CHAPTER - IV

THE PROTECTION OF HUMAN RIGHTS IN INDIA
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I. Introduction

A democratic society is an open society where the public participation is maximum and effective. The government has to facilitate such a process. People can effectively participate and contribute only when they are empowered with knowledge of their rights and avenues of redress. The first step in this direction is to secure basic human rights within the framework of the constitution, actions of legislation and transparent political process.¹

India being largest democracy in the world always pays high respect towards protection and promotion of human rights. The Constitution of India, which came into force on 26th January 1950, is the longest Constitution in the world. It is divided into twenty-six (26) parts and twelve (12) Schedules. The Preamble, Part III of the Constitution consisting of Fundamental Rights, Part IV containing Directive Principles of State Policies and Part IV (A) containing Fundamental Duties, constitute the human rights framework in the Constitution of India.

The Preamble outlines the aims and aspirations of the people that have been translated into various provisions of the Constitution.² The Constitution of India is a declaration of the rights and freedom that India seeks to secure all its citizens and the basic type of government and policy to be established. The preamble serves as a reference for interpretation of an ambiguous law or statute³. If the terms used in the Constitution are ambiguous, then some assistance can be taken from the objectives enshrined in the Constitution and the construction that fits the preamble should be given preference.⁴
The Part III of the Constitution of India provides to the people certain rights and freedoms. Allan Gledhill says that taken as a whole Indian fundamental rights are dynamic realities. The interpretation of the rights has often demanded an approach of a kind not contemplated by ordinary rules of interpretation of statutes. Bearing a few exceptions, the fundamental rights secured to the individual are limitations on the state action. They are not meant to protect persons against the conduct of private persons. Private action is sufficiently protected by ordinary law of land. It is against the right of the state that individual needs constitutional protection. One of the main characteristics of fundamental rights is their justifiability. The fundamental rights contained in Part III of the Constitution of India are enforceable or justifiable rights. This implies that on violations or denial of fundamental rights, a citizen can file a petition in the Supreme Court seeking relief. Article 32 protects fundamental rights of a citizen by giving the courts the power to issue writs. This corrective power is itself a fundamental right. The sanctity of fundamental rights can be gauged from Article 13 of the Constitution of the India, which mandates the state to ensure that no ‘law’ including orders, rule, regulations notifications, ordinances, customs or usages is in violation of any fundamental rights. In the event that a law contravenes any fundamental rights, it can be declared invalid by the courts. The Supreme Court of India has emphasized that the Constitution is supreme in India, and the Parliament derives its authority from the Constitution. The amending power of the Parliament with regard to Constitution of India is limited and any Act or law that subverts or abrogates the Constitution of India can be declared invalid.

Fundamental rights limit on state action and are basically enforceable against the state and not private persons, bearing a few exceptions. There are two types of rights; those that can be enforced against anyone, including the state, are known as horizontal rights, where as those rights that can be enforced against the state are called vertical rights. The vertical rights include Article 14 (Equality before law), Article 19 (Right to freedom) and Article 21 (Right to life). Examples
of horizontal rights include Article 17 (Abolition of Untouchability), Article 18 (Abolition of Titles), Article 23 (Abolition of Forced Labour) and Article 24 (Prohibition of employment of children in factories). ‘State’ in this context refers to the government and Parliament of India, as well as legislature of all the states and any authority, local or other authorities, within the territory of India or under the control of the government. The term ‘local authority’ includes authorities such as District Boards, Panchayats, and Municipalities. The term other authorities includes anybody or organization that is an instrument or agency of the state.

II. Protection of Civil and Political Rights

Article 14 guarantees equality before law and equal protection of law to all persons. This means that no one is above the law and every person regardless of rank and status is subject to the jurisdiction of ordinary courts. Equality before law implies that there should be no discrimination between people who are similarly placed. Thus, it allows different treatment for unequal. The reason behind this is that a uniform application of law to all is inconsistent with the notion of equality. The equal treatment of unequal is as bad as unequal treatment of equals. The application of law therefore requires classification of people into groups. However, a valid classification must be reasonable and should be based upon real and substantial distinction bearing reasonable and just relations to the needs in respect of which the classification is made. Thus valid classification would firstly be founded on an intelligible differentia, and secondly, have a distinct relation to the subject in question.

Articles 15 and 16 are further extension to the general principle embodied in Article 14. They are available to citizens only and not to non citizens. These articles are inserted in the Constitution of India with a view to keep equality among unequals. The state is empowered to make discrimination to bring the unequal section to the main stream of the society. For that purpose the state is entitled to make special provisions for women and backward classes of society.
provides for equality of opportunities in public employment for all citizens. The scope and extent of this Article has been examined in the historic case properly known as Mandal Case\textsuperscript{15}, where the Supreme Court held that caste is a relevant factor for determining backwardness but reservations should not exceed fifty percent limit at any time.

