



ISSN: 2249-7196

IJMRR/Oct 2017/ Volume 7/Issue 4/01-04

**Dr.V.Ram/ International Journal of Management Research & Review**

# The Judicial Protection of Human Rights

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## **ABSTRACT**

The Universal Declaration of Human Rights was approved by the United Nations General Assembly in December 1948. This was a major step forward in the process of defining and establishing these rights. A International Bill of Rights then followed that was legally obligatory on all covenanting parties. The UN General Assembly addressed the fact that the Universal Declaration of Human Rights was not legally binding and that the United Nations lacked the means to ensure its implementation by adopting two covenants for the observance of human rights in December 1965: the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights. Individual rights were established in the first covenant, and their implementation was mandated by law in the second. Following ratification by the necessary number of member states, these covenants entered into effect in December 1976. After the end of 1981, several states ratified the Covenants. Since India is a signatory to these Covenants, they have the force of law in the countries that have ratified them. After the international statement was made, it took India another 44 years to pass the Protection of Human Rights Act.

## **INTRODUCTION**

In order to better protect human rights and for matters connected thereto, on September 28, 1993, the President of India promulgated the Protection of Human Rights Ordinance, 1993, which provides for the constitution of a National Human Rights Commission, State Human Rights Commissions in the States, and Human Rights Courts. The Protection of Human Rights Act of 1993 quickly took the place of the ordinance. Therefore, there is no room for argument on the importance of human rights or the need of ensuring their protection and enforcement. The fight to secure these protections is not limited to India. This is a worldwide occurrence. This problem has gone worldwide since it is widespread in many parts of the globe.

The Protection of Human Rights Act was enacted to establish national and state human rights commissions and human rights courts, as well as to address concerns related to or arising out of the protection of human rights. This means it must accomplish two goals at once: first, it must develop an institutional framework at the federal and state levels; second, it must construct an enforcement mechanism in the form of Human Rights Courts to ensure the proper upholding of these rights. Because of the Act, people all around the world are talking about human rights for the first time.

The Protection of Human Rights Act of India has been in effect for twenty-two years. Many investigations have been conducted so far, particularly those that have examined human rights commissions at the national and state levels. However, the topic of how to properly establish Human Rights Courts has yet to be investigated in depth.

In December 2011, Human Rights Courts were established in the states of Bihar, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, West Bengal, Uttarakhand, Uttar Pradesh, and Tamil Nadu. It's unfortunate that more countries haven't established their own Human Rights Courts. Human Rights Courts in Indian States is a look into the establishment of these institutions. It's time to take a look at the preliminary steps being taken toward establishing Human Rights Courts throughout India.

Long-term human rights protection and advancement can only be achieved by establishing robust human rights institutions at the national level. A primary goal of the organization should be the establishment or improvement of a national protection system in each country that is consistent with international human rights standards. It is particularly crucial for nations emerging from war to engage in such initiatives.

By notification, the state government, with the approval of the Chief Justice of the High Court, may designate one Court of Sessions in each district as a Human Rights Court to hear cases involving violations of human rights; provided, however, that nothing in this section shall apply if:

A Court of Sessions is already specified as a special court,

A special court is already constituted, for such offences under any other law for the time being in force<sup>vi</sup>.

**This Section deals with the formation and formulation of the Human Rights Courts.**

According to Section 31 of the Protection of Human Rights Act, 1993, the State Government must designate a public prosecutor or an advocate who has been practicing law for at least seven years to preside over each Human Rights Court. This individual is known as the Special Public Prosecutor<sup>vii</sup> and is responsible for prosecuting matters in the Human Rights Courts. In this Part, we argue that the Human Rights Courts should appoint a public prosecutor.

According to Section 37 of the Protection of Human Rights Act, 1993, "notwithstanding anything contained in any other law for the time being in force, where the government considers it necessary so to do, it may constitute one or more special investigation teams, consisting, of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights"<sup>viii</sup>. Human rights justice administration relies heavily on the work of special investigative teams.

Human Rights Courts have broader jurisdiction than Human Rights Commissions, thus it's helpful to distinguish between the two.

- I. Human Rights Courts are part of independent judiciary. National and State Human Rights Commissions are quasi-judicial institutions.
- II. Human Rights Courts are headed by the sitting judges of Court of Sessions. National and State Human Rights Commissions are headed by retired judges accompanied by the non-judicial members.
- III. Human Rights Courts have powers to punish the offenders. National and State Human Rights Commission's findings are recommendations only.
- IV. Human Rights Courts have all powers of a criminal court trying a case under Criminal Procedure Code, 1973. National and State Human Rights Commissions have all the powers of a civil court trying a suit under Code of Civil Procedure, 1908.

National Human Rights Commission (NHRC) urged all the states and Union Territories to constitute and notify a Court of Sessions to be a Human Rights Court in each district as, envisaged by Section 30 of the Protection of Human Rights Act, 1993. Under a federal system such as ours, it is evident that concrete responsibilities must rest with individual States both to promote and protect human rights and redress grievances. The decentralization of the complaint disposal mechanism thus becomes a necessity, not least so as to provide a redressal mechanism that is readily accessible and inexpensive in terms and time and cost<sup>ix</sup>.

In a letter to all Chief Minister's on October 4, 1994, the Chairperson of the NHRC has requested them to set up Human Rights Courts in the districts in terms of Sec. 30 of the Protection of Human Rights Act, 1993. The National Human Rights Commission's following annual reports shows that its initiations to set up the Human Rights Courts.

