CHAPTER-5

GUJARAT STATE HUMAN RIGHTS COMMISSION
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5.1 INTRODUCTION

Primarily the protection, preservation, education and prevention of the violation of the quarter rights relating to life, liberty, equality and dignity are the obligation of the state for more effective discharge of this obligation; The Union Legislature enhanced the protection of Human Rights Act 1993. According to the act, Human Rights mean the rights relating to life liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable in India. The act for assisting the state in discharge of its obligation towards the Human Rights of the individual ordains. Constitution of the National Human Rights Commission. The state Human Rights Commission in each state of the country and Human Rights Courts in the states.

Thus came to be constituted the Gujarat state Human Rights Commission on 12th July 2006. Obviously, the Gujarat State Human Rights Commission is a fledgling. Nonetheless, it has been striving ward to attain its mission of discharging its statutory functions and thereby rendering the meaningful co-operation and purposive Assistance to the state of Gujarat in performance of its constitutional and statutory duty of upholding the human rights of the citizenry by enforcing the 'Rule of law'.

All Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act or interact towards one another in the spirit of brotherhood, with amity, community and dignity for protection and preservation of Human fundamental and basic rights. The mechanisms of rule of law is founded upon human rights and equal justice and other legal and constitutional rights enshrined in the legal realm. This concept and philosophy undoubtedly has deep roots in our culture and legacy since many centuries. It is true that every Human being has inherent rights to earth by birth, but now many have mining rights?

It is rightly said what the poor need, the most, is not pity but love, then need to feel and enjoy respect for their human dignity, which is neither less nor different from the dignity of any other human being, our country has been championing the cause
and concern for the human dignity, peace and happiness. The state commission, also been endeavoring to reach the ultimate goal of the protection of human right act. It is very well known from the history of his country that we have pioneered the following principles.

“May all be happy", "May all be healthy", "May all be auspicious", "May none suffer", "Peace be unto all."

5.2 GUJARAT STATE HUMAN RIGHTS COMMISSION NOTIFICATION

In exercise of the powers conferred by sub section (2) of Section 10 read with Section 29 of the Protection of Human Rights Act, 1993 (as amended by the Protection of Human Right (Amendment) Act 2006 (No.43 of 2006), the Gujarat State Human Rights commission hereby makes the following regulations, namely :-

1. Short Title and Commencement – (1) These Regulations may be called the Gujarat State Human rights commission (procedure) regulation (2006)
(2) They shall come into force with effect from the 22nd day of December, 2006.

2. Definitions- In these Regulations unless the context otherwise requires
(a) 'Act' means the Protection of Human Rights Act, 1993.
(b) The 'Chairperson' means the Chairperson of the State Commission.
(c) The 'State Commission' means the Gujarat State Human Commission.
(d) 'Member' means a Member of the State Commission and includes the Chairperson.

3. Headquarters of the State Commission : - The Headquarter of the State Commission shall be located at Gandhinagar.

4. Venue of the Meetings – The State Commission shall ordinarily hold its meetings and sittings in its office or at the camp office of the Chairperson located at Gandhinagar. Howere it may, in its discretion, hold its meeting and sittings at any other place in Gujarat if it considers it necessary and expedient.

5. Periodicity of Meetings – The State Commission shall normally have its sittings in the first and third weeks of every month, excepting holidays. However, the Chairperson by himself or at the instance of one or more of the
Members may direct special sitting of the State Commission to be convened to consider any specific matter of urgency.

6. Secretariat Assistance – The Secretary alongwith such officers of the State Commission, as may be directed by the Chairperson or considered necessary, shall attend the meetings of the State Commission.

7. Agenda – The Secretary shall, in consultation with the Chairperson, prepare the agenda for each meeting of the State Commission and shall cause the notes thereon to be prepared by the Secretariat. Such notes shall, as far as possible, be self contained. Specific files covering the agenda items shall be made readily available to the State Commission for reference. The agenda papers shall ordinarily be circulated to the Members at least two clear days in advance of early meeting. When matters are set down only for hearing the case list of the day of sitting only shall be prepared and circulated.

8. Procedure for dealing with complaints – (1) All complaints in whatever form received by the State Commission shall be registered, assigned a number and acknowledged and, ordinarily, placed for admission, as far as possible, within two weeks for receipt thereof. Ordinarily, complaints of the following nature are not entertainable by the State Commission:

   (a) In regard to events which happened more than one year before the making of complaints
   (b) With regard to matters which are sub-judice
   (c) Which are vague, anonymous or pseudonymous
   (d) Which are of frivolous nature
   (e) Those which are outside the purview of the State Commission.

(2) No fee is chargeable on complaints.

(3) Every attempt should be made to disclose a complete picture of the matter leading to the complaints and the same may be made in Gujarati, Hindi or English to enable the State Commission to take immediate action. To facilitate the filing of complaints the State Commission shall, however, entertain complaints in any other language included in Eighth Schedule of the Constitution. It shall be open to the State Commission to call for further information and affidavit to be filled in support of allegations whenever considered necessary.
(4) The State commission may, in its discretion, entertain complaints conveyed through email or fax, followed by confirmation by the complainant.

(5) A complaint may be dismissed in limine if, upon preliminary investigation or preliminary inquiry by such police and investigation staff under the control of the Additional Director General of Police and such other officers and staff as has been made available to the State Commission by the State Government for efficient performance of its functions, which include investigation and inquiry into the complaints of violation of human rights, the allegations in the complaint are unfounded or unsustainable or unwarranted or not cognizable by the State Commission or requisite action has already been taken or initiated by the concerned authority.

(6) Upon admission of a complaint, the Chairperson/State Commission shall direct whether the matter would be set down for statutory inquiry or statutory investigation.

(7) On every complaint on which a decision is taken by the Chairperson/Commission to either hold statutory inquiry or statutory investigation, the secretariat shall call for report/comments/information from the concerned Government/authority giving the latter a reasonable time thereof.

(8) On receipt of the report/comments/information from the concerned authority a detailed note on the merits of the case shall be prepared for consideration of the State Commission. If no such report/comment/information is received the matter may proceed ex parte.

(9) The directions and recommendations of the State Commission shall be communicated to the concerned Government/Authority and the petitioner as provided for in Section 18 of the Act.

(10) The State Commission may, in its discretion, afford a personal hearing to the petitioner or any other person on his behalf or such other persons as, in the opinion of the State Commission, should be heard for appropriate disposal of the matter before it and, where necessary, call for records and examine witnesses in connection therewith. The State Commission shall afford a reasonable opportunity of hearing including opportunity of cross examining witnesses, if any, in support of the complaint and leading of evidence, in support
of his stand, to a person whose conduct is enquired into by it or to any other person where in its opinion the reputation of such person is likely to be prejudicially affected.

(11) Hearings of the cases: The State Commission may, in its discretion, afford a personal hearing to the petitioner or any other person on his behalf or such other person or persons as, in the opinion of the State Commission, should be heard for appropriate disposal of the matter before any officer, member, a bench or a special bench consisted of two or more Members.

(12) Where investigation is undertaken by the team of the State Commission or by any other person under its discretion, the report shall be submitted within a week of its completion or such further time as the State Commission may allow. The State Commission may, in its discretion direct further investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the State Commission may, on its own motion or if moved in the matter, direct inquiry and receive evidence in course of such inquiry.

(13) The Chairperson or any member of the State Commission or officer, where requested by the Chairperson, may undertake visits for making an on-the-spot study. Where such a study is undertaken, a report thereon shall be furnished to the State Commission as early as possible.

(14) The State Commission may appoint one or more reportiers for specific issues required in depth study and long term monitoring for its assistance.

9. Minutes of the Meeting – (a) The minutes of each meeting of the State Commission shall be recorded during the meeting itself or immediately thereafter by the Secretary or by any other officer as directed. Such minutes shall be submitted to the Chairperson for his approval and upon approval be circulated to all the Members of the State Commission at the earliest and in any case, sufficiently before the commencement of the next meeting.

(b) The conclusions of the State Commission in every matter undertaken by it shall be recorded in the form on an opinion. Dissenting opinion, if given, shall also form part of an be kept on record. Action shall be taken on the basis of the majority opinion where there is difference of opinion.
(c) Follow-up Action – Unless specifically authorized, no action shall be taken by the Secretariat of the State Commission on the Minutes of the meetings until the same are confirmed by the Chairperson.

10. **Record of minutes** – A master copy of the minutes of every meeting and opinion of the State Commission, duly authenticated by the Secretary, shall be maintained and a copy of the minutes pertaining to each item shall be added to the relevant file for appropriate action. Opinions shall be kept in the respective records and the copies thereof with appropriate indexing shall be kept in guard files.

11. **Report of Action taken** - Report of follow-up action shall be submitted to the State Commission at every subsequent sitting indicating therein the present stage of action on each item on which the State Commission had taken a decision in any of its earlier meetings, excepting the item on which no further action in called for.

12. **Transaction of business outside the Headquarters**- The Commission or the Chairperson or a member, with the approval of the Chairperson, may transact business at places outside it headquarters, provided that if parties are to be heard in connection with any inquiry under the Act, at least two Members shall constitute the bench of the State Commission for such purpose.

13. **Authentication of orders and decisions.** (1) Orders and decisions of the State Commission shall be authenticated by the Secretary or any officer of the State Commission, not below the rank of Deputy Secretary and authorized by the Chairperson.

(2) Copies of inquiry reports or orders passed finally disposing in matters by the State Commission shall be furnished free of cost to the petitioner or his representative.

(3) Unless any document is classified by the State Commission as confidential, copy thereof be made available to the parties in the matter on payment of a reasonable fee to meet the cost. Every effort should be made to provide the copies with utmost expedition and, in any case, not later than the period prescribed under the Right to information Act, 2005 (22 of 2005).
14. **Annual report.** – The State Commission shall furnish its annual report for the period commencing from 1st April of the year and ending on 31st March of the succeeding year to the state Government as provided in Section 28(1) of Act. The original report shall be signed by the Chairperson and the Members of the State Commission, if available, and be appropriately preserved.

15. **Special reports.** – The State Commission may furnish such special reports on specific matters as may be considered necessary in terms of section 28(1) of the Act.

16. **Reports on Complaints and Inquiries.** – Every report to which Section 18 of the Act applies, along with the recommendation of the State Commission shall be sent to the concerned Government or authority or person, as the case may be, within two weeks of the completion of the proceedings, and on receipt of the report/recommendation the concerned Government or authority shall within one month or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the State Commission. Thereupon the State Commission shall publish the report in the manner provided in section 18(f) of the Act.

17. **Printing of the report.**– Upon its finalization the Secretariat of the State Commission shall be responsible for the printing of the Annual Report and Special Report with utmost expedition.

18. **Investigation team.** – The State Commission shall have its own investigating team to be headed by a person not below the rank of Inspector General of police appointed by it and such other categories of officers as the State Commission may, from time to time, decide. The State Commission may in any given case appoint an appropriate number of other appropriate persons to be associated with the investigation either as investigators, rapportiers or observers.

19. As and when any matter is found not covered by these Regulations, it shall be competent for the State Commission to make appropriate direction and the State Commission may add, delete, amplify and amend these Regulations from time to time.\(^{(1)}\)

\(^{(1)}\)GHSRC annual report 2007/08
5.3 THE GUJARAT STATE HUMAN RIGHTS COMMISSION
FORMATION, HISTORY AND PERFORMANCE

The protection of Human Rights Act, 1993 provides for the "National Human Rights Commission" (NHRC) at National level and under the same Act, as per Section 21 independent 'State Human Rights Commision' (SHRC) at State level. Accordingly, both levels the Commisions are functional to deal with the complaints against the breach of human rights in the Gujarat State, for the formation of Commision, the following steps and works have been undertaken.

For the first time in Gujarat State, The Gujarat High Court Legal Service Committee formed One 'Human Rights Committee' consisted of three High Court Judges on March 16, 2002, and started its work for conducting cases regarding violations of human rights coming before this Committee, which continued to function under the Hon'ble High Court till the formation of the State Commission by the Gujarat Government in the year 2006. Thereafter, the State Government, by a Notification. Department has notified the formation of an independent "Gujarat State Human Rights Commission" in the State. On the notification of the formation of the Gujar State Human Rights Commission by the Gujarat State, Committee was constituted under Section 22 of the said Act, for selection of members and Chairperson of the Commission, in which the following dignitaries are included

(a) The Chief Minister of the State : Chairperson
(b) The Speaker of the State Legislative Assembly : Member
(c) The Leader of the Opposition : Member
(d) The Minister, Home Department : Member

Considering the recommendations of the above mentioned four member High Power Committee, a warrant of declaration about appointment of Hon'ble Justice Shri Daya Saran Sinha, former Chief Justice of Gujarat High Court, was issued on July 27, 2006, by His Excellency Governor of Gujarat, appointing him as the Chairperson of the "Gujarat State Human Rights Commission". On this basis, formal orders have been issued for appointment of Hon'ble justice Daya Saran Sinha, as Chairperson of the State Commission for a period of five years by a Notification of August 18, 2006, by the Home Department of the State Government.
As the notification for formation of the State Commission and appointment of Hon'ble Chairperson were issued, orders were issued for allotment of accommodation and building for regular functioning of the office of the State Commission. Accordingly, the State Government, General Administration Department had issued orders for allotment of accommodation exclusively to the State Commission on the 1st and 2nd Floor of the Annexe building of the Town Hall in Sector-17 at Gandhinagar on 1st August, 2006, 4th August 2006 and 31st August, 2006 where at its office is working today smoothly.

The State Government Home Department issued Resolution on dated 25th August, 2006 for sanctioning orders of total 52 posts including the Secretary, the Additional Director General of Police and other Police and administrative personnel. Necessary orders have been issued by a Notification of September 12, 2006, by Home Department of State Government on the terms and conditions regarding appointment of Hon'ble Chairperson Shri D.S. Sinha as Chairperson of the State Commission. The State Commission has started its functioning from the day of assuming the charge of the post by Hon'ble Chairperson Justice D.S. Sinha on September 12, 2006.

Thereafter, the appointment of Shri R.L. Meena I.A.S. as the Secretary of the Gujarat State Human Rights Commission has been made by the General Administration Department by a Notification and dated November 8, 2006, and the appointment of Shri Chitranjan Singh I.P.S. as the Additional Director General of Police of the State Commission has been made by a notification of December 15, 2006, of the State Home Department. On assuming the charges in the State Commission by both these high officials, the State Commission has issued necessary resolution on January 31, 2007, for delegating various powers to both these officers under the Human Rights Protection Act, 1993, of India; separate notifications regarding these delegation of powers have been issued. These notifications of the State Commission have been published on March 15, 2007, in the extraordinary Gazette of the Gujarat Government.

