

INTERNATIONAL RESEARCH JOURNAL OF MULTIDISCIPLINARY STUDIES

MONTHLY DOUBLE-BLIND PEER REVIEWED REFERRED OPEN ACCESS INTERNATIONAL JOURNAL

www.irjms.com

E-mail: irjms2015@gmail.com irjms.in@gmail.com

Volume IV, Issue V

ISSN : 2454-8499

May 2018



Executive Editor
Prof. Tanaji Jadhav

Chief Editor
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International Research Journal of Multidisciplinary Studies

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Published by
IRMS
Sr.No.397, Flat No. 7, 4 Sizan Society,
Bhugaon, Tal. Mulshi, Dist. Pune 412115

Printed by
Harshada Graphics, Pune

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ISSN: 2454-8499 (Online)

Issue
Available at www.irjms.in

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Role of the National Human Rights Commission of India in Protection and Promotion of Human Rights

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Abstract

This paper has made attempts to highlight the effective role and contribution of recently established National Human Rights Commission in India in 1993. I also wish to underline the essentials and need of such a commission in India because individual as a human beings enjoys certain basic rights which are necessary for all round development of human personality and in the absence of which no individual would able to lead a happy moral and civilized human life. The commission has really played tremendous and commendable role in the promotion and protection of Human rights violation and discrimination treatment towards the weaker sections of society. It is undoubtedly taken effective step in protection of human rights violation through its legal procedure and constitutional rights about displaced Chakma refugees for their settlement in North-Eastern states. I think that the commission has been empowered within some special provision of the fundamental rights and Directive Principles of states policy to promote and encourage the people to be aware in the matter of the human rights abuses. It has done remarkable work in Punjab as the protection of human rights violation on the ground cremation because the Punjab police had cremated a large number of human bodies. The commission has also taken Suo-moto action on communal riot in Gujarat in 2002 and observed that the state has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all those who constitute it. It is fact that it has done tremendous work in direction of promotion and protection human rights almost in every parts of our country but it is a hard nut to crack for the commission to play an active role because it has limited and only recommending powers in the vital and gross violation of human rights which makes general skepticism among intelligentia, policy makes, human rights activists NGOs and many others. Hence I wish to express my view that the commission should made a fully independent body and based on two pillars- autonomy and transparency so that the commission can do credible job not only promoting human right in the country but also enhancing the image of the nation in the community of states and can help to fulfill the mission of Indian president A.P.J.Abdul Kalam that Indian will include in the hub of developed nation by 2020.

Keywords: Suo-moto, Hub, Gross violation Skepticism, autonomy, transparency and nut to crack.

The expression human right denotes that the individual as a human being enjoys certain basic rights, which are necessary for all round development of human personality and, in the absence of which, no individual would be able to lead a happy, moral, civilized human life. Viewing this, India provides for fundamental rights in part III of the constitution. Not only that Arts.32 and 226 make provision for their enforcement. Further, an amendment in the constitution also included fundamental duties and among them Arts.51-A casts duty on every citizen to promote communal harmony, spirit of brotherhood among all people of the country. Moreover, Part IV of the constitution directs the state to apply such policies and principles in the governance of the constitution so as to enhance the prospects

of social-economic justice. Similarly, Art 43, obligates the state to secure for workers a living wages, decent standard of life and social and cultural opportunities. Finally India has been party to all important international conventions on economic, social, cultural, civil and political rights, albeit with certain conditions. Thus India's status in the provision of human rights is quite satisfactory. All this compelled India to think for the formation of Human Rights Commission by Central Government of India.

More over, the concept of dignity and equality of human beings as enshrined in the universal declaration of human rights on 10 December 1948 was not new to the Indian people. These ideals have been recognized in India even during ancient times. In fact, the Indian concept regarding human values has "the oldest pedigree". It has been mentioned in Rigveda, that "No one is superior or inferior. All human beings are equal. They are all brothers who should strive collectively for the common welfare."¹ The Athervaveda has said, "As the Cow protects a new born at the risk of her life, so one should enlarge one's heart infinitely with compassion for all beings. All human beings have equal rights over food and water." Thus dignity and equality of human beings has been reflected. In India's heritage the procedural laws enacted over a century ago and the relentless fight of the freedom movement for statutory incorporation and enjoyment of human rights are standing testimony to the commitment of the Indian Nation to human rights.

