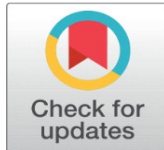
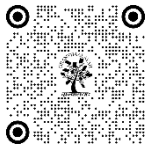


# HUMAN RIGHTS COMMISSION AND ITS EFFECTIVE ROLE IN INDIA

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## ABSTRACT

Human Rights originate with the birth of the individuals and are essential for the adequate development of human personality and their progress and happiness. A number of Declarations, Covenants and Legislations have been imitated and entered into the National and International levels for the effective promotion and protection of Human Rights. However the violation of Human Rights has been increasing day by day. Hence Human Rights enforcement mechanism has been established to enforce Human Rights at the national and International levels. Today, there is a need of strong society based on the fundamental principles of acceptance of Human Rights both in theory as well as in practice. States play a very important role in the promotion and protection of Human Rights. The Philosophy of Human Rights and Fundamental Freedoms were incorporated in the Constitution in the Preamble and in the chapters of Fundamental Rights and Directive Principles of State Policy. The Supreme Court of India and state High Courts have broad powers under the Constitution to enforce Fundamental Rights. This paper is an endeavour to focus upon the functioning of the human rights commission of India in protecting the rights violations.

**Keywords:** Covenants, Rights, Commission, Freedom

## 1. INTRODUCTION

The establishment of National Human Rights Commission in India has been quite positive. NHRC had come into existence as per mandate of the Protection of Human Rights Act, 1993, to provide better protection in cases of violations of Human Rights. National Human Rights Commission in India is playing a vital role in influencing the policy making and sometimes even policy initiations, facilitating protection and promotion of Human Rights. NHRC is providing an excellent mechanism for building public opinion and strong alliances and partnerships with Non-Governmental Organisations and other Human Rights activists for influencing the National agenda on Human Rights.

In addition to the NHRC, State Human Rights Commissions, and Human Rights courts were constituted for better protection and promotion of Human Rights. It is the mandatory duty on the part of the state to implement the Human Rights. Strengthening the justice delivery system is the foundation for world peace which is achieved through universal respect for Human Rights. The judiciary has a very significant role in fulfilling the promises of the Human Rights and Fundamental Freedoms. The judiciary not only protected the Human Rights given but created a new positive rights also. Through various techniques like using the new strategy of Public Interest Litigation, the Supreme Court of India had given expansive interpretation to the right to life and personal liberty, protecting prisoners rights, bonded labour abolition, prohibition of child labour, right to clean environment, and creating a new concept of compensatory

jurisprudence holding executive responsible for avoiding public duty and requiring transparency in the conduct of public affairs.

## 2. AT UNIVERSAL LEVEL

It was the United Nations Charter, which proclaimed the universality of Human Rights at the International level and provided an apparently firm, foundational basis for the development of the International regime of Human Rights. The Universal Declaration of Human Rights, 1948, which was presented as standards to be achieved by all peoples and nations became the source of inspiration and the basis for the United Nations in making advances in standard setting as contained in the existing International Human Rights Instruments. Together with the Human Rights Covenants, this Declaration proclaimed International Bill of Rights. It was followed by the adoption of a large number of conventions and declarations with specific issues. All these developments constitute a remarkable International Normative Consensus on the list of Human Rights and the concept of Human Rights now encompasses, not only civil and political rights but also even social and economic rights and third generation or solidarity rights. Another important development has been the establishment of implementation and enforcement machinery at the International and Regional level.

The provisions of the UN charter empowered the organs of the United Nations namely General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and The Secretariat, to adopt measures and create machinery for realising its objectives including those relating to Human Rights and Fundamental Freedoms. One of the purposes of the United Nations is the promotion and encouragement of respect for and observance of Human Rights and Fundamental Freedoms. The General Assembly and the Economic and Social Council has contributed much for the protection of Human Rights through its various commissions and bodies. The office of the United Nations High Commissioner for Refugees (UNHCR) was established by the General Assembly in 1951 to solve problems of refugees, displaced persons, stateless persons and returnees in accordance with the norms of International Human Rights Law.