**NHRC Annual Report 2002-2003:** It remains a matter of regret to the Commission that the promise of section 30 of the Protection of Human Rights Act, 1993, has not been fulfilled even ten years after the adoption of the Act. It will be recalled that, under section 30 of the Act, the State Government may by notification specify for each district a Court of Session to be a Human Rights Court to try the said offences<sup>x</sup>. It is authentically understood that the said offences means human rights violations.

**NHRC Annual Report 2003 – 2004:** It is rather unfortunate that the Central and State governments have so far failed to resolve issues that are creating impediments in the setting up of fully functioning Human Rights Courts. Hence, it is hoped that by the time the next annual report is written, action would be taken to accomplish this so that the Commission is not required to repeat the same observation year after year<sup>xi</sup>. It is noteworthy that the formation of the Human Rights Courts has become inevitable.

**NHRC Annual Report 2004 – 2005:** It has been more than 12 years since the Protection of Human Rights Act, 1993, entered into force. The Commission has been deeply concerned towards the non-fulfillment of the promise of Section 30 of the Protection of Human Rights Act, 1993, which provides for speedy trial of offences arising out of violation of human rights

by designating, in each district, a Court of Session to be a Human Rights Court to try the offences<sup>xii</sup>.

In a landmark judgment, in the month of January, 2000, the Allahabad High Court has issued mandamus, directing the State of Uttar Pradesh to complete the formality to constitute a State Human Rights Commission within three months. It also directed the State Government to specify for each district, a Court of Session to be the Human Rights Court in terms of

Section 30 of the Protection of Human Rights Act<sup>xiii</sup>. As a result of the verdict, the State of Uttar Pradesh established the Human Rights Courts.

In April, 2011, the Supreme Court appreciated the demand for setting up of special courts for dealing with cases of human rights but refused to pass any direction on the petition in this regard saying the issue has to be raised before high courts. The court was hearing a public interest litigation filed by an NGO, Asian Centre for Human Rights, seeking a direction for the Centre to set up exclusive courts for dealing with the cases of human rights.<sup>xiv</sup> This order is a mile stone in relating with the formation of the Human rights Courts.

Asian Centre for Human Rights filed a public interest litigation before the Delhi High Court in August, 2011 and it had attached an order by the Supreme Court, whereby it asked them to approach high courts of all the states, asking them to fulfill their obligations under the Protection of Human Rights Act.<sup>xv</sup> The High Court bench directed the government to set up Human Rights Courts within the stipulated time frame and file a compliance report.<sup>xvi</sup> As a result of the verdict, the State of New Delhi established the Human Rights Courts.

The Supreme Court of India stated in its verdict that no reason why the State governments should not seriously consider the question of specifying human rights Court to try offences arising out of violation of human rights. There is nothing on record to suggest that the governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. The least which the State governments can and ought to do is to take up the matter with the Chief Justices of High Courts of their respective States and examine the feasibility of specifying Human Rights Court in each district within the contemplation of Section 30 of the Act<sup>xvii</sup>. It is noted that the directions from the Supreme Court made a deliberate attempt to found the Human Right Courts in every district. Further, the apex court directed, in the last week of July, 2015, that the State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up or specifying Human Rights Courts<sup>xviii</sup>. It is true that a plain reading of the provisions of the law may give the impression that the setting-up of a Human Rights Court rests in the discretion of the State government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression.

## CONCLUSION

- I. The term "may" is used in section 30 of the Protection of Human Rights Act, 1993, which provides for the establishment of a Human Rights Court. When legislating for the establishment of a National Commission, however, Parliament has utilized the mandatory 'shall' in subsection 3
- II. A number of countries have voiced concerns about the high cost of establishing Human Rights Courts. However, most national governments show little enthusiasm for creating Human Rights Courts. They may worry that the Human Rights Courts may investigate their actions. The same lacks the political will necessary to get constituted.
- III. It is common practice to interpret the word "may" as "shall" or "must" when doing so is required by the nature of the action. In other words, the authority may be under a duty to execute the power that has been bestowed upon it, taking into account the conditions in which it is intended to be exercised and the context in which it was granted xix.
- IV. Before the federal Right to Information Act, 2005, several states had their own legislation on the subject. Right to information statutes in the State were nullified by the Act, and their effective date was set by the federal law. The Protection of Human Rights Act of 1993 also calls for revisions. If a state fails to create a human rights court within a certain time frame, the federal government must assume that responsibility.
- V. The National Human Rights Commission has, without a shadow of a doubt, made serious measures to establish Human Rights Courts at the regional level. The Human Rights Courts have been ordered to be set up by the high courts of Uttar Pradesh and Delhi. The decision of the Supreme Court has provided more motivation to establish parallel courts. Human rights commission findings show that states aren't willing to set up human rights courts as required by law.
- VI. The following steps should be prioritized in order to establish Human Rights Courts at the district level in all States.
- VII. The States, which have not established the Human Rights Courts, have to initiate necessary steps to establish the same. The political will is very essential for the same.

Eighth, the federal government and the National Human Rights Commission must work together to help the states establish rights machinery at the county level.

IX. If the states are unwilling to establish a human rights court at the district level, the federal government must do so via legislative changes. The Human Rights Protection Act of 1993, specifically Section 30, needs to be updated accordingly.

If Human Rights Courts are established, those who have suffered human rights breaches would have easier access to justice. Human rights courts are helpful for providing quick justice and should be established by state governments in the victims' home districts. The Human Rights Courts need to be fortified to effectively promote and safeguard human rights.

Human Rights Courts as we know them now seem to be a mirage at best. Human rights in India may be better protected if a district court of human rights were established in every state.

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