CHAPTER - VIII

CONCLUSION
The human rights are very precious and valuable rights. These rights include the fundamental rights of people without which mental, physical and spiritual development of a human being is not possible. It is the primary and paramount duty of every state to protect human rights of every individual within its territory. Almost every legal system of the globe has been protecting their individuals by promoting human rights. India, being a part of the globe, cannot remain in isolation from the rest of the world. India has been showing its keen interest in promoting and protecting human rights in the whole territory. In this respect, the Parliament of India established monitoring bodies at national, state and district level by enacting the Protection of Human Rights Act 1993.

The National Human Rights Commission of India is a human rights monitoring institution constituted by an Act of Parliament, “The Protection of Human Rights Act 1993”. From its inception, the National Human Rights Commission of India has been playing a very significant role in developing a healthy atmosphere of human rights in India. It has built an edifice of human rights accountability on the foundations of transparency and autonomy. The National Human Rights Commission of India has been performing its vast and comprehensive functions entrusted to it under the Protection of Human Rights Act 1993, in a methodological and systematic manner. In discharging its duties, the Commission has mostly covered up the terrible occurrence of custodial deaths, rapes and tortures. The National Human Rights Commission of India has been instrumental in initiating some systematic reforms especially those in the prison system, police organization and administration of criminal justice system in the
country. In addition, the National Human Rights Commission of India undoubtedly has some achievements to its credit.

There is, however, a feeling that the National Human Rights Commission of India has not been able to achieve its full potential. Since the National Human Rights Commission of India is a statutory body came under the Protection of Human Rights Act 1993, undoubtedly the Commission has certain statutory limitations. These statutory limitations are mainly responsible for not realizing its full potential. From time to time, there have been demands that the statutory limitations should be addressed but the Union Government has shown its reluctance. However, in 2006 some amendments were introduced to the Protection of Human Rights Act 1993. But these moves are not adequate and sufficient to address the statutory limitations. This needs 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.

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 platforms. The National Human Rights Commission of India must be a body that critically analyses the human rights situation in the country. It is only such a process; the National Human Rights Commission of India can contribute towards the betterment of human rights in India. It is neither a court, nor a spoke person of government. The National Human Rights Commission of India must be an independent, credible, vibrant and active institution that looks forward to address the deeper issues concerning human rights in India. For fulfilling its goal, the following suggestions in the form of recommendations may be considered-
1. Expansion of definition of human rights.

Section 2(d) of the Protection of Human Rights Act 1993 defines the concept of human rights. This definition is confined only to the fundamental rights. Since the horizon of human rights is expanding day by day, hence the parameter of human rights should be made large, particularly to include the developmental rights. The developmental rights have, now a days, stood in equal status with fundamental rights. If the definition of human rights is expanded through an amendment, the National Human Rights Commission of India can concentrate equally on civil and political rights and socio-economic rights.

2. Part IV of the Constitution of India should be made enforceable.

The socio economic rights are placed in the part IV of the Constitution of India. These rights are very valuable even to fundamental rights. Hence, the socio-economic rights should be made enforceable by the court by introducing an amendment to the Constitution of India. If it is made so, the National Human Rights Commission of India can really play an effective role in pressuring the government to provide socio-economic justice to the citizens of India.

3. The composition of the National Human Rights Commission should be comprehensive.

The composition of the National Human Rights Commission of India does not reflect the plurality as required under the Paris Principles on National Human Rights Institutions. Therefore, Section 3 of the Protection of Human Rights Act 1993 should be amended to include the followings representatives.

a. Representatives from NGOs, since they are associated in the grass root level of the society; they understand and know the value of human rights and consequences of violation of these rights as a close observer to people.
b. Representative of experts sitting in international organizations. Presence of experts, sitting in international organization would certainly help the National Human Rights Commission of India in exchanging its views with other National, Regional and International Human Rights Institutions.

c. Representatives from Trade Union would definitely help the National Human Rights Commission in protecting and promoting human rights of workers engaging in industrial field.

d. Representative from Ombudsman office should be included. For that purpose the office of Ombudsman should be constituted. The National Human Rights Commission can gather information about violation of human rights at department level of the government. Since the government is the implementing agency of the rules and policies, therefore, there is a possibility of misusing it. If the representatives of the office of Ombudsman are available, the Commission can easily address such violations.

e. Representative from Parliament of India would defiantly provide a new dimension in promoting and protecting the human rights issues in India. Being the representative of the people, the members of the Parliament are accountable to common people. So, the inclusion of parliamentarians in the composition of the National Human Rights Commission of India would help the Commission in realization of human rights substantially.

f. Representative from field of media would make the composition of the National Human Rights Commission comprehensive and effective. Media is the only agency, which can without any delay reach to the people. So, if representatives from media are included, one can expect better performance of the Commission in discharging its duties towards the protection and promotion of human rights in the country.
g. Representative from woman section is not enough; hence inclusion of women representative to the composition of the National Human Rights Commission of India is necessary. It would give the colour of gender equality. Moreover, most of the human rights violations are related to women so, their view points are important for the Commission to address the issues related to the violation of human rights, particularly rape and sexual harassment.

