

V.4 UNDER THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The Protection of Human Right Act, 1993 which is the result of much criticism from different angles such as social activists, Non-Governmental Organizations and more particularly in the Vienna Convention,¹ 1993 emphasizing the immediate need of suitable mechanism for protection of human rights. In the Statements of Objects and Reasons of the Act it is stated that in order to bring about greater accountability and transparency in the social realities and the emerging trends in the nature of crime and violence, the Protection of Human Rights Act was enacted. Apart from establishing the National Human Rights Commission and State Human Rights Commissions in the states, in para 4(5) it also speaks about establishing Human Rights Courts in the district level.

The National Human Rights Commissions and the State Human Rights Commissions, where established since their inception have been dealing with the matter relating to violation of human rights and in appropriate cases recommending appropriate suggestions to the

administrative authorities including reasonable compensation to the victims or their kith and kin including interim reliefs in appropriate cases. The roles played by such commissions are praise worthy.

Section 2 (d) of the Act defines the term 'human rights' as those rights relating to life, liberty, equality and dignity of the individual guaranteed in the constitution or embodied in the International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights and enforceable in India. By liberal interpretation of the Hon'ble Supreme Court and High Courts on the constitutional provisions almost all the rights have been recognized as fundamental human rights in our country.

Section 12 of the Act prescribes the powers and functions the National Human Rights Commissions in detail.² Section 29 of the Act provides that the power as enumerated in Section 12 of the Act can be exercised by the State Human Rights Commissions. Both the commissions are to entertain complaints alleging violation of human rights or abetment thereof by a 'public servant'.

The Assam Human Rights Commission entertains cases relating to

- i. custodial Death in Jail,
- ii. Custodial Death in Police Custody,
- iii. Custodial Torture,
- iv. Custodial Rape
- v. Death in Police Encounters as reported by Police, District Magistrate, Government,
- vi. Death due to allegedly Fake Encounters as reported by the media or public,
- vii. Rape,
- viii. Illegal Detention or arrest,
- ix. Police Excess and Negligence,
- x. Jail Conditions,
- xi. Violation of the Rights of Prisoners,
- xii. Violation by Health & Family Welfare Department,
- xiii. Dowry Torture or Death,
- xiv. Indignity to Women or Sexual Harassment at Workplace,
- xv. Violation of the Rights of the Child,
- xvi. Violation Of The Legal Rights Of Mentally Retarded Children,
- xvii. Complaint Against Education Deptt.,
- xviii. Violation of The Legal Rights Of Physically Challenged,
- xix. Mysterious Death,
- xx. Mysterious Disappearance,
- xxi. Abduction,
- xxii. Violation by Public Health & Engineering Deptt.,
- xxiii. Electrocutation,
- xxiv. Pension,
- xxv. Cases of Pollution,
- xxvi. Condition of inmates in relief camps set up during natural calamities,
- xxvii. Violation Of The Right To Religion,
- xxviii. Erosion of River and Resultant Threat to Life,
- xxix. Ragging in Educational Institutions,
- xxx. Hill Cutting and Threat to Life,
- xxxi. Loss caused to life and properties by Wild Animals Menace,
- xxxii. Negligence

by Forest Department, xxxii. Unlawful Eviction By Public Authorities and xxxiii. Miscellaneous³.

In view of Section 30 of the Act, the Court of Sessions of all the districts are designated as the Human Rights Courts. Section 30 of the Act provides that for the purpose of providing *speedy trial of offences* arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district Court of Session to be a Human Rights Court to try the said offences. Thus, the section empowers the human rights court to try the offences arising out of violation of human rights. Herein, it appears that the term '*offences arising out of violation of human rights*' as appears in the above section is a vague one. It does not empower the court to take cognizance of the matters pertaining to violation of human rights as are exercised by the National Human Rights Commission and the State Human Rights Commissions.

Secondly, the matters which are entertained by the State Human Rights Commission mostly pertains to the incidents occurred in the district level. Definitely, the district comprises villages. There are some villages which are not communicable till date. The villagers who could

afford by any means approach the human rights commission in the state headquarter. This requires huge expenditure and troubles. But, due to non-defining of the powers and functions of the Human Rights Courts the victims are suffering a lot including mental agony.

Thirdly, the state Human Rights Commission entertains wide jurisdiction on many matters. It can take cognizance of any incident on its own motion. It can recommend the government for providing compensation, including interim relief. But, the Human Rights Courts as embodied in section 30 of the Act does not include the list of subjects which can be entertained by such court. Nor, there is any clause empowering the court to take cognizance of any incident on its own motion or to make an order allowing compensation to a victim.

Fourthly, the Assam Human Rights Commission (Procedure) Regulations⁴, 2001 elaborately provides the procedure of entertaining the complaints pertaining to violation of human rights, procedure of hearing, investigation of the incident as well as the nature of final order. But, till date there is no such Rule or Regulation or Notification providing the procedure which would be followed by the Human Rights Courts in the districts.

Apart from the above, it is noted herein that the Human Rights Courts have been lying dormant since 1995 due to the non-appointment of Special Public Prosecutors. Section 30 of the Protection of Human Rights Act of 1993 does not lay down the jurisdiction and procedures to be followed by such court. The National Human Rights Commission in its 1998-99 reports has drawn attention to the ambiguity regarding the precise nature of offences that could be tried by these courts. It has recognized that substantive amendments to Section 30 of the Act are necessary to enable the courts to execute a speedy trial of the offences arising out of the violations of human rights. These courts cannot serve any fruitful purpose until a comprehensive legislation is passed to that effect.

REFERENCES

1. The World Conference on Human Rights was held by the [United Nations](#) in [Vienna](#), Austria, on 14 to 25 June 1993.^[1] It was the first human rights conference held since the end of the [Cold War](#). The main result of the conference was the [Vienna Declaration and Programme of Action](#).

The World Conference on Human Rights was attended by representatives of 171 nations and 800 NGOs, with some 7,000 participants overall.^{[3][7]} This made it the largest gathering ever on human rights.^[3] It was organised by Human Rights expert John Pace.

2. Functions of the Commission.- 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, 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, under intimation to the State Government, any jail or any other institution under the control of the State Government, where Demons are de tained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon; 6 (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 terror ism, 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 and 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 field of human rights; (j) such other functions as it may consider necessary for the promotion of human rights.
3. As uploaded in the official website of the Assam State Human Rights Commission-ahrc.gov.in.
4. The regulation came into force with effect from the 1st day of September, 2001.

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