Article 17 provides for abolition of untouchability. In pursuance of this Article the Government has enacted the Protection of Civil Rights Act 1955 to make the law more stringent in removing untouchability from society. This is a horizontal right and is enforceable against private individuals as well as state. Article 18 prohibits the state from conferring titles on any person whether a citizen or non-citizen exempting military and academic distinctions.

Fundamental freedoms play a very significant role in democratic country like India. The fundamental freedoms are the backbone of democracy. The Constitution of India has recognized six fundamental freedoms. The freedoms guaranteed under Article 19(1) are available to the Indian citizen’s only\textsuperscript{16}. A non-citizen cannot claim the Fundamental Rights guaranteed under Article 19(1)\textsuperscript{17}. However, none of these rights are absolute, and are subject to ‘reasonable restrictions’ in the larger interest of the community as well as of the state the restrictions on these freedoms are provided in clauses (2) to (6) of Article 19 of the Constitution of India. The provisions of fundamental freedoms as incorporated in the Part III of the Constitution of India are in conformity to international norms like the Universal Declaration of Human Rights (Article 3), International Covenant on Civil and Political Rights (Article 9) and International Covenant on Economic, Social and Cultural Rights (Article 8).

It is to be noted that the restrictions imposed on the rights guaranteed by Article 19 for implementing any one of the directive principles embodied in Part IV of the Constitution of India is generally regarded as reasonable. It is now settled that under certain circumstances the restrictions may amount to total prohibition\textsuperscript{18}. 
However, when the restriction reaches the stage of prohibition special care has to be taken by the court to see that the reasonableness is satisfied. The greater the restriction, the more will be the need to scrutiny by the Supreme Court and the High Courts\(^\text{19}\). When a law is found to be in violation of any fundamental rights guaranteed by Article 19(1), the burden will be on state to prove that the law is protected under clause (2) to (6) of Article 19\(^\text{20}\).

The Constitution of India stipulates certain basic rights of accused persons that must be regarded by criminal justice system. An individual cannot be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. In other words, law creating an offence cannot be applied retrospectively. For instance, a provision creating the offence of dowry death was inserted into Indian Penal Code in 1986\(^\text{21}\). Under the new provision, in the event of death of a woman caused by burns or bodily injury within seven years of marriage, if it is shown that before her death she was subjected to cruelty by her husband or his family members in connection with dowry it shall be assumed as ‘dowry death’ caused by her husband. However, this provision will not apply to deaths caused prior to 1986 even though the conditions of injury and dowry demands as stipulated in Section 304B of Indian Penal Code are satisfied.

Another critical right available to an accused person is that he or she cannot be prosecuted and punished for the same offence more than once\(^\text{22}\). It is known as double jeopardy and the rational behind such a prohibition is that a person cannot be harassed or punished repeatedly for the same offence. Further the Constitution of India provides safeguards against self-incrimination and states that an accused person cannot be compelled to be a witness against himself or herself. Self incrimination would imply providing of information based on the personal knowledge of the accused person and would not include the mechanical process of producing documents in court which may throw light on any of the points in controversy\(^\text{23}\). For instance if an accused person is asked to produce a document
containing his writing or thumb impression or signature so that it can be compared for the purpose of identification it would not amount to self incrimination\textsuperscript{24}.

Article 21 of the Constitution of India guarantees all citizens and non-citizens protection of life and personal liberty. The Supreme Court has interpreted the right to life broadly and stated. "A right to life cannot be limited to an animal like existence. It must include the right to life with dignity as well as a right to basic necessities of life, and right to engage in activities that allow individuals to express themselves"\textsuperscript{25}. The Supreme Court elaborating on the purview of Article 21 stated that life is all those things that give meaning to an individual’s life, including tradition, heritage and culture, and preservation of the same. The expansive interpretation of Article 21 by the judiciary had led to the inclusion of several rights and their elevation to the status of fundamental rights\textsuperscript{26}. Thus the expression personal liberty in Article 21 covers a variety of rights that constitute personal liberty of the individuals, some of which have been raised to the status of fundamental rights and have been accorded additional protection under Article 19. The right to privacy has been interpreted to be an essential ingredient of personal liberty\textsuperscript{27}, which is a right to be free from restrictions or encroachments\textsuperscript{28}. Trapping of telephones has been held to be a violation of right to privacy and is permissible only if strict procedural safeguards are in place to ensure that privacy of individuals is not interfered with arbitrarily\textsuperscript{29}. The Courts have observed that the last word on the question of justice and fairness does not rest with the legislature. A person can be deprived of his life and personal liberty if two conditions are complied with first there must be a law and second, there must be a procedure prescribed by that law, provided the procedure is just, fair and reasonable\textsuperscript{30}. The procedure must not be arbitrary and unreasonable.

Article 22 provides safeguards against arbitrary arrest and detention. Similarly the Constitution of India provides some electoral rights. Citizens above the age of eighteen years are entitled to vote. A person can, however, be disqualified from exercising the right to vote on ground of 'non-residence'.
'unsoundness of mind', 'crime or corrupt or illegal practice'. Further in 2002, the Supreme Court held that the 'freedom of speech and expression' includes right to impart and receive information and the freedom to hold opinions and a democracy cannot survive without free and fair election, without free and fairly informed voters.