4. In addition, Section 3 of the Protection of Human Rights Act 1993 should be amended to replace the Selection Committee. The present format of Selection Committee solely consists of politicians. The Committee appoints the members of the National Human Rights Commission of India during close door meeting between the politicians and their favourite bureaucrats. The present format of the Selection Committee restricts the National Human Rights Commission of India from getting the plurality of prospective, vocations and diverse experience from civil society. The Selection Committee may be constituted as

a. The Chief Justice of Supreme Court of India as Chairperson;

b. The Speaker of Lok sabha as member;

c. The deputy Speaker of Rajya Sabha as a member;

d. The Leader of the Opposition Party as a member;

e. Attorney General of India as a member.

It is expected that the proposed Selection Committee would provide the National Human Rights Commission of India, the plurality of prospective, vocations and diverse experience from civil society.

5. Section 5(2) of the Protection of Human Rights Act 1993 should be enlarged to have transparency in the process of removal of members of the National Human Rights Commission of India by inclusion of Parliament in the process. The process of removal should be same as in case of Judges Supreme Court or High Courts. If
it is made so, it ensures independent character of the body. The present provision exclusively entrusts the power of removal to the executive, which promotes bias or misuse.

6 Section 11 of the Protection of Human Rights Act 1993 is a concern area because it always makes the National Human Rights Commission of India dependent on the Union Government. According to the present format of the Section 11 of the Protection of Human Rights Act 1993, the Union Government shall make available to the Commission officers and other staff required for research, investigation, technical and administrative work. Most of the officers of the Commission have come from government department that is why the Commission is gradually acquiring the image of bureaucratic organization. There is a need to have an independent organ or cell for investigation. The strength of the investigating team is to be expanded or increased. The present format is headed by an officer of the rank of Director General of Police. He is assisted by a Deputy Inspector General of Police, Senior Superintendence of Police, Inspector of Police and Constables. The proposed format of investigation team may be effective.

a. An officer in the rank of Secretary as a Head;

b. Four officers in the rank of Director General of Police for each of the zones of the country (North, South, East and West);

c. Eight officers in the rank of Deputy General of Police; two for each of the zones of the country (North, South, East and West)

d. Sixteenth officers in the rank of Superintendence of Police; four for each of the zones of the country (North, South, East and West)

e. Forty officers in the rank of Inspector of Police; ten for each of the zones of the country (North, South, East and West)

f. Constables as required for each Zone.
It is expected that the proposed format of investigation team would be able to reduce the number of pending cases before the Commission.

Since, Section 11 of the Protection of Human Rights Act 1993 has nexus with Section 37 of the same Act; hence there is a need to amend it. Section 37 provides about the constitution of Special Investigation team, however, the mandate given under it is directory in nature. Hence Section 37 of the Protection of Human Rights Act 1993 should be made mandatory to make the National Human Rights Commission of India an autonomous institution. It would definitely bring the independent character of the Commission. The proposed Section 37 is as

“Notwithstanding anything contained in any other law for time being in force, Union Government shall constitute one or more special investigation teams, consisting of such police officers (as proposed) for purposes of investigation and prosecution of offences arising out of violation of human rights.”

7. Section 18 of the Protection of Human Rights Act 1993 is to be amended because this provision of the Act makes the National Human Rights Commission of India merely a recommendatory body. According to the present provision, the National Human Rights Commission of India has no power to enforce its decisions. It provides a room to the government to consider the National Human Rights of India as neglected institution. If the government refuses to accept the advice, there is no law which empowers the National Human Rights Commission of India to force the government to implement it. Hence there is a dire need to have its own enforcement mechanism. It should be a separate unit for implementation of its judgements or orders received from court. The proposed unit in this regard is

(i) An officer in the rank of Secretary as head of the Unit;

(ii) Twenty-eight Officers in the rank of Deputy Director General of police as members; one for each state;
(iii) One officer in the rank of Deputy Commissioner for each district;
(iv) Other officers (in the rank of inspector or constable) as required.

It is expected that the proposed separate enforcement mechanism makes the National Human Rights Commission of India, a strong, independent and vibrant institution, supporting democracy and good governance.

8. Section 19 of the Protection of Human Rights Act 1993 makes the National Human Rights Commission of India as toothless tiger. This provision does not allow the Commission to take the cognizance of the cases of violation of human rights by armed forces. It compels the Commission to take prior permission from the Union Government. This provision weakens the National Human Rights Commission of India's effectiveness in providing redress to the public in such cases. Since, a large number of complaints of violation of human rights are directed against the member of armed forces, hence there is a need to amend the Section 19 of the Protection of Human Rights Act 1993. The proposed Section 19(1) is as

"Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of armed forces, the Commission shall, either on its own motion or on receipt of a petition, inquire into such complaints."

Thus, sub Section (1) and (2) of Section 19 of the Protection of Human Rights Act 1993, be deleted and replaced by the proposed Section (1) of the Act. It is expected that the proposed Section 19(1) of the Protection of Human Rights Act 1993 would substantially change the image of recommendatory body of the Commission and the Commission does not require to work under pressure. It would certainly provide a new dimension to the effectiveness of the Commission.