The Home Department of State Government has declared both these officials (1) Hon'ble Chairperson and (2) the Secretary of the State Commission by a resolution of December 13, 2006, as the heads of the Department.
The National Human Rights Commission has prepared the details of sub heads and major heads of different subjects on the breach of human rights in its rules and on these lines, the State Commission has also issued subject wise classification of applications of the complaints being received by it.

The State Commission has started its functioning from September, 2006, and thereafter, on the appointments of administrative and Police personnel by the State Government for its regular functioning and on the basis of orders, many officers / employees joined the services and duties of the State Commission. The working of the registration of petitions reached to the State Commission started and acknowledgement of its receipt, its inquiries and getting its reports from departments started from December, 2006. The State Commission had received total 610 complaints and petitions which were classified district wise and month wise in the first year upto March 31, 2007 out of which 419 petitions have been disposed off. the State Commission has disposed off all except 56 applications pending at the end of the year.

The State Commission has prepared district wise and subject wise statistical Statements of classification of 610 applications under 89 sub heads of 15 major heads received during 2006-07.

Details of the expenditure incurred from the financial grants provided by the Gujarat Government for the purpose of its functioning and exercising powers of the State Commission are given below.

These grants are allotted by the Gujarat Government under section 33 of the Human Rights Protection Act, 1993.

Under Section 30 of the Protection of Human Rights Act, 1993, a provision has been made with the consent to Hon'ble Chief Justice of the High Court to appoint special courts for the speedy disposal of the cases of breach of human rights by a Judge of each District Sessions Courts. The Legal Department of the Government of Gujarat, under this provision, issued orders to appoint each District Sessions Judge as the Special Court of Human Rights by a notification of May 24, 2002.

Similarly, the Legal Department of the Government of Gujarat, under Section 31 of the said Act, appointed Public Prosecutors for speedy disposal of breach of human rights, thus all Public Prosecutor are notified and empowered to deal with the
cases as Special Public Prosecutor in the Human Rights Courts for breach of human rights in each district by a notification of July 20, 2007. The above mentioned information and other important information is presented in the annexure. Moreover, the State Commission opened its own website for State Commission’s important information one can see i.e. [http://ghrc.guj.nic.in](http://ghrc.guj.nic.in).  

### Organizational Structure

![Organizational Structure Diagram]

#### 5.4 GUJARAT STATE HUMAN RIGHTS COMMISSION PROVISIONS REGARDING FUNCTIONS AND POWERS OF STATE COMMISSION:

**(A) Functions of the State Commission**

The State Commission has to perform the following functions as per Section 12 and Section 17 of the Human Rights Protection Act, 1993 given below:

**Section – 12**

12. The Commission shall perform all or any of the following functions, namely:
(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, or on a direction or order of any court into complaint of –

(i) Violation of human rights or abetment thereof; or

(ii) Negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the government;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors', including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake a promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organizations and institutions working in the filed of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.'

PROCEDURE

Section – 17. The Commission while inquiring into the complaints of violations of human rights may:
call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary having regard to the nature of the complaint initiate an inquiry.

The State Commission has the powers relating to inquiries u/s 13 and the steps after the inquiry under Section 18 of the Human Rights Protection Act, 1993 as given below:

Section -13

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely -

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the
inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code. (45 of 1860).

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject "matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, In so far as it may be applicable-2 of 1974.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is commuted in the view or presence of the Commission, the Commission may, after recording the facts ‘consulting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed* to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this act:

Provided that no such complaint shall be transferred unless the same is one respecting which the state commission has jurisdiction to entertain the same.
(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the state commission as if it were a complaint initially field before it.

Section 18. The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely –

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned government or authority-

(i) to make payment of compensation or damages to the complaint or to the victim or the members of his family as the commission may consider necessary;

(ii) to intimate proceedings for prosecution or such other suitable action as the commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the supreme court or the high court concerned for such direction, orders or writs as that court may deem necessary;

(c) recommend to the concerned government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

(d) subject to the provisions of clause(e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned government or authority shall, within a period of one month, or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the commission;

(f) the commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the commission.
5.5 GUJARAT STATE HUMAN RIGHTS COMMISSION

Procedure followed by State Commission

Gujarat State Human Rights Commission functions as per the provisions of the Protection of Human Rights Act, 1993. The definition of "Human Rights" in Section 2(d) of this Act is given as follows:

(d) "human rights', means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

Moreover, for the purpose of law, "Commission" means National Human Rights Commission constituted under Section 3(1), while "State Commission" means State Human Rights Commission constituted under section 21(1) read with Section 2(1)(n) and whiever "Commission" is mentioned, there is an amendment in Section 29 about reference to "Commission" shall be construed as reference to "State Commission" in that context. The constitution, duties and powers of the State Human Rights Commission are given in Section 21(1) Chapter V of the Act and the functions to be performed by the State Commission are given in Section 21(5) as follows :-

"21(1) A State Government may constitute a body to be known as the……………….(name of the state) in our case 'Gujarat State Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under this Chapter."

and

"21(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter :

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in, the Seventh Schedule to the Constitution as applicable to the State of Jammu
and Kashmir and in respect of matters in relation to which the Legislature of that State" has power to make laws" had been substituted."

Considering the above provisions of the law, the Complaints/petitions are received from the petitioners from all over the State, they are first being registered in the Inward Register of the office of the Commission and the receipt for the same is given to the concerned Petitioner on the spot. Thereafter, such applications are scrutinized under the provisions / rules prescribed under the Human Right Protection Act, 1993 and if prima facie breach of such Human Rights is found in it, the Public authorities of the concerned Departments / Sections / Authorities / Offices / Boards / Corporations are called for to submit at independent clear report within 21 days in normal circumstances, and if it is not submitted within the prescribed time-limit, the concerned Public authority is issued notice for the required information as per section 17(i)(a) of the Human Rights Protection Act, 1993 to submit the same within 7 days without fail and if even after this action the report is not received, the State Commission takes further action and as per the provisions of section 13(5), the State Commission procedure prescribed in the Civil Procedure Code as a Court A preliminary hearing is done and the party can be summoned and the concerned Officer can be issued summons to remain present and the petition is admitted, the case and may initiate for further detailed inquiry. The Commission can also take action as per section 18 after adopting procedure as per sections 13 and 17.

The report received from the "Public Servant" is scrutinized in the Commission. After completion of its scrutiny, the opinion of the Commission is sent to the concerned Officer, and if the complaint received from the Applicant is solved in the report received from the Public Servant, its note is taken and the Applicant is finally replied accordingly. But if, the complaint is no found in his petition correct, on the basis of report such cases are filed and disposed off and the Applicant is informed accordingly.

In certain cases, if there is any commission or omission no action on the breach of human rights in the preliminary report and proper procedure is not followed by the Public Servant, then after hearings and compliance is sought and thereafter, necessary recommendations, directions and decisions are given from the State Commission to the Public Servant for implementation of the directions to protect the
human rights. The concerned Public Servant / Government Department has to implement the recommendations, directions and decisions of the State Commission, if compliance is not done the commission can take its note in its Annual Report.

For the applications/petitions received in the State Commission, after receiving the report from the concerned competent authority it is scrutinized and thereafter State Commission takes final decision and if there is any lapse in the case at any stage right from inception to conclusion, under the Protection Of Human Rights Act, suggestion, instruction, recommendation are sent to State Government or to the competent authorities as well a intimation sent to the concerned petitioner. The state Government or the concerned state authority in normal circumstances accepts such recommendations, instructions as per 18(e) complies within a period of one month or within the extended period by the Commission, in such period the recommendation, guidance, instructions or advice action, provision of report are made. For such recommendations or directions as received in normal circumstances by the State Government or concerned authority. With a view to avail, immediate protection of civil rights within a prescribed time limit at free of cost in these present highly expensive circumstances without delayed justice, and easy and inexpensive procedure has been chalked out under this Act.

In context to human rights, an important provision has already been made in section 14 so as to utilize the services of any officer or any office of the Government with the concurrence of the Government thus, concerned office or authority has to work under the full control of the State Commission, and a provision has also been made to publish its report about procedures done or to be done about observations of such report by the Commission after receiving from the authorities under section 18(f) of the Act.

Under section 18(a) of the said Act, if the State Commission finds that the public servant has breached the human rights, then it will recommend to the authority as it deems fit to take actions about responsibility for reimbursement as suggested in the Act.

Under section 18(b), the State Commission can contact in such a way as the court finds it proper for issuing writ, orders or directions from the Hon'ble Supreme
Court or High Court and under section 18(c) can recommend interim relief as deem fit.

After the action taken by the State Commission, reports are to be submitted about the actions taken or to be taken regarding recommendations, directions, suggestions or guidance of the State Commission within a prescribed time limit of the Government of the concerned authority. If a report is not received within a prescribed time limit or an extension of time limit has not got the responsibility arise of the concerned authority about not acceptance of the recommendations of the State Commission. So, thus, the State Commission be continuously committed in the direction to provide easy and speedy justice to the citizens.

The Government or the concerned authority it’s immediately informed with the recommendations or suggestions about each case either as disposed off or as filed up by the State Commission. So, information can be obtained by contacting State Commission regarding the non intimation of final disposal of the case admitted in the State Commission. Thus, the real picture of disposed of cases and actions taken about the recommendations of the State Commission can be reflected in the report of the State Commission and a separate assessment can also be done about the awareness and competency of the Government Department or authority regarding human rights in this context.

By this way, the Gujarat State Human Rights Commission undertakes important work in cases of breach of human rights of the citizens of the State and orders to the Public Servants to follow human rights and contributes its maximum towards the implementation of people oriented and transparent administration.

5.6 IMPORTANT ISSUES RELATED TO HUMAN RIGHTS

5.6.1 Right to Information

Under the Right to Information Act 2005, the Government has made arrangements to avail the best facilities to get information to the citizens and thus an excellent work in being done for protection of human rights.

The State Commission started its work from September 12th, 2006, 4 applications were received under the Right to Information Act, 2005 upto 31st March,
2007. Out of which the Public Information Officer has given information as per the request of 3 applications while one application was not related to the State Commission, and the same has been transferred to the Revenue Department for further action, which has been accepted by the Department.

There was no appeal field before the Appellate authority against all the above applications during the year.

In this way, under the Right to Information Act, 2005, the State Commission has provided information in time to all genuine applicants during the year 2006-07.

The Gujarat State Human Rights Commission has also published required State Commission's booklet under the aforesaid Act within the prescribed time limit.

Under the Right to Information Act, 2005, all the citizens have right to get information to their satisfaction from all Department, any person having his own interest can get solve his problem under this Act his grievance by knowing its situation through facts without applying to the Human Rights Commissions. Thus, this Act is playing a very important role to empower a common person.

5.6.2 Weaker Sections of Society – Scheduled Caste / Scheduled Tribe

The Constitution of India has given Right to equality to every citizen. It prohibits any kind of discrimination based on race, caste, creed, faith or religion by public administration. The practice of untouchability has been totally eradicated under Article 17 of the constitution. The Central Government has notified following Acts for its effective enforcement against any violation:


As stated earlier the Commission has started its functioning from 12\textsuperscript{th} September, 2006. Thereafter, the State Commission has received 27 petitions of partiality, injustice exploitation, and atrocities towards Scheduled Castes / Scheduled Tribes in the year 2006-07 and the State Commission have taken immediate actions on them.

It is noteworthy here that, the Central Government has constituted two separate Commissions at the National Level for Scheduled Castes and Scheduled
Tribes (1) National Scheduled Caste Commission and, (2) National Scheduled Tribe Commission. Any citizen of the State can submit his petitions to these Commissions. As per the section 21(5) prviso of Human Rights Protection Act, 1993, if any issue is already filed before any of these Commissions or the NHRC, this commission cannot entertain such cases so that the disputes are not repeated unnecessarily with different commissions.

The State Commission is very alert and immediately admits complaints as soon as they are filed. And in case of Schedule Caste and Schedule Tribes and gets inquiry reports immediately. After going through the reports received, and if any discrimination is noticed, it get certified immediately and if necessary instructions to the concerned Officers are given for protecting the rights of the Scheduled Caste/Scheduled Tribe and recommend penalty in serious offences.

In the case of Scheduled Caste / Scheduled Tribe, if State Commission finds at any stage that hearing is necessary, the concerned Police Officer or other Authorities are needed are asked to remain present and instructions are given to take remedial measures in prescribed time-limit. The Commission takes immediate steps for providing proper justice to the Scheduled Caste and the Scheduled Tribe against the violation of their fundamental rights.

As mentioned earlier State Commission received total 610 petitions upto 31st March, 2007, out of which 50% cases pertain to the Scheduled Caste / Scheduled Tribes, out of which 70% petitions are finalized by the State Commission. A few such cases are presented in the report. Guidance and suggestions have been given to the authorities in many cases and recommendations have also been sent to the Government by the State Commission. Thus, State Commission is well aware and serious in solving the cases of Scheduled Castes / Scheduled Tribes.

27 complaints have been found of prejudiced partiality behaviour against the people of Scheduled Caste, however, no untouchability matter is found openly due to successful efforts done in the past in this regard to eradication of untouchability form the times of Mahatma Gandhiji. While looking in depth, there lies in some clash of economic interests against each other.

Looking into all the above circumstances, with a view of improving attitude and behaviour among communities leaving no scope for discrimination, the State
Commission is continuously keeping vigil over such issues. Such petitions are received with utmost sympathetic approach from the part of the State Commission.

5.6.3 Minority Community

Minority Communities like Muslims, Christians, Buddhists, Jains, Shikhs and Parsis are living in the State. From the religious minority communities in 2006-07 in all 45 petitions were received, and all the applications have been disposed off during the year. There is not a single application received about partiality in school admissions or prevention in religious faiths.

5.6.4 Rights of Children

The humanity is based on freedom, justice and peace. A child has a right to live life and to develop without any discrimination based on caste, colour, gender, language or religion. U.N.O. has proclaimed "Rights to Children" in 1989, which has been accepted by our country in 1992.

However, unfortunately many children, instead of enjoying their childhood, they toil hard at the tender age for study, pick up rags from garbage, weave silk woolen carpets, do farming, diamong polishing, work in poisonous chemicals factories, building construction works and hotel waiters etc. To prevent all this, the State Commission making efforts to help them for their rights for good education and health of the children.

