

# INDIAN JOURNAL OF INTERNATIONAL LAW

VOL. 37, No. 1  
JANUARY-MARCH 1997



*Published by*  
THE INDIAN SOCIETY OF INTERNATIONAL LAW  
NEW DELHI

*A. Srinivasan*

INTERNATIONAL LAW

THE INDIAN JOURNAL OF INTERNATIONAL LAW

of India

January-March 1997

No. 1

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## NOTES AND COMMENTS

# THE STRUCTURE, FUNCTIONS AND POWERS OF THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

T. SURYANARAYANA SASTRY\*

### I. INTRODUCTION

"Human Rights" means the minimum rights which every individual possesses against his state by virtue of his being a 'member' of the human family.<sup>1</sup> The concept of human rights is as old as human history and as broad as 'social life'. Although the concept of human rights is developed on the principles of inalienable rights of natural law, the term human rights had its origin in international law. It is to be stated that the concept of human rights, gained importance in the post World War era, especially when the states started recognising the status of individual as part of the international legal system.<sup>2</sup>

The events of the Second World War and the concern to prevent the recurrence of the catastrophes associated with the 'Axis powers' led the 'League of Nations' to recognise the importance of the social and legal protection of human rights and fundamental freedoms. To achieve this object, states adopted the Charter of the United Nations with an aim to protect the human rights in national and international plane. With the adoption of the Charter, states entered into various multilateral conventions, covenants, treaties at the international and regional level for the effective implementation of the provisions of the Charter, and, to strengthen the principles of international law on human rights.<sup>3</sup>

The increased concern of states for the promotion of human rights led the Economic and Social Council (ECOSOC) to discharge its obligation under Article 13 of the Charter of the United Nations, by establishing a 'Commission on Human Rights' in 1946 for supervision of the problem of protection of

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1. D. Basu, *Human Rights in Constitutional Law*, (Calcutta, 1994), p. 5.

2. *Encyclopedia of International Law*, R. Jennings and Arthur Watts, (eds.), vol. 1 (London, 1982), p. 505; also see Ian Brownlie, *International Law and the Use of Force by States* (London, 1963), pp. 167-213.

3. For the historical development of the concept of Human Rights see, Ian Brownlie, *Principles of International Law* (Oxford, 4th edn., 1990), p. 564; Basu, note 1, pp. 5-8.

human rights in the international arena.<sup>4</sup> After its establishment the Commission has played a significant role in the work of the United Nations for the promotion of human rights as an important branch of international law. However, it lost much of its vigour in the effective enforcement of human rights with the recognition of the ECOSOC that it had no power either to inquire or to take any action against individual complaints of violation of human rights.<sup>5</sup> Hence, it remained the responsibility of states to create a machinery in the regional level for the protection of human rights. Accordingly, various states started establishing the machinery for protection of human rights, to discharge their duty not only in international law but also to fulfill the obligations of their respective constitutions which provided for the protection of the rights of the individual against the state. These rights are popularly referred as the Fundamental Rights.

Although states incorporated the principles of human rights in their respective constitutions, it is to be noted that all the rights enumerated in the Universal Declaration of Human Rights, 1948, are not enforceable in the courts of law. Because, the declaration is a mixture of both the aspects of civil and political, and social, cultural and economic rights. The former, being fundamental rights, guarantee fundamental freedoms of the individuals directly and are justiciable in law for their violation. The latter rights are only directives addressed to the states alone, to remind them of their obligation to transform them into reality in the promotion of human dignity and are therefore non-justiciable in the eye of law. The United Nations realising the practical difficulty of mixing both aspects (justiciable and non-justiciable rights) in a single instrument, took steps to bifurcate them and adopted two independent Covenants in 1966. They are (a) the Covenant on Civil and Political Rights (hereafter referred to as justiciable rights) and (b) the Covenant on Economic, Social and Cultural Rights (hereinafter referred as non-justiciable rights). Both the Covenants came into force in the year 1976, after receiving the required number of ratifications.<sup>6</sup>

The framers of the Constitution of India were also inspired by the ideals of international law of human rights and developed the Constitution on the school of thought of individualism guaranteeing the rights of the individual against the acts of state. Accordingly, the justiciable and non-justiciable human rights of the Universal Declaration were incorporated in the Consti-

4. GA. Res. 1/51, 1946; *Oppenheim*, note 2, p. 1005.

5. ECOSOC Res. 728F (XXVIII) 1959; UNDOC E/600, p. 51; H. Lauterpacht, *International Law and Human Rights* (London, 1950), pp. 221-69.