The civil and political rights are most valuable human rights. The Constitution of India has addressed these rights as fundamental rights under the umbrella of Part III of it. These rights are made enforceable by courts and state is made responsible for safeguarding the fundamental rights. It has been observed the involvement of the Judiciary particularly the Supreme Court of India in promoting and safeguarding the fundamental rights as a guarantor of it.

III. Protection of Economic, Social and Cultural Rights

Part IV of the Constitution of India (Art 36-51) contains the Directives Principles of State Policy (DPSP). These principles are instrument of instructions to government to help in achieving certain ends by their actions. The Directive Principles of State Policies enshrined in Part IV of the Constitution of India are aimed at securing social and economic freedom of the people by appropriate actions. They are the embodiment of the principles of social engineering and ideals of social order that contain popular aspirations and expectations of the people, more particularly, the ideals of economic democracy. They are in the nature of directions to the legislature and the executive that they should exercise their authority in such a manner as to ensure due respect for, and observance of these principles. Although these directions are not enforceable by the courts, are nevertheless fundamental in the governance of the country. They are the imperative basis of state policy and the Constitution of India directs the state to apply these principles in making laws. Moreover, the courts look to these directives as yardstick for determining the reasonableness and public purpose.
In other words, Directive Principles of State Policies are basic guidelines for proper functioning of the state. However, a Directive Principle is required to be implemented by legislations. The Directive Principles of State Policies are regarded as being fundamental to governance and required the laws formulated by states to be informed by these principles. The directions as provided in Part IV of the Constitution of India are in conformity to the international norms such as various provisions of International Covenant on Economic, Social and Political Rights and Universal Declaration of Human Rights.

The paradox between the automatic justifiability of civil and political rights and non-justifiability nature of economic, social and cultural rights is clearly evident. However, as the ultimate authority on Constitutional law, the Supreme Court has taken an active role in developing the power of judicial review as an integral part of its work. These decisions are binding on all courts within the territory of India. Failure to so is punishable with contempt of court. The broad scheme of Part IV on Directive Principles of State Policy reflects the range of socio-economic rights.

Thus the Directive Principles of State Policies contained in Part IV of the Constitution of India set out the aims and objectives to be taken up by the states in governance of the country. It is through the power of judicial review that the Supreme Court has been successful in expanding the scope of economic, social and cultural rights from Directive Principles of States Policies to rights enforceable before the courts. In Re Kerala Education Bill case, the Supreme Court believed that in determining the scope of fundamental rights, the Court should adopt “the principles of harmonious construction” and should attempt to give effect to both the fundamental freedoms and directive principles as much as possible. Thus, the Supreme Court developed the view that there was no conflict between the Fundamental Rights and Directive Principles of State Policy, and they were designed to complement each other in realization of a welfare state, as envisaged in the Preamble of the Constitution of India.
After many judgments over the supremacy of fundamental rights, the Supreme Court held that a hierarchy cannot be sustained within the Constitution. The Directive Principles of State Policies and Fundamental Rights have been held to be both complementary, as well as, supplementary to one another and that Directive Principles and Fundamental Rights must strike a balance and that there is no conflict among them. The Directive Principles prescribe the goal or end that is to be attained, and Fundamental Rights are the means to achieve such ends.

The Judiciary has applied the doctrine of harmony and balance between Directive Principles of State Policies and Fundamental Rights when deciding relevant matters, for example, in cases of Mohini Jain Vs State of Karnataka and Unnikrishnan Vs State of Andhra Pradesh it was held that the free primary education for children unto age of 14 years is a Fundamental Right under Article 21 of the Constitution of India as it directly flows from the right to life. In pursuance of Article 45 and above judgments, the Constitution (Eighty Sixth Amendment) Act 2002 inserted Article 21A and made education for all children from the age of six (6) to fourteen (14) a Fundamental Right.

Legislations, such as the Caste Disabilities Removal Act 1950, Indecent Representation of Women (Prohibition) Act 1986, Equal Remuneration Act 1976 and Commission of Sati (Prevention) Act 1987 have been enacted to give meaning and content to the provisions of the Constitution. The Environment Protection Act 1986 provides for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. Therefore, such judgments and legislation seek to realize Directive Principles by giving them legal authority.

The economic and social rights are also part of human rights. The Constitution of India has addressed the economic and social rights under the umbrella of Directive Principles of State Policies. These are not made enforceable by courts. These are simply directions to state machinery. However, it has been
observed that the Judiciary has interpreted these rights in the same foot of fundamental rights. Now the state machinery starts to give importance to socio-economic rights. It is a positive mode of state machinery in matter of promotion of human rights.

