Women while the second group consists of Sub Commissions on the Promotion and Protection of Human Rights and United Nations Permanent Forum on Indigenous Issues. These Charter based bodies have been taking steps by adopting various resolutions towards the protection and promotion of human rights. However, since their actions are in the form of resolutions, the implementation of these resolutions solely rests on the member states of United Nations. That is why the success rate of implementation is very pathetic. The treaty based bodies are also prominent agencies of United Nations in promotion and protection of human rights throughout the world. But due to over dependence on the member states, these bodies have failed to meet out the challenges before it.

Besides these international institutions, there are some regional bodies which have been taking steps in promotion and protection of human rights. The success rate of regional bodies is comparatively more than the international institutions. The European Convention on Human Rights and African Charter on Human and Peoples’ Rights are the two prominent instruments at regional level.

Since the protection and promotion of human rights mainly rests on the nations, the nations are most responsible agencies in this regard. According to the Paris Principles adopted at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations in Resolution 48/134 of December 20, 1993, it is the primary duty of a nation to constitute a mechanism at national level to protect and promote human rights. Most of the nations have shown their keen interest in establishing a national
mechanism to protect and promote human rights in their own jurisdiction. In doing this task, nations have to keep a balance between the law and order and human rights. Therefore, it becomes a challenging task before a nation to protect and promote human rights and at the same time maintaining law and order. That is the reason why the protection and promotion of human rights becomes a challenge before the world community.

In his Chapter IV entitled “Protection of Human Rights in India” the investigator has made an attempt to highlight the mechanisms available under the Indian legal system to protect and promote human rights in India. India is a democratic country. Being a part of the world, India has shown her keen interest in protection and promotion of human rights. The Indian legal system is quite comprehensive in granting rights. The Constitution of India in its Part III and Part IV describes the Fundamental Rights and Directive Principle of State Policies. The Fundamental Rights incorporated in part III are enforceable by judiciary while the Directive Principles of State Policies are directions to the state and are not enforceable by judiciary. There are some other valuable rights not given place in Part III and Part IV of the Constitution of India but they are placed in other parts of the Constitution. Under the Constitution of India the Judiciary has been created as a protector and guarantor of these rights. In violations of these rights, people can move to the Judiciary for seeking justice. In addition, there are some statutory mechanisms or bodies created under various statutes for protection and promotion of human rights such as National Commission for Women, National Commission for Schedule Caste and National Commission for Schedule Tribe.

India has deeply stressed on protection and promotion of human rights. It can be understood from the enactment of the Protection of Human Rights Act 1993 by Parliament of India. Indeed, it shows India’s commitment towards protection and promotion of human rights. Under the Protection of Human Rights Act 1993, India has established three agencies namely National Human Rights Commission at national level, State Human Rights Commissions at state level and Human
Rights Courts at district level. Out of these agencies, only National Human Rights Commission is effective compared to the other two agencies. The creation of State Human Rights Commissions is not mandatory that is why only few states have established it. The condition of Human Rights Courts is more pathetic. Though National Human Rights Commission of India is only effective mechanism in protection and promotion of human rights in India, however, this mechanism is not out of criticism. The mechanism created at national level has so many shortcomings, which make it weaker. There is a dire need to address these shortcomings by the concerned authorities to have an effective and successful mechanism as promoter and protector of human rights in India.

The Investigator in his Chapter V entitled “The Working of National Human Rights Commission” has made an attempt to analyse the working methods of the National Human Rights Commission of India. Indeed, the jurisdiction of the National Human Rights Commission of India is wide. Therefore, the National Human Rights Commission of India needs a comprehensive and pervasive method to perform its duties assigned by the Protection of Human Rights Act 1993. The methods and procedures to be followed by the Commission are coded in the National Human Rights Commission (Procedure) Regulations 1997. The Commission has six wings through which it works. These six wings are primarily responsible for handling and disposing of complaints either made to it or suo motu cases. In this Chapter, the investigator tries to throw light on the working procedures of each and every wing of the Commission. In addition, there are sub agencies and bodies of the Commission through which it works such as, Special Rapporteurs, Core Groups and Expert Groups. These sub agencies also assist the Commission in promotion and protection of human rights in India. Thus the National Human Rights Commission of India has been working under a wide network for promotion and protection of human rights in India.

The Investigator in his Chapter VI entitled “A Critical Analysis on the Role of the National Human Rights Commission” has made an attempt to highlight both
the achievements and drawbacks it has faced. Since its inception, the National Human Rights Commission of India has undoubtedly done a remarkable job in protection and promotion of human rights in India. The National Human Rights Commission of India has succeeded to raise the image of nation in the community of states. The Commission has been disposing of complaints made before it. The Commission has, by applying suo motu powers, taken initiative in taking cognizance of cases relating to violation of human rights. In the Chapter, a state wise performance of the National Human Rights Commission has been considered since its inception. This analysis shows the success rate of disposing of cases, the amount of pending of cases before the Commission and the technical difficulties it has faced. The National Human Rights Commission of India has been performing all duties assigned to it under the Section 12 of the Protection of Human Rights Act 1993 effectively. However, in exercising its powers, the Commission has been facing problems, particularly handling cases of violations of human rights by armed forces. In addition, financial autonomy and staff members of the Commission are another two vital concern area, which compel the Commission to feel its dependency on the Central government. To make the Commission a powerful organ, there is a need to address the concern areas. It is well reflected in the analysis of the Commission's annual reports. The annual reports submitted by the Commission show its competency and capacity as well as deficiencies of the Commission.