The creation of the U.N. High Commissioner for Human Rights (OHCHR) in 1993 by the General Assembly can be reckoned as a turning point in U.N. action in the Human Rights. It has rendered a signal service for the better promotion and protection of Human Rights throughout the world. The OHCHR in 1994 established a Human Rights hotline, a 24 hour facsimile line which is available to the victims of Human Rights violations, their relatives and Non-Governmental Organisations. It is valuable to those wishing to establish urgent, potentially lifesaving contact with the special procedure Branch of the office of the High Commissioner for Human Rights.

The General Assembly Resolution 60/251 mandates a Universal Periodic Review of each states fulfilment of its Human Rights obligations and commitment. The Universal Periodic Review has great potential to promote and protect Human Rights in the darkest corners of the world. The U.P.R is a unique body which involves a review of the Human Rights records of all 192 U.N members states once every four years. The commission on Human Rights was established by the Economic and Social Council in 1946 for better promotion and protection of Human Rights, It has played an active role in investigating alleged violation of Human Rights. The commission has set up an elaborate machinery and procedures, country oriented or thematic to monitor compliance by states with International Human Rights law and to investigate alleged violations of Human Rights. The U.N commission on Human Rights was often criticized for its system of election. It was not elected by all the members of General Assembly.

In order to rectify this criticism the General Assembly decided to replace U.N. Human Rights Commission by the Human Rights Council vide its resolution 60/251 of 15th March, 2006. Accordingly the commission concluded the sixty-second (Last session) on March 26, 2006 after 60 years of work for the promotion and protection of Human Rights. The Human Rights Council consists of 47 member states. The membership in the council shall be open to all member states of the United Nations. The new Human Rights Council aims to strengthen the world body's machinery to promote and protect Human Rights and Fundamental Freedoms. At present the New Human Rights council is the best available option for making the United Nations an effective Human Rights defender. The Constitution of Human Rights Council is a landmark in the International Human Rights enforcement mechanisms. The International court of justice repeatedly quotes the Human Rights provision of the U.N. Charter, which paved the way for the development of International Human Rights jurisprudence. But the International court of justice is open to states only. It implies that individuals have no access to the court.

Several U.N. Human Rights treaties establish monitoring bodies to oversee the implementations of the treaty provisions by state parties and examine the reports of signatory nations submitted under the treaty. These include, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Elimination of Racial Discrimination, the Committee on the Protection of All Migrant Workers and Members of their families and the Committee on the Rights of Persons with Disabilities.

Normally, the Human Rights treaties establish three supervisory procedures (1) A procedure based on the examination of periodic reports submitted by the state, (2) The procedure of Inter-State complaints which a contracting state can set in motion against another party; (3) the procedure operating at the request of the individuals or group of individuals, who may file with the supervisory body a "communication" setting out the violations allegedly perpetrated by a state. These committees are also incharge of issuing. "concluding observations" where they summarize their concerns about certain states and also give recommendations for the future. Without co-operation of state parties to the Covenants, these committees can not perform its functions successfully and effectively. However, these committees have rendered a signal service for better promotion and protection of Human Rights.

At the regional level, Human Rights Enforcement Mechanisms developed independent of the United Nations. The most advanced is the European Human Rights system which gives individual the right to present cases of alleged violations of Human Right to the European Court of Human Rights. The final judgement of the court are binding. The various functions of the system are allotted to committees, chamber of the court and the grand chamber of the court. In Inter-American Human Rights System, the Inter-American Commission of Human Rights and an InterAmerican court of Human Rights are playing an important role, although the judicial means at their disposal are not so advanced as those of the European Court of Human Rights. The Inter-American court can judge the cases presented to it by the commission and by the States. Individuals have no direct access to the court.