IV. Institutional Safeguard to Human Rights in India

In India, the judiciary plays a leading role in protecting and enhancing human right. The judiciary ensures that human rights are not violated legally. Article 32 of the Constitution of India confers the enforcement of fundamental rights on the Supreme Court. Under Article 32, every citizen has a right to request through a letter the Supreme Court directly to enforce the fundamental rights. The Supreme Court has the power to issue orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto whichever may be appropriate. This power to issue writs has been extensively used by both the Supreme Court and the High Courts in India.44

Moreover, the judiciary has interpreted the Constitution of India in various cases, expanding the scope of human rights in India. The judiciary has interpreted Article 21 as “the right to life includes the right to live with human dignity and all that goes along with it, namely the basic necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings”.45 In Bandhu Mukti Marcha46 Case, the Supreme Court expressed that right to life with human dignity must include protection of the health and strength of workers, men and women and of tender age of children against abuse, opportunities, and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state, neither the Union Government nor the State Government has the right to
take any action which will deprive a person of the enjoyment of basic essentials.\(^{47}\)

The government does face problems in achieving these ideals due to social and economic backwardness of the nation and its huge population. Though these are ideals and the state is attempting to reach that ideals like any society, there are always some shortcomings which need to be taken into consideration.\(^{48}\) In another judgment the Supreme Court held that, “Right to life in Article 21 includes protection of health and the strength of the worker. The expression ‘life’ in Article 21 does not mean mere animal existence. It has a much wider meaning, which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure”.\(^{49}\)

Human rights violations, whether perpetrated by state actors or non-state entities, are being counted by three major agencies; Quasi judicial institutions (National Human Rights Commission of India, Women Commission), Non-Governmental Organizations and the Judiciary.

V. Quasi-Judicial Institutions

A. National Human Rights Commission

Universal human rights standards and norms have been incorporated within the domestic laws of various countries. Various international instruments have also been ratified by countries, either by including them through legislations or by undertaking to directly comply with the obligations contained therein by way of automatic adoption. The existences of laws that protect human rights are not sufficient if there are no process and institutions to ensure the effective realization of these rights. It therefore becomes important for states to establish national infrastructures, including relevant independent and impartial institutions, which can promote and protect human rights.\(^{50}\)
India has shown keen interest in the past in establishing or 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 it was in favour of establishing such an institution. However, at that time no such institution was established.

The western countries and American, 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 in India.

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 on 8th January 1994. The National Human Rights Commission of India (NHRC) was established under the
Protection of Human Rights Act 1993. Defining human rights as, "the rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution or embodied in the International Covenants namely ICCPR and ICESCR and enforceable by Courts of India", the legislation has been enacted for better protection of human rights. The National Human Rights Commission of India was the first such commission to be constituted in the South Asian region.

The National Human Rights Commission 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 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 as also to ensure that redress mechanisms are within easy reach of complainants across the country. The functions of the National Human Rights Commission and the powers that enable the effective discharge of its functions are important in this regard. The powers and functions are outlined below

a. Inquiry and Investigation

The National Human Rights Commission 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 initiation (suo motu) or based on petitions presented by a victim or any person on his/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 thus, has the power to take its own initiative and protect the rights of the people.

The National Human Rights Commission has been vested with the powers similar to those available to civil courts while trying a suit.\textsuperscript{58} This means the Commission can summon and enforce the attendances of any person, examine under oath; require document 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.\textsuperscript{59} These powers allow for the effective functioning of the National Human Rights Commission as a quasi-judicial institution.

Upon the completion of an inquiry, the National Human Rights Commission may make recommendations to the government or the authority concerned for the initiation of proceedings for prosecution or any other action 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.

\textbf{b. Intervention in Court Proceeding}

The National Human Rights Commission may intervene, with the Courts permission, in proceedings involving human rights violations.\textsuperscript{60} A recent illustration of National Human Rights Commission's effective intervention in a case of gross violation of human rights is the Best Bakery Case,\textsuperscript{61} in which serious questions were raised about the fairness of the criminal justice system. With a view to ensuring a fair trial, the National Human Rights Commission of India filed a petition before the Supreme Court urging it to set aside the judgment of the fast tract court in the Best Bakery Case which had acquitted all the 14 accused in the
case and also asked other riot cases to be transferred out of Gujarat so as to minimize the opportunity to intimidate the witness and temper with the evidence.\textsuperscript{62}

c. Inspection

The National Human Rights Commission undertakes inspections and makes recommendations on living conditions in jails and other institutions.\textsuperscript{63} 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.

d. Sensitization

The National Human Rights Commission 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.\textsuperscript{64} 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.\textsuperscript{65}

e. Complaint Mechanism

An individual who has suffered human rights violations or any person on his or her behalf can approach, the National Human Rights Commission to lodge a complaint, which may be done in any language. The complainant is required to approach the National Human Right Commission within one year of the commission of the alleged violation.\textsuperscript{66} Further the National Human Rights Commission cannot undertake inquiry of a matter that is pending before any other Commission.\textsuperscript{67} 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 has prescribed a format in which the complaint must be submitted.68

f. The Limitations of the NHRC

The efficiency of the National Human Rights Commission 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 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 a two-third majority in the Committee, with the opposition leaders being guaranteed only two spots.69