6. The two Covenants came into force after they received the requisite number of 35 ratifications. At present the Covenants have been ratified by more than 70 states. India ratified them on 10 April 1979.

tution of India as 'the Policy'. The Commission redressal to the constitutional and Human Rights Commission it is the duty of the Human Rights Commission better protection in accordance with National Commission violations of the Commission or may really redressal to the

E. 1979]

The Commission

A person who has been to become the Chairperson following categories

- (a) One member of India;
- (b) One member of
- (c) Two members or experienced
- (d) The Chairperson and Secretary National Commission

The Chairperson of the President of India of the Prime Minister in the Act.<sup>7</sup>

The Chairperson shall hold office for a period

7. According to Section 10 Minister as the Chairperson are the Speaker of the Opposition in the Upper House of

of India as 'Fundamental Rights' and 'Directive Principles of State Policy'. The Government of India in order to provide for a speedy and fair redressal to the victims for the violation of human rights and to discharge its constitutional and international obligations, in the year 1993 enacted the Human Rights Protection Act. In accordance with the provisions of the Act, it is the duty of the Central Government of India and the States to establish Human Rights Commissions and Human Rights Courts independently for better protection and promotion of human rights. The Government of India in accordance with the provisions of the Act, in the year 1994 constituted a National Commission on Human Rights empowering it to deal with the violations of the human rights. The aim of the paper is to make a modest attempt to study the structure, functions and powers of the National Commission on Human Rights and to examine to what extent the Commission may really discharge its obligations freely to provide a speedy and fair redressal to the victims of human rights.

## II. STRUCTURE OF THE COMMISSION

The Commission shall consist of a Chairperson and seven other members. A person who has been a Chief Justice of the Supreme Court is alone eligible to become the Chairperson. The other members are appointed from the following categories : namely :

- (a) One member who is or has been a judge of the Supreme Court of India;
- (b) One member who is or has been a Chief Justice of any High Court;
- (c) Two members are appointed on the basis of their special knowledge or experience in the field of human rights and;
- (d) The Chairpersons of the National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Minorities, and the National Commission for Women are the members.

The Chairperson and the members of the Commission are appointed by the President of India upon the recommendations of a committee consisting of the Prime Minister as the Chairperson and five other members as specified in the Act.<sup>7</sup>

The Chairperson and the members of the Commission shall continue to hold office for a period of five years from the date on which they assume the

<sup>7</sup> According to Section 4 (1) of the Act, the Committee shall consist of the Prime Minister as the Chairperson and five other members. The members of the Committee are the Speaker of the House of the People, the Minister of Home Affairs, Leaders of the Opposition in both the Houses of the Parliament and the Deputy Chairman of the Upper House of the Parliament.

office or until they attain the age of seventy years, whichever is earlier. The members of the Commission alone are eligible for reappointment of one more term, provided if they have not attained the age of seventy years. After relinquishing the office, the Chairperson and the members of the Commission are barred from taking up any appointment either under the Central or any of the State Governments.

If any vacancy occurs in the office of the Chairperson by reason of his being on leave, resignation, death or otherwise, such other member as may be directed by the President of India shall act as Chairperson, until the Chairperson resumes office or a new incumbent is appointed.

The Chairperson and the members cannot be removed from office except as in the manner prescribed by the Act. The Chairperson or any of the members of the Commission can be removed from office by the President of India on the grounds of proven misbehaviour or incapacity in accordance with a report submitted by the Supreme Court after conducting a due inquiry upon a referral by the President of India. However, the above provision has no bar on the President to remove the Chairperson or the members of the Commission on any of the following grounds if they are :

- (1) adjudged as an insolvent; or
- (2) engaged in any paid employment outside during their term of office; or
- (3) unfit to continue in office by reasons of infirmity of mind or body; or
- (4) declared as of unsound mind by a competent court of law; or
- (5) convicted or sentenced to imprisonment for an offense which in the opinion of the President involves moral turpitude.