The African Human Rights system is based on petitions which may be presented to the African Commission on Human and People"s Rights. The commission may also subject to certain conditions, consider complaints from individuals. The organisation of the African unity (OAU) attempted to follow the examples of other systems and establish an African Court on Human and people"s rights, which was adopted by the OAU in 1997, but it has not yet entered into force for want of ratification. In addition to the above the Arab commission on Human Rights was setup as a sub-committee of the League of Arab States to promote Human Rights in the Arab States. The Regional Human Rights Enforcement Mechanism has rendered remarkable service for effective implementation of Human Rights. Implementation of International Human Rights law depends largely on the voluntary compliance by the states. Hence, the most effective way to implement Human Rights vests within the legal systems of the different states. Domestic law of a state is required to provide an effective system of remedies for violations of International Human Rights obligations. International law has not become that strong so as to enforce and implement Human Rights violations committed by a state. However the United Nations has provided a fertile ground for the development and protection of Human Rights all over the world.

### 3. FUNCTIONING IN INDIA

The protection of Human Rights Act, 1993, established the National Human Rights Commission in India. This NHRC came into existence in the year 1993, to provide better protection in cases of violation of Human Rights expeditiously and to remove the inadequacy of the existing judicial process. The NHRC is a unique and independent institution, which plays an ideal, supportive and supplementary role, to other institutions that are engaged in upholding Rule of Law in Indian Society. The NHRC is necessary in an existing democratic society in the promotion and protection of basic Human Rights. The main purpose of setting up of the commission is to strengthen the machinery for more effective enforcement of Human Rights of the people in India. Since its inception in 1993, the NHRC has been at the forefront of protection of Human Rights in India. The NHRC has awarded compensation in many cases of custodial deaths and also recommended for prosecution of the concerned police personnel. The commission issued a number of guidelines to the states like mandatory requirement of reporting all custodial deaths to the NHRC within 24 hours, sending Magisterial enquiry reports in all cases of custodial deaths and videography of post mortem in all cases of custodial deaths.

These guidelines as well as the investigative mechanisms of the commission had its remarkable effect on checking the menace of custodial deaths. As per the mandate of the Protection of the Human Rights Act, 1993, the NHRC has

reduced powers to investigate violations committed by the armed forces of the Union. Moreover the word “Armed forces” is excessively defined under Sec. 2(1) (a) of the protection of the Human Rights Act, 1993. Because of this definition, Border Security Forces and other paramilitary forces are also excluded from the investigative power of the NHRC, although they are headed by different Ministries and are subject to different policy decision and responsibilities. Moreover the protection of Human Rights Act, 1993 does not specifically confer Jurisdiction upon the commission to inquire or investigate Human Rights violations by organised groups in the society. The main focus of the Act is to entertain complaints of violation of Human Rights by the public servants. At present certain organised groups such as terrorists, religious fundamentalists, castes and communal groups are considered the greatest threat to the Human Rights. The NHRC has been effective check on the misuse of power or negligence by the police and other governmental agencies.

The recommendations of the commission which are in the nature of recommendatory. The commission's power to follow-up its recommendations and corresponding statutory obligations imposed upon the state authorities to answer them with action taken, report or proposed to be taken within a stipulated time, would evident that commission's real authority. It is to be noted that commission has no power to take action directly. It does not have any power to punish the guilty. This position is far from satisfactory. The functioning of the commission is very much impressive in nature. The implementation mechanisms of the commission makes it abundantly clear that it does not replace the role of the regular courts. Thus, the commission has been functioning as supplement to the regular courts in cases of violations of Human Rights in providing better protection. Section 12(a) of the PHRA, 1993 provides that the commission shall intervene in any proceeding involving any allegation of violation of Human Rights pending before a court with the approval of such court. It is important to note that the commission has intervened in a number of pending proceedings involving Human Rights issues in different courts including the Supreme Court of India.

#### 4. CONCLUSION

It is to be noted that for better realisation of Human Rights, Public must be made aware of their rights and the safeguards available for the protection of those rights. Section 12(h) of the Protection of Human Rights Act, 1993 imposes an obligation on the Human Rights Commissions “to spread Human Rights literacy among various sections of the society and promote the awareness, of the safeguards available for the protection of these rights through publications, Media, seminars and other available means”. Creating Human Rights awareness is considered important and useful for the better protection and promotion of Human Rights. With this view, the Human Rights commissions have been organising seminars, workshops, training programmes, for sensitizing the public on Human Rights issues.

#### CONFLICT OF INTERESTS

None.

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