The effectiveness of National Human Rights Commission's is also undermined by the government, which has failed to carry out its recommendations. In its first annual report, the National Human Rights Commission of India called for amendments to the Protection of Human Rights Act.70 The government did not act upon the recommendations and the powers of National Human Rights Commission 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 and more often than not these reports are published after significant delay and are neither comprehensive nor complete.71 The annual report of the National Human Rights Commission is submitted to the Union Government. The Union Government presents the report before each House of Parliament along
with the memorandum of action 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. Some of the recommendations are –

1. The Commission recommended for the amendments to the Protection of Human Rights Act 1993 to ensure more autonomy to the Commission by being empowered to grant relief to the victim or his family members. In its very first annual report for the period ending on March 31\textsuperscript{st} 1994, the Commission recommended the amendment of Sections 2(1)(d) and 2(1)(f), 11(1)(b) and 11(2) (together with Section 32), Section 13(1)(f), Section 18, Section 30 and Section 36 so as to remove ambiguities and impediments concerning its competence and autonomy of the Commission.\textsuperscript{72}

2. The Commission recommended for the ratification to the Convention Against Torture and Others Forms of Cruel Inhuman and Degrading Treatment or Punishment adopted by United Nations in December, 1984 which came into force in June 1987.\textsuperscript{73}

3. The Commission recommended for making reforms and educate police. It recommended that serious action be taken on the Second Report of the Police Reforms Commission 1979 including those suggesting the insulation of the investigative function of the police from political pressure.

4. Custodial crimes are particularly heinous and revolting as they reflect betrayal of trust by a public servant against a defenceless person. The Commission recommended that the Indian Prison Act of 1984 should
be revised. The Commission has been preparing a new all India Jail Manual for making reforms in the prison system.\textsuperscript{74}

5. The Commission recommended that in order to make people aware of their human rights, there is a need for the movement which unfortunately is not there in spite of the existence of a large number of NGOs.\textsuperscript{75}

6. The Commission stated that one of its priorities related to human rights is to improve the status of the Schedule Castes and Schedule Tribes and of the Minorities. The Commission recommended that the nation required vast programme of social regeneration to deal with ancient social wrongs.

7. The dialogue between policy makers, the security forces, and human rights proponents is sustained for it can contribute greatly to clarity of thought and action in dealing with insurgency and terrorism.\textsuperscript{76}

8. That the Para military forces and the Army make it a point to report directly to the Commission any instance of death or rape occurring while a person is in their custody.\textsuperscript{77}

9. That the right to education be enforced if the nation is to prove its seriousness in the efforts to end the child Labour.\textsuperscript{78}

10. Doordarshan and AIR should increase their involvement in enhancing human rights awareness.\textsuperscript{79}

11. The Commission recommended that to increase awareness of human rights in the country, the inclusion of human rights as a mandatory subject in Civil Services Examination is necessary. The Commission pointed out that this would lead to a greater sensitization on human rights issues and give impetus to the nation's attempts at fostering a culture of human rights among aspiring civil servants of the country.\textsuperscript{80}
12. The Commission recommended for early setting up State Human Rights Commissions. The Commission stated that so long State Commissions are not set up; the Commission must establish a limited number of regional offices that can function as extension of its headquarters.81

13. The Commission recommended that a time-bound programme be embarked upon the speedy clearance of criminal cases in the courts, through the High Courts of the respective States, which alone have exclusive control over the subordinate judiciary.82

B. State Human Rights Commissions

The Protection Human Rights Act 1993 provides under Chapter V for setting up the Human Rights Commissions in States. According to Section 21 of the Act, a state government may constitute a body to be known as State Human Rights Commission to exercise the powers conferred upon, and to perform functions assigned, to State Commission under Chapter V of the Act. The wording of this provision especially the word ‘may’ indicate that it is not compulsory for the states to establish State Human Rights Commission. Thus, it depends upon the discretion of the state. While under Section 3 of the Act, it is compulsory and mandatory for the Central government to constitute a body to be known as National Human Rights Commission.83 The State Human Rights Commissions have been established in sixteen (16) states. The State Human Rights Commission consists of a Chairperson who has been a Chief Justice of a High Court; one member who is, or has been a judge of a High Court; one member who is, or has been, District Judge in that state with a minimum of seven years experience as District Judge and one member to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights.84 The Chairperson and other members of the Commissions shall be appointed by the Governor on the recommendations of a Committee consisting of the Chief Minister (the Chairperson), and the three members, namely, the Speaker of the Legislative
Assembly, Minister in Charge of the Department of Home in that state and Leader of Opposition in the Legislative Assembly.\textsuperscript{85}