After establishment of the State Commission and starting its work from September, 2006, total 4 applications were received on children issues till March 2007. These are as follows:

1. Child marriage-1 and child exploitation – 3
2. No application is received on child labour, child body trade anhd immoral child trafficking.

As per the provisions in Section 12 of the Human Rights Protection Act, 1993, the State Commission is continuously active in child welfare, and seminars would be organized in future. Regarding child nutrition, the State Commission is in touch with UNICEF. About child missing, state police force is alerted by Government. Missing children cell is also established.
The State Commission is very alert of child issues, gets immediate inquiry reports, admits petitions and maintains continuous vigil on children conditions. After getting it, if there finds any lapses, quick attention is paid, and gets compliance immediately. Thus the State Commission initiates for immediate action on petitions relating to breach of any child rights.

5.6.5 Children and Social Security

In Gujarat State, necessary facilities are created for arrangements as per Juvenile Justice Act (Care and Protection of Children) Act, 2000. Under this Act, (1) Observation Home (2) Special Home (3) Children Home (4) Shelter Home and (5) After Care Institutions are functioning. In this way, children are admitted in different organisations for short term, long term protection and care. Before the orders of child welfare committee, they are sheltered by NGOs and such children on attaining age of 18 years are being sheltered in the After Care Institutions.

5.6.6 Missing Children and Women

The following Guidelines are given by the Hon'ble Supreme Court of India on 14-11-2002, while hearing the Writ Petition (Cri.) No. 610 of 1996 field by Horilal V/s. Commissioner of Police, Delhi & Ors. with regard to effective steps to be taken in case of tracing out the missing and kidnapped minor girls and women etc.:

(1) Publish photographs of the missing person in the newspaper, telecast them on the television promptly and in any case not later than one week of the receipt of the complaint. Photographs of the missing person shall be given wide publicity at all the prominent outlets of the city / town / village concerned, that is at the railway stations, inter-State but stands, airport regional passport office and through law enforcement personnel at border check-posts. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of a minor/major girl such photograph shall not be published without the written consent of the parents/guardians.

(2) Make inquiries in the neighbourhood, the place of work/study of the missing girl from friends, colleagues, acquaintances, relatives etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.
(3) To contact the Principal, class teacher and student at the missing person’s most recent school/educational institutions. If the missing girl of woman is employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.

(4) Conduct an inquiry into the whereabouts from the extended family of relatives, neighbours, school teachers including school friends of the missing girl or woman.

(5) Make necessary inquiries whether there have been past incidents or reports of violence within the family. Thereafter, the investigating officer/agency shall:

a. Diligently follow up to ensure that the records requested from the parents are obtained, and examine them for clues.

b. Hospitals and mortuaries be searched immediately after receiving the complaint.

c. The reward for furnishing clue about the missing person should be announced within a month of her disappearance.

d. Hue and cry notices shall be given within a month.

e. The investigation should be made through women police officers as far as possible.

f. The concerned Police Commissioner or the D.I.G. / I.G. of the State Police would find out the feasibility of establishing a Multi-task Force for locating missing girl children and women.

g. Further, in the metropolitan cities, such as Delhi, Mumbai, Kolkata and Chennai, the Investigating Officer should immediately verify the red-light areas and try to find out the minor girls. If any minor girls (may or may not be recently brought there) is found, her possession be taken and she may be sent to the local children’s home (Sec. 34 of the Juvenile Justice (Care and Protection of Children). Act, 2000), and the I.O. to take appropriate steps that all medical/other facilities are provided to her.

5.6.7 Women

Women are Life partner of men and inseparable part of his life. Men and women are the two sides of the same coin of their family. But because of different physiological capabilities, historically half of the total population (women folk) in the entire world have been victimized or exploited. Sometimes, men forget the
importance of powers of women and as a result, women are being exploited. Our State is not an exception to this. The Central and State Governments have provided special laws to protect them from exploitation and conferring equal rights. However, there are many weaknesses in our social structure. “यत्र नारी पूजयते रमन्ते तत्र देवता” this Vedic Sloka has been neglected by us and as a result, women are continued to be exploited. To prevent this, there are many legal provisions.

The State Commission is alert of women rights, it attends petitions of women immediately and keeps continuous vigilance and gets immediate inquiry report on their issues. After receiving reports. If any loopholes are found. It is immediately passes necessary recommendations to the concerned offices of ensure full protection of rights of the women.

Petitions of women, under the Protection of Women from Domestic violence Act, 2005 is involved. The State Commission promptly undertakes action under the Protection of women from Domestic Violence Act 2005. Moreover, under this Act, the State Commission has asked for the report from the State Government on the appointment of Protection Officers, creating public awareness on gender sensitization and providing the budget provision for all the Districts of State. As this Act has come into force recently, during the year 2006-07, so far no such case is registered on the police records under this Act.

The State Commission is in preparedness to issues pertaining to women. It's policy for hearing such case is on priority basis and concerned executing officers are kept present, the State Commission insists for immediate solution of the issues raised in a prescribed time-limit and takes actions for immediate dispensation of justice, free of any burden to the women against the cases of violations of rights of the women. During the year report in the State Commission the following issues have come for consideration.

1. 10 petitions of women's kidnapping, raping, and murders have been received
2. 24 different petitions have been received regarding partiality towards women
3. 3 petitions on dowry death or attempt to murder are received
4. 11 petitions on women's exploitation are received
5. No petitions of immoral trafficking and insult of women, unfair representations and group wrapping are received

6. One complaint about sexual harassment towards woman has been received.

5.6.8 Prevention of Immoral Trafficking of Women and Children

A draft has been prepared to prevent and combat Human Trafficking with Special Focus on Children and women under the National Integrated Plan of Action by the Ministry of Women and Child Welfare with the joint Cooperation of National Human Rights Commission, Ministry of Home Affairs, National Women Commission and UNICEF, in which women and children are specially protected, which is as follows:

The Government of India has signed the "Trafficking Protocol" in December, 2002. The details of procedure to be undertaken by the different organizations and institutions are given. The main organizations and its authorities concerned are as follows:


Keeping in view the women and child welfare in centre the following points have been covered in the draft for prevention of immoral trafficking of human beings.

(1) Introduction, (2) Measures of assurance of human rights of victims of immoral trafficking, (3) Efforts to detect victims as well as immoral traders, (4) Prevention of immoral trafficking in human life, (To get statistics, sensitive capacity building, Education, opportunities to live life and favour and correspondence), and (5) To prevent immoral trafficking and standards to fight it etc.

An ideal protocol has been prepared in the above draft to protect victims and inter state protection work against immoral trafficking. (1) General principles and guidance. (2) Earlier protocol before protection work. (3) Protocol during protocol work, and (4) Protocol after protection work.
(1) Following points have been covered in general principles. These important issues need to be considered while dealing with this problem.


(2) Protocol before protection work – These points need to be considered before the protection work starts.


(3) Protocol during protection work : These steps to be taken during the protection work.

3(1) To take position to cordon, 3(2) keep secret and to inquire, 3(3) Important places of detection, 3(4) Protection work by detecting children, relatives of victims, 3(5) Keep separate from offenders, 3(6) Security, 3(7) Method of preparing evidences and 3(8) To send children to the children welfare committee, if there are children below 18 years.

(4) Protocol after protection work : The measures necessary after the protection work.

4(1) Immediate responsibility, 4(2) To prevent for further victimization, 4(3) Slow and peaceful working, 4(4) Detailed inquiry, 4(5) Options of implementation, 4(6) Medical care and attention, 4(7) Legal and, 4(8) Place to keep victims, 4(9) Arrangements to send after examining the home of adult victims, 4(10) To close prostitution places, 4(11) Procedure regarding offenders involved in exploitation, 4(12) To send victims in their home state, 4(13) To forfeit documents and materials in respect of victims, 4(14) To present with full security the detected offenders, 4(15)
Requirement of police or judicial remand, 4(17) Interim relief, 4(18) Procedure to be followed regarding offences of immoral movement (Pros..) and 4(19) Planning of public broadcast.

5.6.9 Health and Environment

In the context of Human Rights. Every citizen has right to live healthy and a Right to Health. Therefore, the State Government has also implemented many programmes on health. Where in it has been planning has been organized for various programmes for availing easily health and peaceful life services to the people of the State. The State Government is taking actions to make these programmes as the peoples as the people's programmes. In which mainly four groups of programmes are in force (a) Public Health, (b) Medical Services, (c) Medical Education and Research, and (d) Family Welfare Programmes. As a risk of public health, preservation of healthy environment is an important issue for human rights, which is being taken into consideration.

In respect of human rights, the following priority aspects are to be taken into consideration on health (1) Primary facilities for health (2) Immunization programmes (3) Special disease control (4) IMR /MMR / Study of institutional delivery ratio and facilities and taking into further consideration present age of fast communication and transport (5) Trauma centre, EMS (at No. 108) services have been found proactive in proper direction towards Human Rights work. Therefore, when comparing to the other states, health services of Gujarat citizens could be brought on the front line.

The State Commission received a total of 15 applications upto March 21, 2007, out of which 5 were of public health and 10 were of pollution control, of these, 5 applications have been disposed off and 10 are pending.

5.6.10 Consumer Rights

Consumer Protection Act, 2002, is an Act protecting the rights of consumers. In which it includes protection against purchase-sale of harmful products, which can damage to life and property, quality of items, purity, to inform about its standards and price, to assure to avail various items at reasonable price to think over about consumers interests in proper forum, and disposal of complaints against exploitation of consumer or illegal trade system and to enable to hear.
All private, public and cooperative fields have been covered in this Act and there is a provision to get justice free of charge, easily and speedy and to reimburse the loss.

Judicial Magistrate First Class Powers are given for hearing of such type of offences to the Consumer District Forum, State Commissioner in this Act.

Under this Act, a customer can complaint for loss, defective items, and items sold at higher price due to illegal trade practices.

5.6.11 Employment Guarantee Scheme

This is a revolutionary scheme. It is an important scheme brought for the first time for giving assurance of employment to the unemployed persons.

National Rural Employment Guarantee Scheme has been implemented from 2nd February, 2006 in the six districts such as Dangs, Narmada, Sabarkantha, Panchmahals, Banaskantha and Dahod in the State, under the National Rural Employment Guarantee Act, 2005 enacted by the Central Government.

Families living in rural areas of the above districts of the State whose adult members unemployed are willing to do unskilled manual labour work which can be given to them. There is a provision to give employment to minimum employment of 100 days to them.

The management of this programme is being done at district level by the DRDA Agencies through District Panchayat by the District Programme Coordinator, Programme Officer of District Panchayat at Taluka level and at Village level by Gram Panchayats.

This scheme implemented in the above six districts, has been started by converting into a complete Rural Employment Scheme and National Food for Work Programme under the National Rural Employment Gurantee Act, 2005. This scheme is based on demand and not on target. The Gujarat State Human Rights Commission is vigilant, well aware and determined about the basic, effective and meaningful implementation of this programme. No petitions of any kind have been received here in the Commission.
5.6.12 Disaster Management

The work of Disaster Management in Gujarat is done by the Gujarat State Disaster Management Authority (GSDMA) under the Gujarat State Disaster Management Act, 2003, in eventuality of such event Government immediately give required assistance on war footing to the affected people disabled, children, paraplegias, old aged and women and the work of social rehabilitation is being carried out speedly and on timely basis.

On this occasion, it is to be noted that some scattered cases of 201 earthquake are pending in relief works. 11 applications have been received by the State Commission out of which 6 applications have been disposessed off and 5 are still pending which require reassessment of the damages.

5.6.13 Procedure of Arrest

Important provisions of working procedure to be followed regarding criminal offences in context of Human Rights.

In the Criminal Procedure Code 1973, the provisions to be taken into consideration in context of Human Rights, a proper method required to be followed about forfeiting property by confiscation and to enforce arrest warrant or without warrant, to prosecute enquiry are as follows:

- For Protection of Human Rights Committee of Human Rights Commission and for arrest inquiry of arrest by police. Very important guidelines-instructions are given in the judgement dated 19-10-2001 in the case of Appellant Shri D.K. Basu and others Versus State of West Bengal, Criminal Miscellaneous Petition No. 12704/2001, in the Hon'ble Supreme Court in which, the following aspects have also been covered under the Criminal Procedure Code, 1973 and the instructions have been given to activate the State Human Rights Commission by this judgement
- As per Section 41(1) and (2), 42, 151 powers have been given to the police to arrest without warrant
- As per Section 43, any private individual can, by himself, arrest the criminal offending police right and his non-ball, presence and to be arrest and by this way, will consign to the care of Police Officer or to be consigned to the case of Police Officer
As per Section 46(4), no any woman would be arrested in the circumstances of extra-ordinary situation and if she is arrested, it should be noted in the case diary and when a woman is arrested, woman police should be kept with and arrest of minor child should be done without any force or beating

As per Section 49, no handcuffs would be groipped to the the arrested individual without order of a magistrate

As per Section 50, the arrested individual should be informed about the reasons of his arrest and to free on bail

As per Section 50(a) 1, the relatives of arrested person should be informed about his arrest and about details of place where he has been kept

As per Section 50(3) and (4), the note on the arrest should be made in Police Station diary and his identity should be made clearly to the Police Officer

As per Section 53, if an arrested person is injured, it should be clearly mentioned in Arrest Memo and his medical check up should be made and his inquirty should be carried out at fixed place and his relatives should be informed about his and during inquiry, sanction should be given to approach his Pleader and to remain present

As per Section 57. no arrested person should be kept in custody for more than 24 hours

As per Section 58, District Magistrate or Magistrate of sub-Division should be informed about the arrest

As per Section 100(5), a list should be prepared by the Officer of the forfeited items and its places during confiscation and signatures of other witnesses should be taken

As per Section 160, an Officer carrying police inquiry, cannot order to remain present a man below 15 years of age or any aged woman present at any other place except at the place where they live

As per Section 165, if an In Charge Officer of Police Station has a reasonable reason, for which he has a right of police inquiry, a necessary item for police inquiry for an offence, which lies in a boundary of his Police Station or is likely to find out from any place in the limit of a Police Station, where he is serving, and according to his opinion, it is not possible to get it by another way without any further delay, then he will have to note reasons for his validity and
will have to mention in his statement as far as it is possible for the item for which a confiscation is to be carried out, he will be able to carryout the same for the item of any place in limit of such station

- As per Section 167(2), during remand in police custody of an arrested person, medical check up of an arrested person should be carried out at every 48 hours.