The Investigator in his Chapter VII entitled "Comparative Studies of National Human Rights Commission of India with other Commissions of the World" has made comparative studies of the functions of National Human Rights Commission of India with the other Commissions of the world at international, regional and national level. At international level, the agencies responsible for protection and promotion of human rights are operating effectively. Similarly the regional mechanisms, particularly the mechanism created under the European Convention on Human Rights and the mechanism created under the African
Charter on Human and Peoples Rights are notable. These mechanisms have done a tremendous job in protecting and promoting human rights in their regions. The methods of work and infrastructures they used are very effective and useful. Therefore, there is a dire need to study these regional mechanisms. In addition, there is a need to examine the national institutions established by various nations for promoting and protecting human rights in their respective jurisdictions. Though it is not possible to examine in detail each and every national mechanism, however, an attempt has been made to cover up at least ten such national mechanisms, which are effective and have done a credible job in promoting and protecting human rights in their own territory. The working method and composition of these institutions are examined and compared with the National Human Rights Commission of India so that a clear picture of effectiveness of the Commission’s functions can be achieved.

In his last Chapter VIII, entitled “Conclusion”, the investigator tries to hold a complete picture of the Commission in its present form and he feels that there are so many areas that need to be amended so that India, as a biggest democracy of the world, can protect and promote human rights. Undoubtedly, the National Human Rights Commission of India is a recommendatory body and most of its recommendations have been accepted by the Central government. There is, however, a feeling that the National Human Rights Commission of India has not been able to achieve its full potentiality. The National Human Rights Commission of India is not a constitutional body like Election Commission of India or Finance Commission of India; rather it is a statutory body. As a statutory body, the National Human Rights Commission of India has certain limitations. These statutory limitations lead to feel that the Commission is not an independent body. Therefore, it has to work under pressure which hampers its effectiveness. Since its inception, there have been demands that the statutory limitations should be addressed. However, in 2006 some amendments were introduced to the Protection of Human Rights Act 1993. But these are not adequate and sufficient to address the
The investigator feels that the recommendations forwarded by Justice Ahmede Committee should be implemented. In addition, the investigator, from his own, tries to make an attempt to make some suggestions in the form of recommendations. The investigator does believe that if the shortcomings are removed by amending the Protection of Human Rights Act 1993, and the suggestions in the form of recommendations are implemented, the very purpose of the creation of the National Human Rights Commission of India would be effective in real sense.

IV. Research Methodology

Methodology is the essence of study of a particular subject. Research methodology is a systematic investigation to give new knowledge about phenomenon or problem.

The methodology adopted in the preparation of PhD thesis on the subject “AN ANALYTICAL INVESTIGATION INTO THE WORKING OF THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA” comprises of the followings

Primary Sources

The primary sources are the opinions expressed by several persons working in the National Human Rights Commission of India regarding functioning and activities of the National Human Rights Commission in its desired field. For this purpose the Investigator has visited the office of the National Human Rights Commission located in New Delhi on October 2010. During four days visit, the statutory limitations. These are needed to be examined with reference to internationally accepted standards, particularly Paris Principles. These principles provide that a national institution must have a broad mandate; pluralism, including representative composition; wide accessibility; effectiveness; independence; sufficient resources and adequate powers of investigation.
Investigator had got an opportunity to observe how the functions of the Commission are conducted.

Secondary Sources

Secondary sources consist of materials collected from research articles, books, journals, internet and statutes. For this purpose the Investigator has collected lot of materials relating to the protection of human rights in India by visiting libraries like Library of National Human Rights Commission of India, Lakhminath Bezbarua Library of Dibrugarh University, KK Handique Library of Gauhati University, Administrative Staff college Library, Khanapara, Guwahati and visiting internet café and the Office of the Assam State Human Rights Commission. In addition, the investigator has studied various case laws decided by the Supreme Court of India and the annual reports of National Human Rights Commission of India.

Hypothesis

The Protection of Human Rights Act 1993 needs to be amended to make the National Human Rights Commission of India more effective instead of continuing it as a recommendatory body.

Conclusion

The role of the National Human Rights Commission of India is to be a human rights monitoring agency in India. Being a national institution, the role of National Human Rights Commission of India is important in international platform. The National Human Rights Commission of India must be a body that critically analyses the human rights situation in the country. The National Human Rights Commission of India can contribute towards the betterment of human rights in India. It is neither a court, nor a spokes person of government. The National Human Rights Commission of India must be an independent, credible and active institution that looks forward to addressing the deeper issues concerning human rights in India. For better effectiveness of the National Human Rights Commission of India, it may be transformed from a recommendatory body to constitutional body.
References


4. Ibid at page 916.

5. Section 4 of the Protect of Human Rights Act 1993.


7. Section 18 of the Protect of Human Rights Act 1993.