The Commission, in addition to the Chairperson and the members, shall consist of a Secretary-General, Police and investigative, administrative, technical and scientific staff to support it in its effective functioning. The Secretary-General is the Chief Administrative Officer of the Commission. The Government of India is empowered to appoint any Officer holding a post not below the rank of the Secretary to the Government of India as the Secretary-General of the Commission. The Police and other investigative staff are also provided by the Central Government and placed under an officer not below the rank of a Director-General of Police. The administrative, technical and scientific staff are appointed by the Commission to suit its needs in accordance with the rules framed by the Central Government. The Commission, however, is empowered to frame its own rules and regulations for its effective functioning. The Commission shall normally conduct its meetings and sittings in its office in New Delhi. However, with the prior permission of the Central Government, and, if in its discretion it is necessary

and expedient in its functioning it can hold meetings or sittings outside its usual place as decided by it. The Commission shall ordinarily have its regular meetings in the first and third weeks of every month excepting Fridays. However, the Chairperson by himself or at the instance of one or more of the members may have a special sitting to deal with any specific matter if it requires immediate action.<sup>8</sup>

### III. FUNCTIONS OF THE COMMISSION

The Commission is mandated to discharge the following functions, namely :

- (1) To inquire into the violation of human rights or abatement thereof either on its own or on a petition submitted by an affected party or on his behalf by any person, or negligence shown by a public servant in the prevention of such a violation.
- (2) To intervene in any of the proceedings pending before a court with the permission of such court on any complaint of violation of human rights.
- (3) To visit any jail, or any other institution where persons are detained or lodged for purposes of treatment, reformation or protection under the control of a State Government with an advance notice to study the living conditions of the inmates and to make recommendations.
- (4) To review the safeguards for the protection of human rights provided by the constitution or any of the existing law and to suggest measures to the Central and State Governments for their effective implementation.
- (5) To review all the aspects that inhibit the enjoyment of human rights including the acts of terrorism and recommend the remedial measures to the Government.
- (6) To study the treaties and other international instruments on human rights and make recommendations to the Central Government for their effective implementation.
- (7) To undertake and promote research in the field of human rights.
- (8) To propagate the concept of human rights and to promote the awareness for their protection among the various sections of the society, it can undertake publication of books or pamphlets or conduct seminars, or use the media or any other means available to it.
- (9) To promote and support the non-governmental organisations and institutions working in the field of human rights.

8. No. A-1103/1/94, NHRC., p. 25.

#### IV. POWERS OF THE COMMISSION

The Commission exercises the following powers while inquiring into the violation of human rights.

- (1) The Commission while inquiring in the violations of the human rights exercises the same powers of a Civil Court trying a suit under the Civil Procedure Code, 1908. They are especially in respect to :
  - (a) summoning and enforcing the attendance 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 if in its opinion arrives at a conclusion that any information may be useful for or relevant on any such aspects or matters under its consideration it can direct any person to submit such information required to it. Any such person directed by it, in whatever capacity he may be, is legally bound to furnish such information as directed by it within the meaning of Sections 176 and 177 of the Indian Penal Code.<sup>9</sup>

9. Section 176 of the Indian Penal Code, 1830, reads as follows : Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 177 of IPC reads as follows : Whoever, being legally bound to furnish information on any subject to any public servant, as such furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years or with fine, or with both.



- (3) The Commission or any other officer (not below the rank of a Gazetted Officer) authorised by it can enter into any building or place wherein, if in the opinion of the Commission that any document relating to the subject matter of inquiry may be found and to seize such a document or to take extracts of copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, to the extent it may be applicable.<sup>10</sup>
- (4) The Commission is though empowered to exercise the powers of a civil court only during the course of inquiring into the complaints, it can also record the facts constituting the offense and the statement of an accused person as is described in sections 175, 178, 179, 180 or

Section 100 of the Cr.P.C., reads as follows : (1) Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

- (2) If ingress into such place cannot be obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of Sec. 47.
- (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made such person may be searched and if such person is a women, the search shall be made by another women with strict regard to decency.
- (4) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- (5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.
- (6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- (7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.
- (8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Sec. 187 of the Indian Penal Code (45 of 1860).