5.6.14 Position of Jails

The Gujarat State Human Rights Commission carries its functions and duties under Section 12 of the Human Rights Protection Act, 1993 of India. Under these provisions, inquiry about carelessness of any public servant in preventing such breach or breach of human rights, the State Commission, undertakes itself "Suo Motu" or from representation of somebody. Moreover, under Section 12(G) of the above Act, about working of Jails, special provisions have been made as follows:

However there is any provision in any such law, in which it is in implementation from time to time, any jail under the control of State Government or any other organization in which a person is kept in custody or kept for treatment, improvement or security purpose to recommend to the State Government on it an to visit for study of living of his co-living."

Under the above provisions, as per the information received by the State Commission from Jail Department of the State Government, the position of present jails in Gujarat is as follows:

(1) The total No. of prisoners in State jails is 11,509 and detainees are 625, and they are in all 12,134. Average over crowding in State jails is 113.40%. But in (1) Ahmedabad Open Jail (2) Amreli Open jail (3) Chhota Udepur Sub Jail (4) Rajpipla Sub Jail and (5) Himmatnagar Sub Jail, there is no over crowding

(2) Comparing to the total population of State is 5,62,98,000 (Male 2.94,90,000 and Female 2.68,08,000) the following facts are found. Comparing to per 1,00,000 population, the figures showing comparison of prisoners are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Ratio of total No. of prisoners</th>
<th>20.24</th>
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<tr>
<td>2(a)</td>
<td>2(b)</td>
<td>2(c)</td>
</tr>
<tr>
<td>Ratio of total No of male prisoners</td>
<td>37.39</td>
<td></td>
</tr>
<tr>
<td>Ratio of total No. of female prisoners</td>
<td>1.79</td>
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</tr>
</tbody>
</table>
2(d) Ratio of total No. of Under Trial Prisoners 11.40
2(e) Ratio of total No. of male Under Trial Prisoners 20.81
2(f) Ratio of total No. of female Under Trial Prisoners 1.05
2(g) Ratio of total No. of convicted Prisoners 9.03
2(h) Ratio of total No. of male of convicted Prisoners 16.57
2(i) Ratio of total No. of female of convicted Prisoners 0.74

Comparing to total prisoners, ratio of Under Trial prisons was 55.79 %, in which it includes 55.66 % male and 58.71% female prisoners.

In context of Human Rights, Gujarat State Human Rights Commission, in respect of human rights of prisoners in jails, undertakes programmes according to Section 12(9), and undertakes necessary considerations in context of human rights regarding issues of necessary prisoners, programmes and shibirs. Complaints of 10 prisoners have been received in the State Human Rights Commission. Out of which, 6 complaints have been disposed off and 4 are pending in want of field information.

For arrested prisoners, the State Human Rights Commission recommends as follows:

(1) With a view of speedy disposal of all the arrested prisoners in State Jails, the Commission recommends to take suitable actions.

(2) It also recommends creating facilities similar to their numbers if there are more prisoners than the intake capacity of jails.

(3) The commission also recommends keeping vigil to present in time before the Hon'ble Court the arrested prisoners on remand before the expiry of their tenure. It is illegal to keep any person in arrest without getting remand.

5.6.15 Nirmal Gujarat

The Gujarat Government has decided to celebrate the year 2007 as the "Nirmal Gujarat Programme." This programme is very nice. Under this programme, the goal of the Government is to keep the big cities, towns and villages totally clean, make beautiful and Nirmal. In this programme, public places like religious places, vegetable market, ST Stand, Railway Station, Public Roads, Government Offices, Schools-Colleges, Shopping Centers, Gardens and Dispensaries etc. which are generally creating more garbage will be kept clean and health facilities will be provided to the citizen. This programme has been proved very useful. This programme has remained very userful with a view of maintaining balance of
environmental cleanliness. Under this programme good hygienic and cleanliness conditions maintained in the cities and towns of Gujarat. Though there are good rains more than the average due to the climatic changes for last 2 to 3 years. It is a worth noting that there is net decrease in spread of epidemic. Outside tourists also take note of this and appreciate. Not only this, but due to successful and effective implementation of this Nirmal Gujarat Programme, tourism activities of Gujarat have attracted more visitors directly or indirectly. The State Human Rights Commission is actively involved with this programme and proper recommendations are sent to respective departments for these activities.

Two officers of the State Commission have been appointed as the Nodal officers for some areas Dr. R.L. Meena, IAS, Secretary, has been given charge of Gandhi Nagar notified area. He gave suggestions to create a very transparent environment, inspected various offices in the State Secretariate etc to create people friendly atmosphere there. He has also suggested long term and short term solutions of chronic problems of the Gandhinagar notified area. He took weekly rounds of every street with officers in Gandhinagar which has very good impact to improve the environment. Shri V. G. Vanzara, Under Secretary was given a charge as a Nodal Officer at Umargaon and he has allotted responsibility for making this programme successful. They have preformed their duties with great responsibility. This programme should not be limited for one or two years, the State Commission recommends continuing this programme for long term basis.\(^{(5)}\)

5.7 DISTRICT AUTHORITIES AND HUMAN RIGHTS (Sensitizing the Distribut Aministration)

The District Administration is the real face of the administration Being at cutting edge level all kinds of administrative and development activities are mostly initiated at the District level supervised and followed up till the delivery level. District Administration news to be sensitized so that it can act as prime Human Rights defender as per the international standards and in ensuring the practice of the Democracy at the grassroots level. So as to ensure basic Human Rights to the citizens, its alertness and attitude as prime Human Rights defender within the Government.

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system is absolutely essential for a democratic and welfare state. Legislature, Executive and the Judiciary are the three pillars of Democracy and are given a balanced role to contribute to the democratic ethos to run the country on the Public cost. Of the Executive, the District Magistrate plays a vital role. Being the Nodal officer at the District level to vast field of "Executive", have over all responsibility to ensure protection of Human Rights. It harnesses all the development projects of Government and also maintains District Administration including law and order at the Cutting Edge of the society. It has to work in liaison with the various State Government Departments, Central Government offices, NGOs, Statutory bodies, Armed forces, Private Organisation etc. Apart from the implementation of the Government Policy, it has to apprise the higher authorities regarding ground realities of the District. As, lot of qualified, talented and professional youngsters are entering in the administrative field, it is necessary to create awareness towards Human rights among them. Thus, sensitizing the District Administration means ensuring that the people will get their due from the Administration and in making the life of the people much better and dignified. However, it is given here briefly and some new features are discussed to give idea of the field performance.

2. All public welfare functions and schemes of State Government e.g. Local bodies, Law and Order, Scarcity relief, Natural calamities and Disaster Management, Public Health and Sanitation, Education, Roads, Electricity, Irrigation, Food and Nutrition, Agriculture, Fisheries and Preservation of Forests, Prisons and custodies, Care to Children, old age and retarded people and upliftment of slum dwellers, marginal farmers, laboureres of unorganised sectors and women, Social justice and empowerment related to Economically and socialy backward classes, Scheduled castes and Scheduled tribes, Juvenile Justice and atrocities on Women, Cottage and small scale industries, Co-operative societies, Sports, Literature and Cultural Activities, Urbanisation issues, Housing are carried out through District Administration, hence it can be the only important and vital agency so far as the issues of Protection of Human Rights are concerned.

3. In modern concept of pro people democratic administration, the independent agencies and NGOs only need not to raise the flag for Protection of Human rights.
The duly Sensitized District Administration should be one of the agencies within the government machinery, which can take up the causes for Protection of Human Rights, easily and successfully. The District Administration can also make use of Human Rights norms as a strong weapon to protect people from the clutches of vested interest. Any individual or NGO has to spend time and money both to get redress for Human Rights violation, which can also be taken up by the District Administration even before any such violation takes place or at the time of such violation. If such happens within the Government System, then definitely it is the wonder of Democracy.

4. District Administration plays a key role in handling the Human Rights issues. The state Government has also designated District Courts as the Human Rights Courts in the state. The District Authorities are supposed to deal effectively all the issues but on account of lack of awareness among the administration and people most of the petitions are addressed to the Commission at the state level and copies are sent to the District Authorities and field functionaries. Here issues are of District level hence the Commission needs verification of record or the facts on the ground. This process makes the procedure lengthy and costly for the petitioner. The NHRC has got prepared 'The Human Rights Manual for District Magistrates and has sent it to every District heads as they are expected to address district level public grievances directly. The manual emphasizes the role of District Administration in depth. It envisages that the institution of the District magistrate who is in charge of the Administration of the District under CRPC has to pay more attention to the weaker sections of the society who look up for their help. The efficiency of the administration depends on the role of this key person.

5. New Global standards of governance and emerging need to be enforced at the district level to reach to the common man. Citizens are demanding better performance on the part of their governments and they are increasingly aware of the costs of poor management and corruption. The District Administration should have the objective to promote sound development management through basic level good governance that seeks to advance the following critical objectives such as transparency and predictability, accountability, strategic focus, efficiency and effectiveness and participation. Therefore, the role of District Magistrate business very important to have full public orientation of the district administration to be sensitive to resolve...
these issues before they become complicated and hardened the attitude of the beligerent parties and become subject to judicial litigation. There are many regulatory Department maintaining Village records including Record of rights, the Revenue Department with is the custodian of land records. A paper maintenance of this record which is historically being done by the Talati-cum-Mantri and under close supervision of Circle office. Mamlatdar and all developmental records. Under Taluka Development Officers. The up-to-date maintenance of this record is key to being desired efficiency and transparency in the District Administration. The transparency brought under Village Panchayats by internets can empower the common man.

6. The experience of about last six years shows that most of the grievances are in public at the District level. Even those policy issues at the state level the grievances are reflected at the district level functioning only. Therefore, the importance of District Administration get prime place in handling them. The 10 major areas of grievances are issues pertaining to the present public grievances in the state are largely found in the following areas of legal framework:

1. Domestic violence against women, dowry deaths, rape, murder and suicides
2. Disputes regarding properties particularly with family members
3. Atrocities against the Scheduled Castes and Scheduled Tribes
4. Police issues regarding prohibition, Custodial tortures and illegal detentions
5. Land disputes and issues regarding rights of roads
6. Issues of rehabilitations of unauthorized colonies
7. Complaints of maintenance of revenue records and city survey records etc
8. Grievances regarding discrimination in service and non-payment of Pensionery benefits and other dues in time
9. Procedural irregularities arising of urban land transactions
10. Money lending at high interest rates, Loan recovery and Economic disputes.

7. There is not much awareness to raise Human Development Index (HDI) issues but these real long term Human Rights issues needed immediate attention for long term strategy to resolve without affecting social harmony. About 25 of these issues are being monitored as programmes on the directions of the Supreme Court. The District
administration has to be more focused on them for monitoring purpose at the state level.

8. Experience of the past six years working shows that there is undue duplication of the agencies at the District level. There are many subjects for which separate field functionaries are working for local body, representatives of the state Government, Central Government and the functional Departments. While in western countries the local countries handle all issues of local importance, in India neither local bodies are so equipped nor trusted for maintaining objectivity. Commission feels there should be efforts to empower bodies to ensure proper role for them so that administrative economic burden can be brought down and minimized, coordination issues are also minimized by avoiding duplication or triplication of District or local administrative functionaries. The role of police need to be more functionally defined. For example the traffic management, prison management, crime detection, local intelligence maintaining law and order and enforcement of criminal laws should be more specialized with respective functionaries rather than an ill equipped over burdened inspector treated as solution to all problem and answerable to public and every one result into a functional blocked of all activities at the ground level without effective supervision of any single agency. This tendency has given power without proper accountability for effective enforcement.

9. In the land occupancy rights there is a need to recognize title only as the legitimate ownership. The conflicting ruling on the occupancy rights breeds land mafias who forcefully occupy lands and try to legitimize the occupancy mercy of the basis of physical possession. Again for proving physical possession manipulation of status reports, records of rights are forcing people to go his legal titles simply by legal documents of registration and orders from government or the competent Courts.

10. There should be complete separation of executives and legislative work so that objectivity is maintained and manipulation by local functionaries such as that of talaties should be reduced to professional management of record under the revenue Authorities rather than Panchayats or Municipalities.

11. Presently there are overlapping jurisdictions of different field machineries creating confusing for a layman. There should be clearly well defined boundaries at
Government level to regulate jurisdictions of all fields functionaries to bring down administrative cost and burden of a common man.

12. The Secretary and other officials of GSHRC took visits of the various districts of the state to create Human Rights awareness & facilitating assessment of enforcement Human Rights including the field visits.

13. Dr. L. Mishra IAS Retd. Special Rapporteur, NHRC has given some practical tips on operationalise the guidelines contained in the Human Rights Manual for District Magistrates.


(ii) Proactive, positive and sensitive district administration shoule adopt the interpretations which goes in favour of the targeted group.

(iii) Timely implementation is essential for any legislation can be saved by acknowledging the existence of the problem, effective dealing and steps to prevent its recurrence.

(iv) Cognigence can be taken from credible source of information such as newspapers reports through public interest litigation.

(v) Officers of proven trust, ability and social conscience can be delegated powers when they are indisposed.

(vi) Take a fair and judicious view of the reports received.

(vii) All complaints grievances received be redressed in shortest possible time.

(viii) Computerized documentation of the successful stories is extremely important.

(ix) Appreciate fast tract efficient officials while penalize sloppy slow and superfluous ones.