It was in keeping with our rich tradition that within a year of signing of the Universal Declaration of Human Rights, the constitution of India has incorporated all the principles of Human Rights in its Preamble Part-III-Fundamental Rights and Directive Principles of state policy.

It was further provided that all the existing laws, which may be inconsistent with the fundamental rights, shall be void to the extent of the inconsistency. It was ordained that the state shall not "make any law which takes away or abridges the right" conferred by Part III of the constitution. These rights were made legally enforceable. In fact, the right to move the highest court of the land, the Supreme Court of India, for the violation of Fundamental Rights was itself guaranteed as a fundamental right under article 32 of the constitution.

During the last sixty seven years of independence, the courts have drawn extensively upon the declaration while interpreting the provisions in part III of the constitution Article 13(2) of the Declaration of the constitution which provides that "everyone has the right to leave any country including his own and to return to his country" was read into Article 21 of the constitution which guarantees the rights of life and personal liberty so as to sustain the citizen's claim, for the issue of a passport.²

In these sixty seven years, the United Nations have evolved many covenants, principles and standards and almost all of them have been incorporated in the social legislation, substantive and procedural laws by India. In all point of view India has established an apex National Human Rights Commission and many states have also established Human Rights Commission.

Need for Human Rights Commission in India

Respect for the dignity of an individual and striving for peace and harmony in society, has been an abiding factor in Indian culture. The Indian culture has been the product of assimilation of diverse cultures and religions that came into contact in the enormous Indian sub-continent over time. The international community has recognized the growing importance of strengthening national human rights institutions. In this context, in the year 1991 a UN-sponsored meeting of representatives



of national institutions held in Paris, a detailed set of principles on the status of national institutions was developed, these are commonly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights¹ and the UN General Assembly² have become the foundation and reference point for the establishment and operation of national human rights institutions.³

Formation of National Human Rights Commission

The Government of India did realize the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights Commission (Commission) by the Government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments. The Commission is the first of its kind among the South Asian Countries⁴ and also few among the National Human Rights institutions, which were established in early 1990s. The Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993.⁵ Fourteen Indian States have also set up their own human rights commissions to deal with violations from within their states. The Act contains broad provisions related with its functions and powers, composition and other related aspects.⁶

Section 2(d) of the Act defines human rights as rights relating to life, equality and dignity of the individual guaranteed by constitution or embodied in the international covenants and enforceable by Courts in India. The Indian Constitution provides certain rights for individuals in Part III of the Constitution, which are known as the fundamental rights.⁷ Part IV sets out the Directive Principles of State Policy.⁸ While the former guarantees certain rights to the individual, the latter gives direction to the State to provide economic and social rights to its people in specified manner. The word fundamental means that these rights are inherent in all the human beings and basic and essential for the individual. However, the rights guaranteed in the Constitution are required to be in conformity with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a party to these Covenants by ratifying them.⁹ The justiciability of fundamental rights is itself guaranteed under the Indian Constitution.¹⁰ The responsibility for the enforcement of the fundamental rights lies with the Supreme Court by virtue of Article 32 and by Article 226 to the High Courts.¹¹

The Constitution of the Commission dealt with in Chapter II of the Act. Section 3 of the Act says, "the Central government shall constitute a body to known to the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

The Commission consists of following members:

- a) A chairperson who has been a Chief Justice of the Supreme Court;
- b) One Member who is, or has been a judge of the Supreme Court;
- c) One Member who is, or has been the Chief Justice of the High Court;
- d) Two members to be appointed from amongst persons having knowledge of or practical experience in, matters relating to human rights.

The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be



deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

The headquarters of the Commission shall be Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

The appointment of the Chairperson and other Members are elaborately discussed under Section 4 of the Act.¹³ The other provisions relate to the removal of a member of the Commission, the term of office of Members, a member to act as a Chairperson or to discharge his functions in certain circumstances, the terms and conditions of services of members, vacancies, etc., not to invalidate the proceedings of the Commission, the procedure to be regulated by the Commission¹⁴.