The State Human Rights Commission is empowered to perform all those functions which have been entrusted to the National Human Rights Commission. However, the Act excludes the study of treaties and other International instruments on human rights from the purview of the State Human Rights Commission\textsuperscript{86} as the study of these treaties and eligibility to make recommendations for their effective implementation has been made as the exclusive domain of National Human Rights Commission. The State Human Rights Commission may inquire into violation of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seven Schedule of the Constitution of India.\textsuperscript{87} Section 36(1) of the Act, however, states that the National Human Rights Commission shall not inquire into matter which is pending before the State Human Rights Commissions or any other Statutory Commissions duly constituted under any law in force. It implies that the Protection of Human Rights Act 1993 gives priority to the State Commissions dealing with a problem if the matter is filed before it. The Commission is required to submit its annual reports to the state government and it may submit at any time special reports on any matter which in its opinion is of such urgency or importance that it should not be deferred till submission of annual report.\textsuperscript{88} The state government submits these reports before each House of State Legislature with a memorandum of action taken and the reasons for non acceptance of the recommendations if any.\textsuperscript{89}

Other Commissions

Besides the National Human Rights Commission and State Human Rights Commissions there are other Commissions whose function involve protecting human rights in India.
C. National Commission for Women

Owing to overwhelmingly patriarchal structure of society, women have been relegated to a secondary status and have been subjected to various legal and social discriminations. The framers of the Constitution of India recognized the need to remove such inequities, and made special provisions to redress the same. The need was felt for a structure to uphold the rights and implement the provisions of beneficial legislations in an organized and institutionalized manner. The National Commission for Women (NCW) is a statutorily constituted body under the National Commission for Women Act 1990. The Commission is created or established with a view to protect promote and safeguard the interest and rights of women. The National Commission for Women consists of a Chairperson, five members, and a member secretary, all nominated by the Central government according to guidelines provided for in the Act.

The functions of the Commission as enumerated in the National Commission for Women Act 1990 are as follows

1. The Commission Investigates and examines all matters relating to safeguards provided for women under Constitution of India and other laws. The Commission can consider a matter relating to deprivation of women’s right and take up the issues with appropriate authorities on its own. It looks into complaints and takes suo motu notice of matters relating to non-implementation of laws and non-compliance of policy decisions, guidelines or instructions enacted and aimed at mitigating hardships, ensuring welfare, and achieving equality and development, and take up the issues arising out of such matters with appropriate authorities.

2. The National Commission for Women conducts studies and investigations into problems arising out of discrimination and atrocities against women and recommends strategies for their removal. The
members of National Commission for Women participate and advise on the planning process of socio-economic development of women suggest measures to promote their representation in all spheres and evaluate their progress. The National Commission for Women is also required to review the safeguards provided for women in the constitution and other laws, study their working, recommend amendments to meet any inadequacies or shortcomings, and suggest measures for more effective implementation. For instance, in furtherance of its mandate, the National Commission for Women has urged amendments to the Indian Penal Code to tighten the curbs on trafficking of minor girls. It has also recommended that the Child Marriage be made non-bailable offence and to be declared to be void under Child Marriage Restraint Act (1929). Further, the National Commission for Women has formulated Bills on Prevention of Sexual Harassment at Workplace and the Domestic Violence to Women (Prevention) Bill 1994, in consultation with member of the Civil Societies; the Protection of Women Forum Domestic Violence Act 2005, ultimately came into force.

3. The Parivarik Mahila Lok Adalat (PMLA) is an innovative mechanism developed by the National Commission for Women, which has taken up many cases so far. It deals with measures pertaining to family law, encouraging settlement of disputes outside the formal legal framework and aiming to empower women in the justice delivery system. All decisions of PMLA are legally binding on both parties to the dispute.

4. Moreover, following are the some of active research of the National Commission for Women.

I. A meeting was convened with the Police Commissioner of Delhi and Home Secretary to discuss strategies to combat rising violence against women in Delhi. The
recommendations arising out of the consultations were taken up with the concerned authorities for their implementation.98

II. All India Conference of Dowry Prohibition Officers were organized on 31st January, 2004 as a part of Foundation Day Programme.99

III. A National Workshop on laws concerning crime against women was organized in association with the Bar Council of India on 1st February, 2004 which reviewed the following laws100:

- Immoral Traffic Prevention Act 1956;
- Provisions in Indian Penal Code regarding Sexual Assault on Women;
- Dowry Prohibition Act. 1961;

IV. A National Conference on Gender Sensitization of Sainik Boards was held in February, 2004 and a National Workshop on Gender Sensitization of Media was held on 5th and 6th February 2004.101

V. A National Seminar on Sexual Harassment at Work Place was organized in New Delhi, March 2004, to discuss the draft Sexual Harassment of Women at Work Place (Prevention) Bill.

VI. A National Consultation on Sex Terrorism was held in Mumbai on March, 2004 to discuss the gravity of the problem and the steps needed to curtail it. Thus the National Commission for Women has been playing an in incredible
job in promoting and protecting human rights particularly women’s right. There is, however, a feeling that the National Women Commission has not been able to achieve its full potential. Since the National Women Commission is a statutory body, undoubtedly the Commission has certain statutory limitations. These statutory limitations are mainly responsible for not realizing its full potential.