(x) Good reliable and committed NGOs be promoted encouraged and be fully supported and whole heartedly involved.\(^{(6)}\)

\(^{(6)}\) Annual Report 2008-2009 pg no. 17 to 20
5.8 HISTORICAL PERSPECTIVE OF SOCIAL JUSTICE

Inclusive Development and Affermative Actions for Empowering Deprieved Groups To Enjoy Human Rights

The ancient literature of Vedas Upanishads Ramayan, Mahabharat, Puranas and other creations are full of legendary stories of benevolent activities for helping the poor and needy as well as protection of Human Rights. Whole Manav Dharma was meant to guide people to conduct themselves with social responsibilities towards others to protect their Human Rights. Helping weak was the sacred duty of all. Treating others as you wanted treatment for yourself, others' ladies always to be respected as mother or siste, others' money as a worthless piece or iron, worshipping a wise and learned man without looking into his background caste or nationality. Balmik, Vedvyas, Kumbaj, Vidhur all from humble background were highly respected as learned persons their wisdom. Despite social stratification charity and social responsibility to the lesser privileged has been duly emphasized in ancient literature, Guiding people and preaching good things to society was duty of learned people called Brahmins, like Guru Vashishtha Raj-purohit was to advise on policy matters. Protection from enemies within and outside was the prime responsibility envisaged for a ruler and warrior class Khsatliya and served by the faithful secretaries like Sumant who shared many family secrets also. There was freedom of movement and even a foreigner enjoyed same rights of protection etc. There is no dearth of stories of benevolent Kings like Harish Chandra, Dasharath, Ram, Krishna, Bhishma, Karn, Yudhisthir etc. These heroes are well known to enforce their principled rule of law and welfare orientation and readiness for sacrificed every thing for well being of their subject. Lord Ram says to Lakshman "the king whose subject is not happy, that king certainly deserve hell". The governing principle of Dharma was well being of all. This is mine and that is yours that is thinking of narrow minded people for large hareded people everyone on earth is a part of famioly. Over and above the core principle governing society was 'Action to help others was considered proper and desirable right virtue and troubling or harming others was an act of sin 'Protection of weak was the duty of strong. Due respect and help to woman was must in times of crisis even at the cost of one's own life). Jatayu gave his life in efforts to save Sita from clutched of Ravan. Sita was always called Mata and she called them as son by Lakshman and Hanuman who were almost of the same age as Ram. Ram was all alone with his
brother far away in forest exiled person but Sugreev and his all monkeys' and bears' army even Vishishan the brother of Ravan, also came to support him for his right cause to get back Sita and helped in killing of wicked king Ravan of Srilanka. A total selfless service by Hanuman, as he treated Lord Ram protecting sages and weak, as his master. Even Ravan did not prevent his doctor (Vaidya) Sukhen from treating his enemy Lakshman as he got right to health. Every one got right to seek services of Doctor (Vaidya).

2. No Ruler, whatever powerful he was, got public recognition unless he conducted and took welfare activities to win the heart of masses. Harischandra sacrificed every thing for adhering to the truth. For getting recognition as emperor, Ashwamedha Yagna were to be performed to show power, the sacred horse accompanied army moving free every where after conquering all those who challenged (no undue killing of weak) before sacrifice followed by liberal charities, donations for all Jachaks (beggars) who came to his door till they were fully satisfied. The donations included kanyadan, gaudan, food, clothes, even house as given by Kishna to Sudama Abhaydan and even sacrifice of self as Bhisma disclosed secret of his own death to Arjun, Karna donated his protection of natural armour around his body since birth on demand of his mother for victory of Pandavas his step brothers, who were fighting for right cause. Raja Bali, the King of Daityas committed for three steps of land, lost his entire kingdom to Lord Vaman, who came to protected the interest of lord Indra, the King of Heaven Normally no rights conferred on recipients except Brahmins who were busy in learning and service of God for well being of all, always enjoyed priority even before the ruler himself. However, it ws all voluntary and guided by more religious obligations to secure better results for successful and sate future in present and next birth rather really caring for well being of the deprived of groups (beggars) Ram Rajya was described as a perfect welfare state for well being of its subjects. Ram sacrificed kingdom and accepted 14 years Exile to please step mother and keep words of his late father. Again even abandoned his innocent and beloved wife Sita for exile, to remove doubts and seek confidence of a common man (washerman). The emphasis was more on personal fighteous dignified conduct and service to the people rather than creating physical infrastructure facilities of making wealth for himself Actually physical facilities, luxuries and comforts were mentioned but all in context of the unpopular king Ravan, such kings bothered their own comforts and their capital city
golden Lanka. It appears that in most of the times rural India was left to its own fate and the capital city enjoyed full patronage state boundaries were very broad landmarks. People believed in their own Karma. This ensured automatic consideration of others' rights first and if any thing was missing it was attributed to his own misdeeds of the past birth, hence no grudge against others. As such therer is no record of general upsurge or organized demand for these activities and very limited role of the ruler to maintain order which was partly inbuilt. His role was to sit on a seat of judgement only when there was a dispute. Even a single innocent killing of Sravana Kumar by mistake of King Dashrath or King Bali without provocation by Ram, they had to undergo punishment of similar painful deaths. While Bharat accepted responsibility to look after kingdom for 14 years, other brother, Shatrughanm was entirely given full responsibility to look after properly old mothers Human Rights of all including the oldaged and weaker persons were well protected. There are ample examples of creating public facilities for education in gurukuls, drinking water tanks, building hospitals, wells, stepwells, gardens, planting fruits bearing medicinal, shed plants and protection of cow and domestic animals. The kings were helping citizens during the years of droughts and many monuments, tanks, temples or dharmsalas were built in drought relief works. Of course, the common grahsthi (family man) had very big social obligations to discharge, four compulsory obligations were there, one part of earnings was for self and his wife, second for paying past debt through looking after elders, third part for proper care and upbringing of children for future and lastly the fourth part was for general social charity work. After paying his share to Rajkosh to maintain administration and the king and his establishment, donations given for looking after moving saints and religious priests, ashrams, gurukuis and beggars and needle and salvation by performing pooja and feasting the Brahmans and other jackaks. Full rights were enjoyed by the Brahmin Purohits, Gurus, Rishis, Saints and Sadhaks Raja Mordhwaj sacrificed his son to feast pet lion of the saints (Shri Krishna and Arjun in disguise). People observed fast for all auspicious occasions. If they were not satisfied, the host was unhappy. Some times they could also threat to invoke curse for future life or complaint to the rulers who were protecting faithfully their rights otherwise they would be subjected to such curse. However, the concept of giving food or water to any hungry or thirsty is well observed charity by all classes at every place without much discrimination. There were many religious rituals which always
concluded with community feasts by offering foods to Brahmins and the poor or dependents particularly the unmarried girls and saints. However, this was also fact that ladies used to take food in the last and get satisfied with whatever was left out just before the lowly placed people were offered the remaining food. But over all people were happy and no record of distress or mass hunger deaths. Lokmat (public opinion) was always governing principle for a good governance. It is to be noted that over a period in later days fast deterioration noticed in the system even then kings like Ashoka, Harsh Vardhan and Akbar followed similar policies. Unfortunately, western critics and their blind followers seldom mention these positive legacies of our past and magnify the defects of Varna System biased against Sudras (of course, it needs correction) but it is not supported by the literature that such maltreatment was rampant.

3. As per the experts Reports on the issue, the emergence of untouchability in the caste based social order has a complex history with little consensus or clarity on its origin. While some have attributed it to the growth of agricultural civilization in the country and the emergence of agricultural castes, which needed assured access to manual labour for agricultural operations, others have traced its genesis to expansionist phase of Indian civilization which led to the conquest of indigenous inhabitants and their consequent enslavement by the Aryans. The 'shudras' in the social hierarchy towards the end of the RigVedic period, represent these enbsaved persons who were assigned inferior status, which was related to their birth in that community. Wheateve be the explanation of its origin, the institutional structures which governed social conduct in the society are subsumed under the nomenclature of Caste System.', which broadly represents a vertical arrangement of social division of the Hindu population into four major groups, known as 'Varnas'. At the top of this arrangement are the Brahma (Priestly class), followed by 'Kshatriya' and 'Vaishya', 'Shudra' stood at the bottom of hierarchy. The 'untouchables' were not a part of this Scheme. However, over a period of time, the exigencies of situation led to the addition of fifth group of this classification which was not given any caste status as such but nonetheless integrity linked to the social order and is referred to as 'untouchables' or 'outcastes'. the membership of this group was determined y birth and could not be changed by individual effort of social acceptance. These four 'Vamas'
subsequently transformed/got divided into hundreds of sub-castes, known as 'jati' and each 'jati' having its own norms of social conduct.

The caste structure is characterised by following six important features:

1. Segmented division of Society
2. Hierarchy,
3. Restrictions on feeding and social interaction,
4. Lack of unrestricted choice of occupation.
5. Civil and religious disabilities and privileges of different sections, and
6. Restrictions on marriage

The segmentation of society into four groups represents a highly divided arrangement of both status and occupation, which is linked to each other in a hierarchical relationship. Brahmins occupy the top slot in the hierarchical ladder and 'untouchables' the bottom.

As the caste hierarchy operates around the concepts of purity' and pollution', 'untouchables' are considered as the most degraded because they perform pollution tasks. The restrictions on feeding and social intercourse incorporates code of conduct for each caste on what one can see and cannot see, what one can and cannot touch and what can and cannot touch and what can or cannot be accepted by a person of one caste from a person of another caste. Restrictions on occupation are intended to prevent any destabilisation of hierarchy. Civil and religious disabilities mandate untouchables to live at a distance from the main village not to draw water from village well, enter the village temple, wear the sacred thread, acquire education or recite the religious texts. Untouchables and required to undertake the most polluting and degrading occupations, such as cleaning fifth including human excreta, flaying dead animals, digging graves etc. The absolute restriction on marriages outside the caste and in fact, even sub-castes ensures that there is no mobility from one group to another. Thus, the untouchables face total segregation in all matters, subjected to acute discrimination, do the most menial and degrading jobs and have no right to change heir status. The transition from caste disabilities to commission of atrocities has been traced to 3rd and 4th Century. A.D. when Varma system faced crisis of deviations from the prescribed social conduct and the need was felt for coercive measures to enforce caste discipline and boundaries. The king emerged as the
Upholder of the system. Those who violated the system were subjected to secular punishment as well as performance of various rituals. This is how physical violence by higher castes on the lower castes was sacrificed. This situation continued for centuries. The persons of suppressed communities acquiesced in this arrangement, as there was no opinion for them to escape from it. Perhaps they may have been made to believe that life in the next birth may be better if discipline imposed by existing status is adhered to.

4. During the medieval period some saints, Kabir, Nanak and Ravidas were critical of existing social order and preached a religion of love, compassion and consideration and a more tolerant social arrangement. But there was no protest against the caste system and its social ramifications as such. The prevailing laws continued to support the caste system and the rulers upheld them. During the Muslim Rule in India. Some people from the suppressed communities might have converted to Islam as a way out of their degraded status, but there is no evidence that the Muslim rulers ever tried to interfere with the Hindu caste system or reform it. Their strategy of governance may have prevented them from doing so, The British established the rule of law which was based on a concept of equality. The law applied to all persons irrespective of their position. This was a major departure from the pre-British judicial system where caste distinctions were not only recognized but also enforced and differential punishment was awarded for the same offence, depending on the caste status of the offender under the new system. But even in the British period caste distinctions remained relevant in matters relating to Hindu Law. The general features of the legal system did not change the status of lower castes, as the overall British policy remained on of non-interference. An matters such as entry to temples, ritual pollution and rights to exclusiveness the courts supported the customary laws of Hindus and their view was under event at the level of Privy Council. There was however, some difference in the attitude of Courts towards secular public facilities such as streets and roads where such disabilities were not enforced. However the Courts did not provide any support for removing caste disability in matters which came up before their consideration.

5. On a social plane, the period witnessed many reform movements in Hindu Society, such as Brahmo Samaj, Prarthana Samaj, Arya Samaj, Ramakrishna Mission. Theosophical Society, the Social Conference which attacked the caste system and some other features of Hindu Social order. These movements, while supporting the
four varnes, condemned the inhuman practice of untouchability, during the freedom movement, Gandhiji contributed a great deal towards abolition of untouchability and later founded the All India Harijan Sangh for the purpose. In south, self-respect movement was launched against Brahminical tyranny. It was Dr. Ambedkar, who took up the fight against caste oppression more vigorously through the All India Depressed Classes Federation. Around 1909, the issue of untouchability acquired political significance when proposals were made for special legislative representation for untouchables. In 1917 the Congress passed anti-disabilities resolution. In the 1930s antidisabilities bills were introduced in Central Legislative Assembly, Madras and Bombay Legislatures. In 1938, Madras Legislature passed the first comprehensive law to remove social disabilities making it an offence to discriminate against the untouchables. In fact, in the publicity supported facilities, such as roads, wells, transport vehicles etc as also in other secular institutions, such as restaurants, hotels, shops, the law also prohibited judicial enforcement of any customary right or disability. This was followed by similar legislations in other provinces. Later, initiative was also taken by Madras to facilitate temple entry for Scheduled Castes by making it a criminal offence for any person to prevent any Hindu from entering worshipping at any temple. Similar Acts were passed in other provinces.

6. However, the British Government never took positive action to improve the condition of shudras and untouchables and to remove their disabilities. Apparently, the larger consideration of consolidating their rule prevented them from interfering with the customary practice associated with indigenous religions. Thus, at the time of independence the traditional status of untouchables and caste disabilities, which prevented them from leading a life of dignity and self-respect continued to prevail. It was, therefore, left to the Constitution of India after independence to make the first comprehensive break with the past and to pronounce the policy of abolition of untouchability and declare total equality for the shudras and untouchables in Indian society. The Constitution also laid down means to achieve these objectives.

7. The Gandhian Movement along with freedom struggle gave unique atmosphere for social reforms. Most of the legislations were the outcome of shortcoming noticed in achievements in the started objectives of these social reforms particularly for the eradication of untouchability and improving working conditions in the mental jobs attached to such conditions. These are various steps initiated by the Governments in
power to remove the social discriminations but with the passing of time and diminishing commitment of Gandhian followings, the more stringent actions were required to curve the menace. There are some voices raised in international fora or that of India society has racial discriminatory Policy just the way it existed in South Africa or some other Common Wealth countries. India always denied it and there every possible legislation in all the states to curve such tendencies but in practice it may be there. The anti north Indian Movement taken up by the Shiv Sena breakaway group MNS of Raj Thakre in Maharashtra or similar craze to protect sons of the soil is recognized in many states. Despite single common national citizenship, based on language, religion or the state domicile such discrimination still exist. Government of India recognized the need to give domicile such discrimination still exist. Government of India recognized the need to give priority in lower category C and D jobs to the local residents. Maharashtra enacted such policy and recognized locals the person who stayed in the state for more than 10 years and reserved 80% jobs in industry in the year 1990. Similarly other states including Gujarat have policy of giving priority to local in non technical and lower worker level recruitments in the private units having Government concessions on grants on the same lines. In fact even our constitution recognized the lists of SC/ST based on the state domiciles. But the subject of social discrimination as remanants of untouchability and discriminatory had practices do exist, need complete burial.

8. The Constitutional and Legal provisions for removing unhealthy practices and so bring a fair and just social order

After independence, we adopted a fair and just Constitution and many legislations to bring fair and just society not only on the issues correcting past relics of Varna discrimination but in many new emerging trends of discrimination to workers in the industrial relationships and improving their working conditions.