Role of human Rights Commission in India

Wide powers and functions have been given to the Commission under section 12 of the Act. The paragraph (a) of section 12 provides, that the Commission can enquire *suo motu* action against any public servant against whom a complaint has been registered for violation of human rights. Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court.¹⁵ Section 12(c) empowers the Commission to visit any jail or other institution prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to State Governments on the basis of such visits. The Commission found after visiting many jails that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to a lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons.¹⁶ The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must be left when a person enters the gates of a prison. Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation. Under Section 12(e) there is a separate provision to review the causes of terrorism, which inhibits the enjoyment of human rights, and to recommend appropriate remedial measures. Section 12(f) provides for the study of all treaties related with international human rights instruments and the making of recommendations for their effective implementation. Section 12(g) provides for promotion of research in the field of human rights. Section 12(h) empowers the Commission to 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. Section 12(i) empowers the Commission to encourage the efforts of Non-governmental organizations (NGOs) working in the field of human rights. Lastly, Section 12(j) provides, such other functions as it may consider necessary for the promotion of human rights.

liberty under Article 21 of the Indian Constitution. Timely intervention by the Commission has saved the life of thousands of innocent Chakma refugees from AAPSU.

On 3rd December, 1996, the Commission took cognizance of a letter from Chaturman Mishra, then Union Minister for Agriculture regarding starvation deaths due to the drought in Bolangir district of Orissa. In similar matter a Writ petition was filed on 23 December 1996 by the Indian Council of Legal Aid and Advice and others before the Supreme Court of India under Article 32 of the Constitution. The petition alleged that deaths by starvation continued to occur in certain districts of Orissa. The Supreme Court of India on 26th July 1997 directed that since matter is seized with the NHRC and is expected to deliver some order, the petitioner can approach to the commission. Realising the urgency of the matter the Commission acted quickly and initially prepared an interim measure for the two years period and also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts.²⁶ A Special Rapporteur has been regularly monitoring the progress of implementation of its directions. The Commission observed that as starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant. The Commission strongly supported the e-view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right.

The Commission organized a meeting with leading experts on the subject, in January, 2004 to discuss issues relating to Right to Food. The Commission has approved the constitution of a Core Group on Right to Food that can advise on issues referred to it and also suggest appropriate programmes, which can be undertaken by the Commission. By this decision it is firmly established in the context of India that economic, social and cultural rights are treated par with the civil and political rights before the India Courts and the Commission. India is amongst the few countries in the world, which have accorded justiciability of economic, social and cultural rights.²⁷

Two writ petitions were filed before the Supreme Court of India containing serious allegations about large-scale cremations resorted to by the Punjab Police of persons allegedly killed in what were termed as "encounters". The main thrust of the Writ Petitions was that there were extra-judicial executions and hasty and secret cremations rendering the state liable for action. These petitions were largely relied on a press note of 16th January 1995 by the Human Rights Wing of the Shiromani Akali Dal under the caption "Disappeared" "cremation ground". The note alleged that the Punjab Police had cremated a large number of human bodies after labeling them as unidentified. The Supreme Court after examining the report submitted to the Court by Central Bureau of Investigation (CBI), relating to cremation of dead bodies observed that report indicates 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. The report discloses flagrant violation of human rights on a large scale. On 12 December 1996 the Court requested the Commission to have the matter examined in accordance with law and determine all the issues related with the case. Though matter is still pending before the Commission for final consideration, however, the Commission granted in some cases compensation amounting of Rupees Two Lakh Fifty thousand (Rs. 2, 50, 000/-) to the next of kin of the 89 deceased person. While granting the compensation the Commission relied on the laws developed by the Courts in India in the field of evolving legal standards for remedial, reparatory, punitive and exemplary damages for violation of Human Rights.²⁸ The Commission observed, it is

The responsibility entrusted to the Commission under the Act of 1993 cannot be adequately fulfilled without the development of close ties between the Commission and NGOs. For the Commission, it is not just a matter of Statutory obligation under Section 12(i) of the Act. The Commission recognized that the cause of human rights has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship.¹⁷ The Commission from very beginning associated NGOs with the inquiry of complaints. In several places, during visits by the Commission, NGOs have boldly come forward with evidence of wrong-doing in relation to specific complaints addressed to the Commission.¹⁸

The Commission acknowledged that the promotion and protection of human rights requires the courage and commitment that NGOs bring to bear in their endeavours and that it is for this reason that the country has much to gain by encouraging their efforts, whether the NGOs are national or international.