D. National Commission for Minorities

There is no universal definition of minorities. However, a commonly accepted working definition was provided by UN Special Reporters Francesco Capotorti, which is as follows

“A group numerically inferior to the rest of population of a state, in a non-dominant position, whose members being national of the state posses ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”

In India, neither the Constitution nor the National Commission for Minority Act 1992 defines the term ‘minority’. The National Commission for Minorities states ‘minority’ for the purpose of this Act means a community notified as such by the Central Government.

The National Commission for Minorities was first constituted in 1978 by a Government of India Resolution dated 12th January, 1978 to look into the welfare of minorities. The Commission was made a statutory body in 1992, with the passing of the National Commission for Minorities Act in order to better address the interest of minorities in an organized and effective manner. A special Commission for Minorities was considered necessary even though special provisions had been included in the Constitution for their protection. The Commission consists of a ‘Chairperson’, a Vice-Chairperson and five members to
be nominated by Central government from amongst persons of eminence, ability and integrity, where the Chairperson and five members are to be from amongst minority Communities.\textsuperscript{104}

Like National Human Rights Commission, the National Commission for Minorities has been vested with the powers of a civil court\textsuperscript{105} while evaluating the progress of the development of minorities under the Union and States,\textsuperscript{106} monitoring the working of the safeguards provided in the constitution and in laws enacted by the Parliament and the State Legislatures\textsuperscript{107} and looking into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities.\textsuperscript{108}

Although it is vested with quasi-judicial powers, the National Commission for Minorities is not formally endowed with statutory powers of investigation and has no independent investigative unit of its own. The National Commission for Minorities has recommended the amendment of the National Commission for Minorities Act 1992 to address its shortcomings,\textsuperscript{109} but to no avail. Its powers are also restricted on completion of an inquiry as it cannot initiate prosecutions, but may only give recommendations, grant compensation or refer cases.

The National Commission for Minorities also recommends to the Central or State governments the ways to effectively implement the safeguards for the protection of minorities, conduct studies on discrimination against minorities and recommends measures for cessation, promote research on issues relating to the socio-economic and educational development of minorities, and submit reports to the Central government on any matter pertaining to minorities.

An individual or institution falling within the jurisdiction of the National Commission for Minorities can approach it.\textsuperscript{110} All complaints are to be routed through the Chairperson, a member or Secretary of the Commission. In order to ensure that economic status of a person does not act as a hindrance in redressing grievances, no fee is charged. However, the National Commission for Minorities
does not entertain complaints which are not based on minority status or rights, or which are ambiguous or vague in character or complaint which are more than one year old from the date of filing of the petition. The National Commission for Minorities is also empowered to undertake a case on its own without a complaint of any rights violation of any individual group or institution on the basis of media or any other credible report, no formal specific complaint needs to be filed in this regard.\textsuperscript{111}

\textbf{E. National Commission for Scheduled Castes and Scheduled Tribes}

The Scheduled Castes (SCs) and Scheduled Tribes (STs) in India are often subject to discriminatory treatment. The need for providing them with adequate safeguards was recognized by the framers of the Constitution of India and special provisions are made to promote their social, educational and economic interests. The National Commission for the Scheduled Castes and Scheduled Tribes came into being on the passing of the Constitution (Sixty Fifth Amendment) Act 1990, and was constituted with the objectives of monitoring and implementing all the safeguards provided for Scheduled Castes and Scheduled Tribes under the constitutional and legal provisions.\textsuperscript{112}

The National Commission for Scheduled Castes and Scheduled Tribes was bifurcated by the Constitution (Ninety Forth Amendment) Bill 2002, to form two separate Commissions. The reasons for bifurcation were explained in the amendment as follows-

"Geographically and culturally, the Scheduled Tribes are different from Scheduled Castes and their problems are also different from Scheduled Castes. In order to safeguard the interests of the Scheduled Tribes more effectively, it is proposed to set up a separate National Commission for the Schedule Tribes by bifurcating the existence National Commission for Schedule Castes and Scheduled Tribes".\textsuperscript{113}
The National Commission for Scheduled Castes consists of a Chairperson, a Vice-Chairperson and five other members appointed by the President of India. The National Commission for Scheduled Tribes consists of a Chairperson and two other members appointed by the President of India. Both the Commissions enjoy the powers of a civil court while investigating, monitoring and evaluating all matters relating to the safeguards provided under the Constitution of India or other laws. These Commissions are mandated to participate and advise on the planning process of the socio-economic development of the Scheduled Castes and Scheduled Tribes respectively and evaluate the progress of their development. They are required to present reports on the working of the safeguards to the President and make recommendations for their effective implementation, also discharging any other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and Scheduled Tribes, respectively. The Union and State governments must consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

Reservation is one of the measures adopted by the Constitution to remedy the continuing inequalities arising from past discriminations. Its basic objective is to lift the limitations on access to opportunities and thereby remove the bias among the Scheduled Castes and Scheduled Tribes. The Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act 1989, deals with atrocities committed against members of Scheduled Castes and Scheduled Tribes.