9. Section 20 of the Protection of Human Rights Act 1993 should be amended to prescribe a three months time limit from the date of submission for the reports of National Human Rights Commission of India to be placed before the Parliament.
and for reports to be made public after three months even if not placed before the legislative bodies. It would certainly make the Union Government more accountable;

10. Section 32 of the Protection of Human Rights Act 1993 makes the National Human Rights Commission of India always a dependent body on the Union Government. For money power, the Commission always waits for government. It harms in the independent character of the Commission. So, there is a need to address the issue and the proposed Section 32 in this regard be

(1) "The Parliament shall, after consultation with the Chairperson of the National Human Rights Commission of India, pay the sums as the Parliament may think fit for being utilised for the purposes of the Act."

(2) "The Commission may spend such sums as it thinks fit for performing the functions under the Act, and such sums shall be treated as expenditure payable out of the Consolidated Fund of India"

It is hoped that the proposed Section 32 would be able remove the image of dependency on government and makes the Commission, an independent and strong monitoring body of human rights violations in India. Here, it can be mentioned that the National Human Rights Commission set up a high level Committee under the Chairmanship of Justice A.M. Ahmade, former Chief Justice of India, to access the need for structural changes and amendment to Protection of Human Rights Act 1993. The Committee submitted its report to the Commission on 18th October, 1999. In its report, Justice A. M. Ahmede also recommended that there is a dire need to amend the Section 32 of the Protection of Human Rights Act 1993 to have financial autonomy but unfortunately recommendations have been remain as recommendations.

11. Section 36 of the Protection of Human Rights Act 1993 restricts the Commission in taking cognizance of the matters arising out of human rights violation if the matter is pending before other Commissions. It also restricts the
Commission to take the cognizance of the matters, arising out of human rights violation, after expiry of one year. These mandates would not help the Commission in preventing miscarriage of justice in any case of human rights violation rather it would violate the very purpose of the constitution of the Commission. Therefore, there is a need to amend the Section 36 of the Protection of Human Rights Act 1993. In this regard, Justice Ahmede Committee constituted by the Commission itself in 1999, has given very valuable recommendations and should be implemented by the government. The recommendations forwarded by Justice Ahmede is

“To add provision to Section 36 (1) to provide for National Human Rights Commission of India to entertain, either suo motu or at the instance of an aggrieved person, any matter already considered and decided by any other Commission except on the question of quantum of compensation, with a view to giving the Commission a certain power of judicial superintendence and powers similar to those exercised by the Supreme Court vis-a-vis the High Courts under Article 136 of the Constitution of India in order to prevent any miscarriage of justices in any case of human rights violation.”

In addition, Section 36(2) may be amended to prevent miscarriage of justices in case of human rights violation. According to the present mandate after one year lapse, the National Human Rights Commission does not have jurisdiction to take up the case. Hence, the Section 36(2) be amended and the limitation of time frame for taking up cases should be enhanced from one year to three year. The proposed Section 36(2) in this regard is

“The National Human Rights Commission or State Commissions shall not inquire any matter after expiry of three year from the date on which the act consisting violation of human rights is alleged to have been committed.”

Justice Ahmede has also made a valuable recommendation in this respect. The recommendation is-
“To amend section 36 (2) to provide for inquiry into a complaint of human rights violation by National and State Human Commissions even after the expiry of one year from the date of its occurrence, subject to their being good and sufficient reasons for the same.”

12. A new provision may be included to the Protection of Human Rights Act 1993 which makes an obligation on the part of the public servants to give documents or information to the National Human Rights Commission of India unless they are exempted. In this regard the provision of Equal Treatment (Netherland) Act may be considered.

13. The Protection of Human Rights Act 1993 provides a provision for publishing the annual reports of the National Human Rights Commission of India. However, there is no provision for action taken report of these annual reports. Therefore, a new provision may be included to the Protection of Human Rights Act 1993 which binds the Union Governments to publish action taken reports immediately after publishing the annual reports within a specific period of time.

14. Section 21 of the Protection of Human Rights Act 1993 should be made mandatory so that the Union Government establishes State Human Rights Commissions in every state.

15. A new provision to the Protection of Human Rights Act 1993 may be added which not only distinctly compartmentalize the jurisdiction of the National Human Rights Commission and State Human Rights Commissions but also maintains hierarchy between them like Supreme Court of India and High Courts.

16. Regarding policy making in the field of human rights, the government should consult with the National Human Rights Commission of India. It would be a very effective and positive mode. In this regard the Human Rights and Equal Opportunity Commission (Australia) Act 1986 is notable because under it Government of Australia consults with the Human Rights and Equal Opportunity Commission of Australia.
The investigator feels that the shortcomings of the very statute under which the National Human Rights Commission of India comes to existence, are to be addressed properly. The investigator finds out that the best probable remedy which can make the Commission effective is to amend the Protection of Human Rights Act 1993 to make the National Human Rights Commission of India more effective instead of continuing it as a recommendatory body.