(1) The Constitution provides various safeguards to implement objectives enshrined in the preamble to the Constitution. These safeguards include social, economic, educational, cultural, political and serice. Social safeguards are contained in Article 17, 23, 24 and 25(2) (b) of the constitution.

As per Article 17, untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability has been
made an offence punishable in accordance with the law." and important legislations have been enacted to give effect to contents of this article.

The Constitution of India has given Right to equality to every citizen and it prohibits any kind of discrimination based on race, caste, creed, faith or religion by public administration. The practice of untouchability has been totally eradicated under Article 17 of the constitution. The Central Government has notified following Acts for its effective enforcement against any violation:

(I) Citizens Rights Protection Act, 1995
(II) Scheduled Caste / Scheduled Tribe (Atrocities) Prevention Act, 1989
(III) The Untouchability Act, 1976

(2) The Protection of Civil Rights Act, 1955 has been enacted with the objective of providing punishment for preaching and practice of untouchability, in the enforcement of any disability arising there from and for matters connected there with. Article 25(2)(b) provides that Hindu religious institutions of a public character shall be open to all classes and sections of Hindus. The term "Hindu" includes persons professing Sikh, Jain and Buddhist religions. This provision strikes against the opinion held by some sects of Hindus that members belonging to Scheduled Castes/Scheduled Tribes have no right to enter the temples.

(3) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 seeks to prevent the commission of offences against the members of Scheduled Castes and Scheduled Tribes Article 23 prohibits traffic in human beings and 'begaar' and forced labour in any form and contravention of this provision of this provision has been made an offence punishable in accordance with law.

(4) Bonded Labour System (Abolition) Act, 1976 has been enacted and a special programmed for identification of bonded labourers, their liberation and rehabilitation has been in existence to operationalise its provisions. While this Act does not specifically mention Scheduled Castes and Scheduled Tribes, it is of special significance for them because majority of the bonded labour belongs to Scheduled Castes and Scheduled Tribes.
(5) **Article 24 of the Constitution** provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment.

(6) **The child Labour (Prohibition and Regulation) Act, 1986.** A large number of child labourers engaged in hazardous employment belong to Scheduled Castes and Scheduled Tribes.

(7) **Employment of manual scavengers and construction of Dry Latrines prohibition Act-1993**

The Act makes violation of the law an offence punishable with imprisonment for a term which may extend to one year or with fine or with both. In pursuance of the Act, Ministry of Urban Development operates a scheme for conversion of dry latrines into water sealed latrines. Ministry of Rural Development administers Rural Sanitation Programme for construction of sanitary latrines in rural areas for conversion of dry latrines into wet latrines and construction of village complex for women. Ministry of Social Justice & Empowerment has a centrally sponsored scheme, called the National Scheme for liberation and rehabilitation of scavengers. This Ministry, through another scheme, provides pre-matric scholarship to children of those engaged in unclean occupations, which is intended to benefit children of scavengers primarily.


(9) **National Commission for Safai Karamcharis**

Problems, Grevances, welfare activities and working conditions of Safai Karmacharis are looked after by this National Commission.

(10) **Devdasi System Abolition Acts**

Devdasis originally had only religious functions, but the practice subsequently degenerated into sexual abuse of these women by high priests and royal patrons and later by landed gentry and other powerful persons. "Andhra Pradesh Devdasi (Prohibiton of Dedication) Act, 1988 which provides for rehabilitation of such women, Karnataka Government has also enacted the Karnataka Devdasi (Prohibition of Dedication)Act, 1992. In Gujarat this practice has no evidence of existence.

(12) **For curbing unequal distribution of economic assets**


(13) **For positioning watch dog arrangements**

(Who submit their annual reports to the Parliament and the State Legislative Assemblies of the State).

(i) National Commission for Scheduled Castes
(ii) National Commission for Scheduled Tribes
(iii) Nations Human Rights Commission and State Human Rights Commissions
(iv) National Commission for Women
(v) National Commission for Protection of Child Rights
(vi) National Commission for Safai Karamcharis

(14) Various International Human Rights covenants and conventions applicable to India, include.

(a) Universal Declaration of Human Rights 1948.
(b) International Convention on Civil and Political Rights 1966.
(c) International Covenant on Economic, Social and Cultural Rights 1966,
(d) International Convention on Elimination of all forms of Racial
   Discrimination 1965.
(e) Convention on Elimination of all forms of Discrimination against Women
   1989
(g) ILO Convention No.29 Forced Labour Convention 1930.
(h) ILO Convention No. 111 Discrimination (Employment and Occupation)
    Convention 1958.
(i) ILO Convention No.107 Indigenous Peoples Convention 1957

All the above have been signed and ratified by the Government of India. These
international instruments lay down norms and standards for treatment of individuals
and groups and protection of their rights. Thanks to large scale governmental and
public efforts, changes are happening although the pace is slow. However, it has to
be borne in mind that society is a living organ. There is always a gap in wishful
thinking, legislations and real outcome. Social attitudinal changes take place after
change in generation; therefore we have to concentrate more on future generation.
The past experience shows that mere statute does not bring change in practice, what we
need is the public education and mass awareness. In democratic process, the true
safeguard to Human Rights is the awareness of people. The people select their
representatives, one has to ensure that these representatives are properly enlightened
and public seek reform agenda to be implemented in letter and spirit Unfortunatel,
growing role of money and apathy of general public towards, these issues is
responsible for their persistent presence. Only modern compulsory education to all
can bring this change which has to encompass in all areas urban or rural and remotest
slums or tribal hamlets with mass poverty pockets.(7)

(7) Annual Report 2008-2009 Pg 21 to 27
5.9 ATROCITIES AND CRIMES AGAINST WEAKER SECTIONS

1. Having gone through historical factors, this fact to be accepted that the cause behind such attitude in older generations particularly whose public exposure is limited, past two Reports of the Commission show that in such atmosphere the atrocities and the crimes against the weaker sections of the society took place which are further discussed in this report with the figures of the year 2008-09 along with the data of the petitions received in the Commission. The Commission was very sensitive to the sufferings and discriminations noticed against these sections. In the last reports it was observed that India being one of the oldest continuing civilizations it has carried lot of past social vagaries with it despite many positive factors. Dr. B.R. Ambedkar’s efforts have brought them recognition of equality before the Constitution of India and not only assertive action of abolition of untouchability and any inequality before law is enacted, but Directive Principles of state policy also found way in the statute. Many these Directive principle have taken form of the legislations. No doubt, the pace of change was slow but this was a unique peaceful revolution taken place everywhere in the world and more so in India as the malaise of caste system was deep rooted in the psychic of the society. The discrimination against the Dalits has been pointed out by the various international agencies in the international forums which become very embarrassing for the Government agencies when we raise issues of racial attacks on the Asians or Indians in the Western countries or Australia etc they take defense of the fact and counter that there are far more attacks on the dalits in India than the attacks on Indians abroad. We need to address this issue seriously and remove this blot from our international face.

2. The improvements in the desired direction are seen in the past half century but it is noted that form of discrimination against Weaker Sections have now changed shape from physical discrimination to economic and that is the reason any adverse situation developed they faced the burnt first but that does not mean that physical atrocities have completely stopped. North Gujarat and Saurashtra regions still reflect such problem prominently in rural areas. The present economic slow down cannot be any exception which has rendered innumerable casual workers jobless. No doubt the Employment Guarantee programmes are too some extent helpful but they are the worst hit. Even without economic slow down these weaker sections faced social discriminations and there are large number of petitions received in the commission.
from these groups, the women, scheduled Castes (SC) and the Scheduled Tribes (ST), children and minorities, the people below poverty line, and people affected by projects or the natural disasters etc. This chapter is devoted to analyze the size and nature of these recorded atrocities in the foregoing paragraphs. The revolutionary legislation of right to information, no doubt slightly empowered them but there is lot of efforts require to level the social malaise.

3. Human Rights and Dalits – a legal framework. The fall out of deep rooted malaise of Varma classification in Manusmruti has been discussed passed through millennia of history necessitated long term affirmative action in India for Dalits and weaker sections and women which dates back to social reforms initiated in the 18th Century. Presently a three pronged strategy is envisaged. Firstly, an overall frame work of rights is created under Article 15 and 17 that conferred equality of status and abolition of untouchability. It was hoped that it will liberate the dalits from all disabilities, but it did not happen. Several policies and programmes were undertaken under these institutions to give concrete steps to ensure full equality in enjoyment of the constitutional rights. Reservation was not only given in the elections to the seats in Parliament (rticle 330) but also in the State Legislative Assemblies (Article 332), Panchayats (Article 23D) and Municipalities (Aarticle 343 (T). The system of reservation was introduced in services of Central and State Governments. Thirdly, the attempts are made to wean away Dalits from such perniciously degrading practices as 'Manual scavenging by passing the 'Employment of manual scavengers and construction of dry latrines prohibition Act 1993.' Some other legislations helped these groups are. Under the Right to information Act, 2005, the Government has made arrangements to avail the best facilities to get information to the citizens and thus an excellent work is being done for protection of human rights. Under the Right to Information Act, 2005, The Human Rights generally touch upon every person however, the violations are generally seen more against the weaker sections of the society. The major violations are against the most vulnerable section of our society i.e. women, scheduled Castes (SC) and the Scheduled Tribes (ST) and some of them against minorities. The people below poverty line face major constraints of poor literacy rates, poor education opportunities and health services and other infrastructure facilities which need massive efforts on education to bring the desirable change.
4. Scheduled Caste / Scheduled Tribe atrocities. It is noteworthy here that, the Central Government has constituted two separate Commissions at the National Level for Scheduled Castes and Scheduled Tribes (1) National Scheduled Caste Commission and (2) National Scheduled Tribe Commission. Any citizen of the State can submit his petitions to these Commissions. As per the section 21(5) of Human Rights Protection Act, 1993, if any issue is already filed before any of these Commissions or the NHRC, this commission cannot entertain such cases so that the disputes are not repeated unnecessarily with different commissions. Besides these two, there are three other commissions to serve the weaker sections, those are; The National Commission for Minorities, The National Commission for Women and The National Commission for Protection of Child Rights.

5. The State Commission is very alert and immediately admits complaints as soon as they are field and in case of Schedule Caste and Schedule Tribes, gets inquiry reports immediately. After going through the reports received, and if any discrimination is noticed, it get rectified immediately and if necessary instructions to the concerned authorities are given for protecting the rights of the Scheduled Caste / Scheduled Tribe and recommend penalty in serious offences.

6. As mentioned earlier State Commission received total 610 petitions up to March, 07 and then 1420 petitions up to 31st March, 2008, and 2260 petitions us to March, 09 out of which number of cases pertain to the Scheduled Caste / Scheduled Tribes, are also finalized by the State Commission. A few such cases are presented in the report. Guidance and suggestions have been given to the authorities in many cases and recommendations have also been sent to the Government by the State Commission. Thus, State Commission is well aware and serious in solving the cases of Scheduled Castes /Scheduled Tribes.

7. The State Commission recommended in many cases for the Human Rights of such weaker sections. There are 1147 offences registered regarding atrocity on SC and 194 offences regarding ST category during the year 2008-09. Out of which many cases under atrocities against SC/ST were filed and the offences registered by the police, out of which in many cases it was found that relevant Section of Atrocities are wrongly applied which were set right by the Gujarat State Human Rights Commission. The State Commission also made recommendations in regard to the
responsibility of such lapses as well as also various recommendations are made for the implementations of Human Rights of such weaker sections. The concern authorities have not promptly reported action taken on the implementation of the recommendations.

8. Thus the State Commission has acted according to the legal aprovisions for protectiing Human Rights of the weaker sections of Gujarat State and thus discharges its duty to peaceful development anad welfare of the State. The State Commision scrutinizes the petitions and if found correct, issues notices to obtain the reports and to arrange the hearing and make recommendations. Ultimately desired result achieved to prevent the breach of the Human Rights in the State.

9. **Minorities** : Gujarat state has a sizeable percentage of the minorities. The Gujarat State Human Rights Commission during the year received 50 petitions of various kinds, from the minority communities like Muslims, Christians, Parsis, SC etc during the year in 2008-09. In the last year 2007-08 there were 37 applications.

10. **Women** : We have discussed in the last year Report our healthy traditions and dignified place of women in our society in ancient literature, enjoying equal rights with man. Women are life partners of men and inseparable part of the society. But because of different physiological capabilities, historically half of the total population (Women folk) in the entire world have been victimized or exploited.

11. The State Commission is alert of women rights, it attends petitions of women immediately and keeps continuous vigilance and gets immediate inquiry reports on their issues. After receiving reports, if any loopholes are found, it immediately passes necessary recommendations to the concerned authorities to ensure full protection of rights of the women mostly the petitions of women, are for the 'Protection Domestic violence Act, 2005. The State Commision has undertaken action under this Act, 2005. Moreover, the State Commission has observed that the State Government acts upon the appointment of Protection officers, creating public awareness on gender sensitization and providing the budget provision for all the Districts of State. As this Act has come into force recenbtly, during the year 2006-07, very few cases have been registered on the police records under this Act.

12. The State Commission is in preparedness to the issues pertaining to women, it's policy for hearing such case is on priority basis and concerned executing officers are
kept present, the State Commission insists for immediate solution of the issues raised in prescribed time-limit and takes actions for immediate dispensation of justice, free of any burden to the women against the cases of violations of rights of the women.

13. The highlights of some of the steps taken by the National Commission which apply on the state also are:

i) Integrated Action Plan to prevent and combat human trafficking with special focus on women and children – A draft Plan of Action was evolved in this regard and it was discussed with all stakeholders during the National Consultation held in New Delhi from 3-4 August, 2007. The document once finalized will take the shape of a national Plan of Action to prevent and combat human trafficking.

ii) Missing Children – The recommendations/suggestions of the Committee constituted by the National Human Rights Commission in this regard have been sent to the concerned authorities in the country and the Government of India.

iii) Juvenile justice – The Commission is in the process of preparation of an Action Plan for bringing about improvements in the functioning of the juvenile system in the country and also to prepare guidelines in this regard.

14. Missing Children and women:

The missing children is a matter of serious concern. Guidelines are given by the Hon'ble Supreme Court of India on 14-11-2002, while hearing the Writ Petition (Cri.) No.610 of 1996 filed by Horilal V/s Commissioner of Police, Delhi & Ors. with regard to effective steps to be taken in case of tracing out the missing and kidnapped minor girls and women etc and the guidelines issued by the National Human Rights Commission have been given in past reports to deal with such situations.