There is a need to strengthen the National Commission for Scheduled Castes and Scheduled Tribes to ensure proper implementation of the provided safeguards.

India has given importance in promotion and protection of human rights not only through the Constitution of India, but also through the various statutory bodies. There are numerous statutory quasi judicial bodies which are working as an watchdog bodies. However, it has been observed that almost all statutory bodies
are recommendatory in nature and due to its recommendatory nature, there is a big question regarding the credibility and effectiveness of these bodies.

VI. Non-Governmental Organizations

Besides, Commissions established by the government at the Union or State levels, a number of NGOs function at national and regional levels to protect human rights and protect against their violations. There are at least three major NGOs namely People’s Union for Civil Liberties (PUCL), People’s Union of Democratic Rights (PUDR) and Citizens for Democracy.

The People’s Union for Civil Liberties (PUCL) had set up units in various states, for example in Delhi, Bombay, Bihar, Madhya Pradesh and Allahabad and efforts are being undertaken to establish units in other states. This NGO is actively involved in fighting human rights violations, whether by the state or non-state actors. It has constituted a number of facts finding missions to investigate human rights violations. Like People’s Union for Civil Liberties, the People’s Union For Democratic Rights has also been involved in a number of fact finding missions and reports related to social economic and political issues. In particular, it focuses on police atrocities and encounter deaths.

Non governmental organizations are the most effective organization in promotion and protection of human rights because these organizations are at the grass root level. There are numerous NGOs working in the field of human rights, highlighting the violations of human rights by state machinery.

VII. Conclusion

Thus India has been taking initiatives at various level; government and non-government level to protect and promote human rights in India, in spite of so many difficulties. Though various statutory bodies have been established, however, due to having shortcomings in their powers and functions, they are unable to understand their strength. As a result, these bodies are unable to stand by the hope and aspirations of the common people. The non-governmental bodies are non
statutory bodies. Hence, they are not as powerful as the statutory bodies. However, NGOs can aware the people about their rights. In India, NGOs are highlighting the violation of human rights; particularly the violations by state mechanism and thus in India NGOs are drawing attention of government in this regard. In addition, there are necessary conditions, which must be fulfilled so that everyone in the society can enjoy the human rights, which alone can ensure human dignity.
References


7. Article 13 of the Constitution of India (Short Notes & Subject Index), Eastern Book Company, Lucknow.


10. Article 12 of the Constitution of India(Short Notes & Subject Index), Eastern Book Company, Lucknow.


17. Ibid.
19. Ibid.
21. Section 304B of Indian Penal Code, Prof S. N. Mishra, Central Law Publication, Allahabad.
22. Article 20(2) of the Constitution of India (Short Notes & Subject Index), Eastern Book Company, Lucknow.
23. Article 20(2) of the Constitution of India, (Short Notes & Subject Index), Eastern Book Company, Lucknow.
28. Ibid.
29. People’s Union for Civil Liberties v. Union of India (1966).
31. Article-326 of the Constitution of India (Short Notes & Subject Index), Eastern Book Company, Lucknow.
34. Article 37 of the Constitution of India, (Short Notes & Subject Index), Eastern Book Company, Lucknow.
35. Article 144 of the Construction of India (Short Notes & Subject Index), Eastern Book Company, Lucknow.

36. Article 129 of the Construction of India (Short Notes & Subject Index), Eastern Book Company, Lucknow.


45. Francis Coralis Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.


55. Section 1(d), Protection of Human Rights Act 1993, Pioneer Printer, Agra.

56. Preamble to the Protection of Human Rights Act 1993, Pioneer Printer, Agra


59. Ibid.


61. NHRC decides to move the Supreme Court in Best Bakery Case, Transfer application also moved in respect of four other serious cases http://www.nhrc.nic.in/disparchive.asp?no = 60.


64. NHRC Annual Report 2002-03 http://www.nhrc.nic.in.


72. India signed the convention on October, 14, 1997.

74. Ibid.


76. NHRC Annual Report, 1994-95.

77. Ibid.

78. Ibid.


89. Section 3, para 2(a) of National Commission of Women Act 1990.

90. Section 3, para 2(b) of National Commission of Women Act 1990.

92. Section 10(1)(b) (iii) of the National Commission for Women Act 1993.

93. At http://ncw.nic.in.

94. Ibid.

95. Supra n 93.


97. Ibid.


100. http://ncw.nic.in.

101. Article 30 of the Constitution of India (Short notes & Subject Index), Eastern Book Company, Lucknow.

102. Section 2(c) of the National Commission for Minorities Act.


104. Section 9(4) of the National Commission for Minorities Act 1992


110. At http://ncm.nic.in.


114. ibid.

115. ibid.


117. ibid p 175.