228 of the I.P.C.<sup>11</sup> The Commission after recording the facts constituting the offence and the statement of the accused as specified in the Code of Criminal Procedure, 1973, has to transmit the case to a Magistrate having jurisdiction to conduct the trial. Since all the proceedings before the Commission are considered as judicial proceedings, the Magistrate to whom the case is referred bound to conduct the trial.

- (5) The Commission while inquiring into the complaints of the violations of human rights may adopt the following procedure:
  - (1) It can call for information or report either from the Central or any of the State Government concerned or any other Authority or organisation subordinate to them within the time frame fixed by it. However, it may proceed to inquire into the complaint on its own if it doesn't receive the information or report within the time frame. But the Commission shall not proceed further if it is satisfied upon the report submitted by the concerned government or authority along with the action initiated.
  - (2) If in the opinion of the Commission a matter requires immediate action, it can initiate an inquiry even without asking the relevant government or authority for their report or information.
- (6) In accordance with the provisions of the Act while dealing with the complaints of the armed forces it adopts the following procedure:

11. Section 178 of I.P.C., reads as follows : Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 179 of I.P.C., reads as follows : Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 180 of I.P.C., reads as follows : Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Section 228 of I.P.C., reads as follows : Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

- (a) It may, either on its own or upon receipt of a petition, can ask the Central Government to submit a report. After receiving the report from the Central Government it may not either proceed further, or may make recommendations to that effect.
- (b) From the date of the receipt of the recommendations the Central Government is bound to inform the Commission of the action taken by it within three months, or within the period of extension as permitted by the Commission.
- (c) The Commission has to publish a report on its recommendations and the action initiated by the Central Government upon them.
- (d) The Commission transmits copy of the published report to the petitioner or his representative.
- (7) The Commission exercises the following investigative powers while inquiring into the complaints :
- (a) it may utilise the services of any officer or any of the investigative agency of the Central or State Government with their prior approval.
- (b) The officer or agency whose services are utilised by it shall be under the control and direction of the Commission. Further, the Commission may—
- (i) summon and enforce the attendance of any person and examine him; or
- (ii) direct such person to discover or produce any document before it; or
- (iii) requisition any public record or copy therefrom from any office.
- (c) Any statement made by a person before any officer or agency whose services are utilised or a statement made by a person in the course of giving evidence before the Commission shall not be used against him in any civil or criminal proceedings; except for the purpose of prosecution for giving false evidence by such statement. However, the Commission is empowered to use such statement if it is made in reply to a question asked by the Commission or relevant to the subject matter of inquiry.
- (d) If the Commission is not satisfied about the correctness of the facts stated and any conclusion arrived at in the report submitted by such person, it may conduct an inquiry or examine such person or persons assisted the investigation.
- (8) If the Commission at any stage of inquiry considers it necessary to inquire into the conduct of any person it may do so. But if in the

opinion of the Commission such an inquiry may prejudicially affect the reputation of the person, it has to give a reasonable opportunity to that person to produce evidence in his favour during such inquiry. However, the Commission cannot conduct any inquiry if it affects the reputation of the person in any manner.

## V. CONCLUSION

It is an undeniable fact that the enactment of the Human Rights Protection Act, 1993 and the establishment of the National Human Rights Commission of India are certainly in advance of many states to evidence its commitment for better promotion and protection of the principles of International Law of Human Rights. But at the same time, it is also true that the Commission alone may not be able to carry out the obligations under the Covenant on Human Rights in letter and spirit to secure justice to the claims of the individuals before it.

Although the Constitution of India pledges to foster respect for international law and treaty obligations, the principles of treaties to which India is a party do not automatically form part of the law of the land until the legislature enacts a legislation to that effect. Secondly, even if a statute has been adopted to give effect to them, it is the statute and the constitution which will prevail even if they are inconsistent with the principles of international law.<sup>12</sup> In this type of situation, the Commission is bound to interpret the provisions of the statute or the constitution in harmony with the principles of international law to the extent possible rather than to discharge its functions freely in accordance with the Covenants.

To overcome these obstacles, the Commission has to resort to the Blackstonian doctrine of 'Incorporation of International Law into Municipal law.' By adopting this theory, the Commission can not only protect the interests of the individuals, but also interpret and apply the rights which are guaranteed under treaties or covenants wherein the obligations exclusively lie on the Executive without bringing any changes in the internal law of the state to the extent permissible by the Constitution.