15. Rights of persons with disabilities – Rights of Disability:

Conventions on the Rights of Persons with Disabilities were adopted on 13th December, 2006 by the UN General Assembly. The Government of India has ratified the convention on the Rights of Persons with Disabilities (CRPD) on 1st October 2007. Article 33 of the Convention explains the role of National Human Rights Institutions (NHRIs) in promoting and protecting the Rights of Persons with Disabilities. There is a need to focus on their rights for employment, education,
vocational training and access of services. A few petitions got filed before the commission which have been disposed of. The Commission provides a role for NHRC is in the monitoring of the rights of persons with disability and will continue its efforts in this regard.

16. Children

Government of India has set up separate Commission for issues of children known as National Commission for Protection of Children Rights (NCPCPR). It is recommended that state governments may also have similar Commission to focus on the issues of children.

17. Right to Health

In the context of Human Rights, Every citizen has right to live healthy and a Right to Health. Therefore, the State Government has also implemented many programmes on health. Where in planning has been organized for various programmes for availing easily health and peaceful life services to the people of the State. The State Government is taking actions to programmes dare in force (a) Public Health (b) Medical Services. (c) Medical Education and Research, and (d) family Welfare Programmes As a risk of public health preservation of healthy environment is an important issue for human rights, which is being taken into consideration.

In respect of human rights, the following priority aspects are to be taken into consideration on health (1) Primary facilities for health (2) Immunization programmes (3) Special disease control (4) IMR / MMR / Study of institutional delivery ratio and facilities and taking into further consideration present age of fast communication and transport (5) Trauma Centre, EMS (at No.108) services have been found proactive in proper direction towards Human Rights work. The State Commission received a total of 25 applications up to March, 31, 2009, out of which 13 were of public health and 12 were of pollution control.

18. Consumer Rights

Consumer Protection Act, 2002, is an Act protecting the rights of consumers. In which it includes protection against purchase-sale of harmful products, which can damage to life and property, quality of items, purity, to inform about its standards and price, to assure to avail various items at reasonable price, to think over about
consumers interests in proper forum and disposal of complaints against exploitation of consumer or illegal trade system and to enable to hear. All private, public and cooperative fields have been covered in this Act and there is a provision to get justice free of change, easily and speedy and to reimburse the loss. Judicial Magistrate First Class are given powers for hearing of such type of offences to the Consumer District Forum, State Commissioner in this Act Under this Act, a customer can complaint for loss, defective items, and items sold at higher price due to illegal trade practices. The complaints received under these subjects have been sent to the concerned Departments to take actions befre the relevant forums.

19. Disaster Management

The work of Disaster Management in Gujarat is done by the 'Gujarat State Disaster Management Authority' (GSDMA) under the Gujarat State Disaster Management Act, 2003, in eventually of such event Government immediately give required assistance on war footing to the affected and disabled people children paraplegias, old aged women and the work of soial rehabilitation is being carried out speedy basis. On this occasion, it is to be noted that some scattered cases of 2001 earthquake are pending in relief works, 11 applications have been received by the State Commission out of which 6 applications have been disposed off and 5 are still pending which require reassessment of the damages. There is still no positive response from the authority. It is recommended that the Gujarat State Disaster Management Committee should act with open mind on such humanitarian issues and resolve favourably these issues.

20. Relief and Rehabilitation of the Displaced persons

The Government of Gujarat has adopted a progressive policy regarding the rehabilitation of the Project affected people (PAP) of the major irrigation Dams, canals and other major projects like SSNNL are being monitored by the Committee appointed by Hon. Supreme Court The Project of Gujarat Capital at Gandhinagar displaced certain villages. These 7 villages have problems of house sites or Gamtal for the growing families. The issue need deep thinking and the status of families which has grown, need serious consideration to extend Gamtal or a multistory housing project for economically weaker sections society to accommodate more then 2000 new families on the same pattern of programmes working for other villages in
panchayat areas. It is recommended that Government may resolve these issues on priority basis.

21. Removing barriers for the inclusive development by positive assertive action

The following issues which need focused attention as per directions by the Hon Supreme Court, basically the action at the District level but to be properly monitored at the state level continued attempts are being made by the Commission to address these Human Rights issues. Some of them are being monitored as Programmes on the directions of the Supreme Court.

The Programmes in pursuance of Supreme Court Remit are:

- Abolition of Bonded Labour
- Functioning of the mental hospitals at Ranchi, Agra and Gwalior.
- Functioning of the Government Protective Home (Women), Agra
- Right to Food

Other Programmes and Human Rights issues taken up by the Commission include:

- Review of the Child Marriage Restraint Act, 1929
- Protocols to the Convention on the Rights of the Child
- Preventing Employment of Children by Government Servants, Ahmedabad of service Rules.
- Abolition of Child Labour
- Guidebook for the Media on Violence against Children.
- Trafficking in women and Children. Manual for the Judiciary for Gender Sensitisation
- Sensitization programme on Prevention of Sex Tourism and Trafficking
- Maternal Anaemia and Human Rights
- Rehabilitation of Destitute Women in Vrindavan
- Comblating Sexual Harassment of Women at the Work Place
- Harassment of Women Passengers in Trains
- Abolition of Manual Scavenging
- Dalits issues including atrocities perpetrated on them
- Problems faced by Denotified and Nomadic Tribes
- Rights of the Disabled
• Right to Health
• HIV / AIDS
• Relief Work for the Victims of 1999 Orissa Cyclone
• Monitoring of relief measures undertaken after Gujarat Earthquake 2001
• District Complaints Authority
• Population Policy – Development and Human Rights. (8)

5.10 CUSTODIAL CRIMES AND PRISONERS' CONDITIONS

Custodial Violence and Custodial Deaths:

Article 21 of our Constitution provides for fundamental right to life and liberty, reflecting this provision enacted in the form of law in the Protection of Human Rights Act 1993. Definition of human rights incorporated in section 2(d) which goes like :- "Human rights means the rights relating to life, liberty, equality and dignity of the individual guarantee by the Constitution or embodied in the International Covenants and enforceable by courts in India."

2. The Universal Declaration of Human Rights envisages freedom of life in its first article which envisages that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood, Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Everyone has the right to life, liberty and security of person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled in full equality to a fair and public hearing by an independent and

(8) Annual Report 2008-2009 Pg 52 to 57
impartial tribunal, in the determination of his rights and obligations and of any
criminal charge against him. Everyone charged with a penal offence has the right to
be presumed innocent until proved guilty according to law in a public trial at which he
has had all the guarantees necessary for his defence. No one shall be held guilty of
any penal offence on account of any act or omission which did not constitute a penal
offence, under national or international law, at the time when it was committed. Nor
shall a heavier penalty be imposed than the one that was applicable at the time the
penal offence was committed.

3. It is generally perceived that the worst form of violation of Human Rights is in the
form of torture. In a report "Torture in India 2008: A State of Denial"… the first ever
nationwide assessment of the use of torture in the nation, the Amnesty Commission of
Human Rights alleges that 7,468 persons… on an average of 1,494 a year… died or
killed in prisons and police custody during 2002-2007. A pervasive regime of
impunity is the single-most important factor for institutionalising widespread use of
torture even in areas where there are no armed conflicts. Only four personnel were
convicted in 2004 and three in 2005 for custodial deaths, it says. The ACHR warns
that unless the government addresses human rights violations and brings those
responsible to justice, the prospects for counter insurgency success will diminish
significantly and the space for more violent and extremem armed opposition groups
(AOG) will grow, and these will continue to commit appalling acts of torture with
impunity."

4. Among India's burgeoning armed opposition groups, the Naxalities or Maoists
have an appalling record of breach of human rights, including killing, torture and
mutilation. Their trajets include anti-Maoists, Salwa Judum activists, alleged police
informers, adivasis and dalits. The naxalites have increasingly organised para-state
institutions, notably "Jan adalats" to impose torture and multilation.

5. Moot legislation

The ACHR recommends that the government should enact legislation to
criminalise tirture and provide compensation to the victims, further amend the Human
Rights Protection Act of 1993 to bring the armed forces under the purview of the
National Human Rights Commission and ratify the United Nations Convention
Against Torture. It also urges the National Human Rights Commission to recognise torture as a crime distinct from custodial death and provide a separate heading for torture under its annual report, create a separate department to study all post-mortem reports submitted to the Commission in all cases of custodial deaths and set up a separate prosecution department that will take necessary measures for prosecution of the guilty, should find facts and evidence establishing the acts of torture.

6. There are many provisions of IPC defining various types of crimes which are all required to be enforced and the police has the powers to either prevent the crime or arrest the offender who has committed the crime. The Criminal procedure code has provided for the procedures as to how the administration of justice should conduct itself.

7. The National Human Rights Commission in Reports for the year 2005-06 has observed

"3.50 The most fundamental of all rights is undeniably the Right to life and liberty. Denial of this basic right to a human being or impediments brought in the way of attainment of this right, in any manner, is cause for concern for the society as a whole. Therefore, when the State apparatus is accused of being the cause of custodial violence or death, it would not be wrong to say that it is willfully abdicating its most basic and fundamental duty towards the citizens in a democratic system. The very care of a democratic philosophy rests on the presumption that the State shall not do anything that impedes or denies the right to life of any individual except by the due process of law.

3.51 The national Human Rights Commission has, since its inception, been grappling with the problem of the custodial justice system in the country. In particular, it has focused on the most serious of its manifestations – custodial deaths. It is to bring an element of deterrence and accountability of those upon whom the law has vested the responsibility of managing the custodial institutions, that the Commission has issued directions, which make it incumbent and mandatory for all district authorities to report to the Commission any incident of custodial death, within a period of twenty-four hours of its occurrence."
8. Custodial Violence and Deaths

There are many dimensions to the problem relating to custodial justice management. The National Human Rights Commission in Report for the year 2006-07 has observed, "3.54 The Commission has made sincere efforts for the protection and promotion of Human Rights within the country. Though the impact of the Universal Declaration of human rights is quite evident in Part-III and IV of the Indian Constitution, the fact remains that there is a wide gap between theory and practice. The denial of fundamental freedoms and human rights by the State creates conditions of social and political unrest. It definitely sows the seeds of violence and conflicts within and between societies and nations.

3.55 Some of the common features of violations of human rights are torture of arrested person, disappearance of suspects who out to have been in regular police custody, deaths in fake encounters, deaths in police custody, and under-trials detained in jail for years without trial.

3.56 In order to curb custodial violence, the Commission has issued guidelines to all States and Union Territories that all deaths in police and judicial custody should be promptly reported to the Commission within 24 hours of the occurrence.

3.57 The Commission has further directed that in case of death in police custody, the post-mortem is to be video-graphed and the videotape sent to the Commission. These measures enable the Commission to exercise checks on custodial torture and violence by the police and other public servants.

3.58 Since its inception in October 1993, the Commission has received intimations of 15166 deaths in police and judicial custody. Most of these deaths, especially those in judicial custody, were chiefly attributable to natural causes such as illness and old age. In other cases, they occurred for a variety of reasons, including illness aggravated by medical negligence, violence by public servants or between prisoners, and due to suicides."

9. The Procedure for Arrest

The State has to exercise powers of arrest to bring the criminals to justice and prevent untoward happenings. The Criminal Procedure Code, 1973 provides procedure to do so. Very important guidelines / instructions are given in the judgment dated 19-10-2001 in the case of Shri D.K. Basu and others Versus State of
West Bengal, Criminal Miscellaneouss Petition No. 12704/2001, in the Hon. Supreme Court, in which, most of the aspects have also been covered under the Criminal Procedure Code, 1973 and the instructions have been given to activate the State Human Rights Commission by this judgment.

10. Position of Jails in Gujarat

The Gujarat State Human Rights Commission carries out its functions and duties under Section 12 of the Human Rights Protection Act, 1993. Under these provisions, inquiry about carelessness of any public servant in preventing such breach or breach of human rights, the State Commission, undertakes itself "Suo Motu" or from representation of somebody. Moreover, the Section 12(c) of the above Act reads as under;

"visit, notwithstanding anything constrained in any other law for the time being in force, any jail or other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the government;"

11. The present status of the Jails in Gujart State is as below

(1) Total Number of prisoners in State Jails as on 31-3-2010 is 12,446 and Average over crowding in State jails is 74.9 %.

(2) Out of the total 12,446 prisoners there are 647 females and 799 males. The details of the prisoners as on 31-3-2010 are as under:

<table>
<thead>
<tr>
<th>Details of prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Convicted</strong></td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>4452</td>
</tr>
</tbody>
</table>

(3) The Gujarat State Human Rights Commission, in respect of human rights of prisoners in jails, undertakes programmes according to Section 12(c), and undertakes necessary actions into considerations in context of protection and promotion of Human Rights regarding issues of prisoners' programmes and Shibirs.

12. The Commission closely watches the law enforcement agencies. In the whole year total Complaints of 23 prisoners have been received in the State Human Rights
Commission and 3 were pending at the beginning of the year, totaling to 26. Out of which, 22 complaints have been disposed of and 4 are pending for requisite information and further inquiry as on 31st March, 2010.

The Commission is serious and showing its concern for the over crowding of jails. To reduce the number of inmates, the State Human Rights Commission observations as follows:

(1) With a view of speedy disposal of all the arrested prisoners in State Jails, the Commission recommends to take suitable actions for hearing the cases fast.

(2) It also recommends creating facilities as per the needs to match their numbers if there are more prisoners than recommended to increase the intake capacity of jails by constructing more facilities and also having full utilization of jails building ready for occupation.

(3) The Commission also recommends keeping vigil to present in time before the Hon'ble Court the arrested prisoners on remand before the expiry of their tenure. It is illegal to keep any person in arrest without getting remand.

(4) The State Commission also visits the jails and studies the situation of prisoners in the jail.

(5) The capacity of accommodation of prisoners allotted to respective jails in Gujarat is 6763 for male prisoners and 353 for female prisoners. Comparing to this figure it is 57% overcrowded.\(^{(9)}\)

5.11 VISITS OF GSHRC OFFICERS AND OFFICIALS OF THE UNO

2007-08. The commission was visited by the International dignitary Ms Asma Jahagir UN special Reporter on freedom of Religion and Belief and it was noted with satisfaction that there was not a single application of discrimination based on religion with the watch dog agency of human rights and oversees the conditions of the Human Rights, in the state. Early in the year, member of NHRC Shri PC Sharma visited

\(^{(9)}\)Annual Report GSHRC 2009-2010 Pg 23 to 2
Ahmedabad and called on the Hon’ble. Chair person in circuit House Ahmedabad. The State Human Rights Commission Officials attended the workshop and complied pending issues.