Thirdly, in accordance with section 2, clause (d) of the Act,<sup>13</sup> the Commission cannot inquire into any matter against the state, if it either refuses or fails to implement the non-justiciable human rights (*i.e.*, the

12. *Gramophone Company v. Brendra Bahadur Pandey*, AIR 1984 S.C. 667.

13. Section 2 Clause (d) reads as follows: "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and embodied in the International Covenants and enforceable by Courts in India.

Directive Principles of State Policy) which are addressed to the state only under the Covenant on Economic, Social and Cultural Rights.

It is true that the Commission cannot entertain any matter under the Directive Principles of State Policy. But as a component of the State<sup>14</sup> it is the duty of the Commission to take cognizance of these rights which are essential in the governance of the country. Hence the Commission, in the light of the recent practice adopted by the judiciary, has to ensure that the government carries out its obligations under Art. 37 by so interpreting the provisions of the Constitution to achieve the concept of 'social justice' as a new factor in the realm of human rights.<sup>15</sup>

Fourthly, section 36 of the Act<sup>16</sup> itself may be described as an axe upon the powers and functions of the Commission. For example, as happened in the Bombay Bomb Blasts Case<sup>17</sup> for any reason whatsoever may be, if the government intends to deprive the Commission off the jurisdiction to inquire into any of the violations of human rights, it can do so by constituting a separate Commission under any other law in force. In this case it is submitted that the government has to amend the relevant provision in the Act suitably either to remove the time-frame imposed upon the Commission or empowering it to deal with the matters which have already been dealt by other Commissions, if they fail to conclude their mandates, or if at any time they are terminated midstream.

14. The Directive Principles under Part IV of the Constitution are not addressed to the Legislature but to the State. However if one examines the definition of State under Art. 36 read with Art. 12 of the Constitution, the Commission certainly qualifies to be called as a State. This view finds support from a catena of cases decided by the Supreme Court of India, for example, *S.R.T.C. Devaraj*, AIR 1976 S.C. 1027; *Ujjam Bai v. State of U.P.*, 1963 (1) S.C.R. 778.

15. *Sadhuram v. Pulin*, AIR 1984, S.C. 1471, *Maneka Gandhi v. Union of India*, AIR 1978, S.C. 597, etc.

16. Section 36 of the Act reads as follows :

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

17. In the Bombay Blasts Case the Government of Maharashtra appointed Justice Srikrishna Commission to inquire into the violation of human rights independently of the Human Rights Commission. But after a year a new Government suddenly terminated the Commission without assigning any reason. The Commission has been revived recently. In this case if the Government refuses to accept the recommendations of the Commission, the victims of the Bombay Blasts cannot approach the National Commission as per clause (2) of section 36 of the Human Rights Act.

Lastly, the hands of the Commission are also tied like those of the judiciary, if the Executive refuses to accord permission to investigate the violations of human rights of the Indian citizens committed by a foreign state or its representatives and pleads for sovereign immunity even though they are committed within the country.<sup>18</sup>

To overcome this problem, it would be more appropriate on the part of the government of India to amend section 86 Civil Procedure Code on sovereign immunity<sup>19</sup> empowering the judiciary as well as the Commission to determine the applicability of sovereign immunity to a foreign state in each case. It is natural that such an amendment has to be incorporated into the Human Rights Act, 1993 also.

As stated earlier, India is ahead of many other countries in implementing the justiciable and non-justiciable human rights as a party to both the covenants on Human Rights. However, the Government of India has to come forward whole-heartedly to carry out the suggestions made above to justify its commitment for promotion of international law as pledged in Article 51(e) of the Constitution. Implementation of these suggestions may not only promote better protection of human rights but also fulfill the vision of the Constitution which has been primarily founded on the philosophy of human dignity.

18. *Hari Bhajan Singh Bhalla v. Union of India*, AIR 1987 S.C. 9; also see section 86 of Civil Procedure Code, 1908.

19. T. Suryanarayana Sastry, "The Changing Concept of State Immunity and Indian Perspective", *A.L.R.*, vol. XVI (1992), p. 242.