5.11.1 Participation by GSHRC officers at various Seminars, Conferences, Training Programmes and Visits of Jails etc. year 09/01/2010

(1) Visit of Tamil nadu HRC

Shri Amitabh Pathak, IPS, Addl. Director General of Police, GSHRC had paid a visit to Chennai to study the activities of the HRC, Tamil nadu on 22nd to 26th January, 2010. He found that the HRC had started functioning in year 1998. It was considered that during the last 11 years HRC in T.N. would have been strong enough to deal with activities related to human rights. This was one of the guiding reasons to choose to visit Chennai and study the activities of HRC.

He met the Hon’ble. Chairperson, Mr. Justice Venkatachalam Moorthy also. He also met and discussed with Officers of HRC. It is found that compared to us, their input in terms of number of applications is 5-6 time more. And also they have much more strong component of police officers. This way they are in position to independently check/verify the details of a few chosen applications.

Hon’ble. Chairperson narrated that recently they had succeeded in getting a panel of officers approved by the Government both in Forensic Science Laboratory and Medical department, as well. This will strengthen their arms to deal with the technical issues connected with the forensic science and medical, as well.

Though they have been functioning for the last 11 years or so, T.N. Commission is still struggling to have the financial autonomy as well as to increase the funds availability.

In addition they have a post of Registrar to deal with the administrative matters.

(2) Visit of NHRC, New Delhi

Shri Amitabh Pathak, IPS, Addl. Director General of Police, GSHRC had paid a visit to NHRC, New Delhi on 26-03-2010 for the purpose to get acquainted with functioning of the NHRC. Keeping this objective he had detailed discussion with
Hon’ble. Member Justice Shri B.C. Patel, DGP Shri Sunil Krishna and DiGP Shri Satendra Pal Sing.

Shri Pathak had studied the processing system of application at NHRC in their FPP Cell. They have developed a computer based "Complaint Management System (CMS) with the assistance of National Informatics Centre (NIC), New Delhi. He had preliminary discussion with Hon. Member Justice Shri Patel and DGP Shri Sunil Krishna. Both of them seemed to be positive about sharing the same system with GSHRC. In fact, they have already passed it on to a few states, in the recent past.

(3) Visit of Jamnagar, Porbandar and Junagadh district

Shri Amitabh Pathak, IPS, Addl. Director General of Police, GSHRC had gone on tour to Jamnagar, Porbandar and Jamnagar districts. The purpose was to discuss human rights related issues with the district authorities, concerned with the implementation of the same. The District & Sessions Judge, District Magistrate and Superintendent of Police were chosen for discussion as they were considered as the appropriate authorities for the implementation of human rights. Information required was already communicated to them and they were asked to come prepared with the corresponding charts.

At Jamnagar, District & Sessions Judge, Mr. Vakil was personally present. The District Magistrate was represented by the RDC and Superintendent of Police M.R. Jotangia was also present. Junagadh being the parent district of Porbandar, the meeting of the officials of the both the districts was arranged at Porbandar itself.

The reports obtained from all the three districts reveal that majority of the application are pertaining to Police Department.

(4) Workshop on Child Labour and Bonded Labour

National Human Rights Commission (NHRC) in collaboration with Labour Department of State Government arranged a workshop on Child Labour and Bonded Labour at Mahatma Gandhi Labour Institute, Ahmedabad on 15th and 16th January, 2010, under the Chairmanship of Hon. Justice Shri B.C. Patel, Member of NHRC.

Shri Varen Sinha, Principal Secretary, Labour Department; Dr. L. Mishra, IAS (Retd); Special Rapportier, NHRC; Director General/Economic Adviser (Labour welfare), Ministry of Labour and Employment addressed the audience on the issues
under reference. Many senior and middle level officers from various State Government Departments participated in this two days programme.

Various constitutional and international aspects, works done by Government Departments and NGOs were discussed on both subjects and this workshop was concluded with a vote of thanks by Smt. Vatsala Vasudeva IAS, Labour Commission, Gujarat State.

Shri A.K. Rakesh IAS, Secretary, Shri Amitabh Pathak IPS, Addl. DGP and Shri Pravinsinh Rana, Deputy Secretary from GSHRC attended this workshop.

(5) Visit of Secretary, Bihar State Human Rights Commission

Shri Ajay Kumar IAS Secretary, Bihar State Human Rights Commission paid a visit to GSHRC office at Gandhinagar on 18th March, 2010.

He was warmly greeted by GSHRC office staff and was offered a courtesy call by the Chairperson Hon’ble. Justice Shri D. S. Sinha.

Discussion on human rights issues were held with him in presence of Shri A.K. Rakesh IAS, Secretary, GSHRC, Shri Amitabh Pathak IPS, ADGP, GSHRC and Shri Pravinsinh Rana Dy. Secretary, GSHRC.

Shri Ajay Kumar addressed the infrastructure made available to GSHRC office and he also appreciated the work done in respect of protection of human rights in Gujarat.

(6) Visit of students from Gujarat National Law University, Gandhinagar

A team of 18 students, studying in LLB (Hons.) degree of Gujarat National Law University, Gandhinagar paid a visit of GSHRC office on 23rd March, 2010. These students doing a field study on "Globalization and Gender Justice to fulfill the purpose of clinical paper: IV" in their 10th Semester for LLB degree (Hons.). They had selected various topics relating to protection of human rights viz. Domestic Violence, Eve Teasing, Sexual harassment at work place, Women Entrepreneurship and Economic Violence etc.

This team was appraised of the existence and role of GSHRC / NHRC and provisions of the Protection of Human Rights Act, 1993 and Universal Declaration of Human Rights etc. Deputy Secretary, GSHRC Shri Pravinsinh Rana and Addl. DGP GSHRC Shri Chitranjansingh IPS discussed various issues and topics with them.
These meritorious students of Law faculty were highly impressed up on the work being carried out at GSHRC office and they found this visit very much useful for enhancing their knowledge of law and human rights.

(7) **Visit of Dy. Secretary under "Clean Gujarat Programme."**

The Deputy Secretary of the State Commission Shri V.G. Vanzara has been appointed as the Nodal Officer of Umargam Municipality by the State Government under the "Clean Gujarat Champaign."

Under this programme a Nodal Officer has to pay monthly visits to the place allotted to him, and he has to inspect, monitor and supervise various offices and issues as per the instructions and guidelines of the Government.

Shri Vanzara has regularly paid monthly visits to Umargam town and successfully carried out the mission entrusted to him by the Government. Thus, he has attributed to cleanliness of the town subsequently contributing to the promotion and prevention of human rights.

5.11.2 **Visits of GSHRC Officers and Officials of the UNO year 2010-2011:**

1. **Visit of Gondal Sub Jail by the Secretary**

The secretary has paid visit to Gondal sub Jail on 27-10-2010 and he noticed that there were 138 prisoners including one child. It is also found that top roofs of the barracks were covered with jute bags which impediment day-light and air circulation. It is not proper in view of safety and security measures, so it must be covered with steel frame.

It is necessary to start vocational training activities for prisoners.

As started by the prisoners before the Secretary, Medical Officer did no pay visit of the jail. They suggested that the medical treatment should be carried out periodically in jail by medical officer. They have nothing to say about food.

The secretary has suggested for a new tubewell for water as two existing tubewells were failed.

2. **Visit of Surat district Jail by the Secretary**

The secretary has noticed during his visit of Surat district jail on 19-11-2010 that the jail was over-crowded with 1122 prisoners as against inmate capacity of 350.
It is also noticed by the Secretary that the four terrorist out state prisoners instigate the other prisoners as well as disrupt the atmosphere of the jail by making false and superfluous complaints. The Secretary feels that they should be transferred either Ahmedabad or Vadodara central jail. The prisoners feel satisfaction except medical treatment. They feel dissatisfaction on the attitude of the medical officers of the civil hospital not being recommended for medical check-up even after recommended by the medical officer of the jail.

The jail is equipped with library and TV sets in each barrack.

As agasinst total 281 sanctioned posts only 76 were filled. It is necessary to fill vacant posts at the earliest.

3. **Visit of Umargam sub Jail by the Secretary**

The Secretary has paid visit to Umargam sub jail on 20-11-2010. The prisoners of Pardi and Umargam tehsil are kept in this jail. It is found that the building of the jail is very old and situated in the narrow compound of Mamlatar office and is not found proper in view of security as well healthy atmosphere of the jail. Moreover, there was absence of cleanliness. It was painful matter that two prisoners were ill but no care has been taken. They were treated only after intervention of the Secretary and he had suggested for permanent medical treatment for the prisoners.

The Secretary found that only boiled gram and three wheat breads which insufficient and unbalnced food serves by the contractor. After investigation it was stated by the contractor that his bills were not paid for two years by the authority so he was not able to serve more than that. The Secretary has requested to the SDM/RDM to ensure to pay the bills regularly.

4. **Visit of Jamnagar District Jail/Remand Home by the Secretary**

Jamnagar district jail and Remand Home has been visited by the Secretary on 29-12-2010. There were 462 prisoners as against inmate capacity of 466.

The prisoners had put a matter before the Secretary that the time of police surveillance has been fixed at the time to medical examination at civil hospital. In most of occassions they are forced to back in jail with incomplete treatment as the time of surveillance expires. It is suggested that in those occassions the police
surveillance time would be extended with the consultation between the RMO and Superintendent.

The jail own library with 4000 books. There expressed satisfaction about food.

During the visit of Remand Home, it is found that it has vast compound and well equipped with care and support room, library, counseling, computer room, water RO plant, TV sets, and playing materials etc. The children live with joy and get balanced food.

5. Visit of Palara Special Jail of Kachchh district

The secretary of the State Commission had paid visit of the Palara Special Jail on 18-1-2011. The necessary report of the visit had been sent to the respective authorities.

Visit of Godhra sub jail / Remand Home / Women Shelter Home by the Secretary

The secretary had paid visit of Godhra sub Jail/Remand Home/ Women Shelter Home on 24-1-2011.

The secretary feels that the sub jail must be shifted out side the city by constructing new building as the existing building is constructed in 1864, in the view of security and safety and is in the middle of the city.

There were 211 prisoners a against inmate capacity of 165. Prisoners get vocational training. Jasil has library, TV sets and newspapers. Teaching of Yoga, meditation and spiritual activities also conducted in jail. They expressed satisfaction about food.

Medical treatment must be given on regularly bases instead of necessarily bases.

At time of visit of Remand Home, there were 8 children and they get education under sarva shikshaa Abhiyan. There was no part time psychologist for counseling which is necessary.

6. In Women Shelter Home, there were 5 women and 4 children

The local leaders had complained about irregularities of woman superintendent before the Secretary that she could not take proper care of the children.
In last 6 months 5 children were died in the shelter home. The standard of cleanliness is also not maintained properly. The superintendent is habitual to leave the office in each holiday and thus multiple problems arise. They have put to the notice of higher authority of the irregularities of the superintendent but no action has been taken so far.

7. Visit of Bharuch sub Jail by the Secretary

The Secretary has paid visit of Bharuch sub jail on 31-1-2011. Th jail is divided in two circles. The two barracks out of six of 1st circle and three barracks out of five of 2nd circle were unused due to want of repairing. Not only that the entire construction of the jail is very old and requires either repair or construct new one. It is necessary to mention here that in the last year, one incident of collapse of wall was reported and two prisoners were buried and died under the garbage of wall.

Water is provided by tankers. A library and TV sets are there for the prisoners. Teaching of Yoga, meditation and spiritual activities also conducted in jail.

The prisoners had put a matter before the Secretary that the time of police surveillance fixed at the time to medical examination at civil hospital. In most of events they forced to back in jail with incomplete treatment as the time of surveillance expires. It is suggested that in those events the police surveillance time must be extended.

5.11.3 Outstate visit of the Secretary and Deputy Secretary

The Secretary and the Deputy Secretary of the State Commission had paid study visit of the Andhra Pradesh State Human Rights Commission on 29-10-2010 and 30-10-2010.

During 9-2-2011 and 10-2-2011 the Secretary and the Deputy Secretary of the State Commission had paid study visit of Maharashtra State Human Rights Commission.

During these visits they acquired information about the functioning of the State Commissions.

5.11.4 Visit of special rapporteur of UNO to GSHRC

The high level delegation consisting of three members: Ms Margaret Sekaggya, Mr. Dolores infante Canibano and Ms. Olga Nakajo and coupled with Shri
Jyoti Kalash IAS, Director of Home Affairs and Miss Rohita Mishra paid visit to the GSHRC on 17-1-2011.

The high level delegation was welcomed by the Hon’ble. Chairperson as well as senior officers of the GSHRC. Ms Margaret Sekaggya the special rapporteur of UNO took the stock of the situation of the various issues pertaining to the human rights and its promotion and preservation. The Hon. Chairperson of the GSHRC appraised the delegation of the functioning as well as the position of the various petitions and state of status of human rights. The high level delegation also discussed the various provisions incorporated into POHRA, 1993 with the Hon’ble. Chairperson. The Hon’ble. Chairperson shed light of various aspects of POHRA, 1993. The delegation expressed satisfaction over functioning of the Commission.¹⁰

5.12 CONCLUSION

From Cradle to grave, indisputably the laws of the state concern almost every human life, which is not touched, affected or regulated by the laws. The maintenance of the 'Rule of law' is entrusted to the state and its instrumentalities, including the statutorily recognized and defined 'public servants'. The state in the process or preserving the Rule of law is obliged to protect preserve, educate and prevent the violation of innate as well as constitutionally guaranteed human rights of life, liberty, equality and dignity of individual by its public servants' for better protection of HRs and matters connected there with or incidental thereto parliament has enacted the protection of Human Rights Act, 1993 hereinafter called 'The Act', providing for constitution of National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts. Thus, came into being the Gujarat State Human Rights Commission, here after called the state commission and the Human Rights Courts in all the Districts of the state of Gujarat.

Having been constituted on July 12, 2006. The State Commission has now completed four years of its meaningful existence. Apparently it is still a fledgling with inadequate infrastructure and financial autonomy lacking. Nonetheless it has strived

¹⁰Annual Report 2010-2011 Pg 11 to 13
hard to deliver goods to the people of the state to the best of its capacity and to accomplish the mega goals of protection preservation, education and prevention of violation of the Human Rights in relation to life, liberty, equality and dignity of individual through effective co-operation and purposive assistance to the state of Gujarat in discharge of its constitutional and statutory duty of upholding the Human Rights of its citizenry by Enforcing the well-defined and established laws, a condition precedent for Human Freedom and social betterment.