There is a well organized investigation division within the Commission.¹⁹ The primary duty of this investigation division is to look into complaints received by the Commission. For this purpose the investigation team makes on the spot investigations. The Act outlines the investigative role of the Commission. Subsection 1(b) of Section 11 provides, "Such police and investigative staff under and officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission."

A considerable increase in public awareness of the work of the Commission has been observed. This is reflected in the vast increase in the number of the complaints of human rights violations received by the Commission over the years. Many of the cases received by the Commission were of great poignancy, but they could not be entertained by the Commission because of the Regulation 8 of the Commission. The Commission broadly divides the cases in these following categories: (1) Custodial deaths; (2) Police excesses (Torture, Illegal detention/unlawful arrest, false implication etc.; (3) Fake encounters; (4) Cases related to Women and Children; (5) Atrocities on Dalits/Members of Minority community/Disabled (6) Bonded labour (7) Armed forces/para military forces and (8) other important cases.²⁰

Once the Commission accepts complaints, it seeks comments from the concerned government or authority regarding complaint. After receiving the comments of the concerned authority a detailed note on the merits of the case is prepared for the consideration of the Commission. After this, directions and recommendations of the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

Since its established in October 1993, the Commission has directed compensation in the amount of Rs. 9,76,68,634 be paid in 559 cases. In year 2002-2003 the Commission recommended that compensation amounting to Rs. 31, 40, 000/- be paid in 39 cases.²² The Commission during the period beginning from 1 April 2002 to 31 March 2003 registered 68,779 cases and in the same period for 2001 to 2002 the Commission registered 69,083 cases in year 2001-2002.²¹ Out 68,779 cases registered in the year 2002 to 2003, 67,354 complaints were of human rights violations, 1340 related to custodial deaths, 2 concerned custodial rapes and 83 related to police encounters were found. As on 31 March 2003, the total number of cases before the Commission was 43,010, which included 9763 cases awaiting preliminary consideration and 33,247 cases in respect of which reports were

now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life of a citizen by the public servants and the state. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation.²⁸

The commission took suo motu action on communal riot which took place in Gujarat in early 2002, the decision to take action was based of media reports, both print and electronic. The commission also received an e-mail communication requesting the Commission to intervene. A team of the Commission had visited Gujarat between 19 to 22 March 2002 and prepared a confidential report, which is latter made to the public.³⁰ The release of the confidential report was initially withheld to provide an opportunity to the Gujarat government to comment on its contents, given the sensitivity of the allegations contained in it. Unfortunately, the state government did not bother much about this report. The commission observed that the state has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it.³¹ The principle of *res ipsa loquitur* (the affair speaking for itself) applies in this case in assessing the degree of state responsibility in the failure to protect the constitutional rights of the people of Gujarat. The responsibility of the state extended not only to the acts of its own agents, but also to those of non-state players within its jurisdiction and to any action that may cause or facilitate the violation of human rights. Recently the US government has revoked visa to Chief Minister Narendra Modi because of the Commission's report on Gujarat.³²

Suggestive Conclusion

The setting up of NHRC through the protection of Human Rights Act, 1993, is an important development in the quest for human rights in India. The appointment of such commission can make a platform for institutionalizing the concept of the human rights in addition to the provisions of fundamental rights as enshrined in the Indian constitution.

There is a general skepticism among intelligentsia, policy makers, human rights activists and many others regarding the very basis of the formation of this commission. They express their doubt that the establishment of NHRC has been inspired by the genuine desire to protect and promote human rights standards in our country; they feel that it is a response from external pressure. In order to answer this it can be said that the setting up the commission is a response to both internal demand necessity and includes political parties, manifestos and demand from various circles – NGO Community, press, pressure groups, eminent tourists, constitutional experts and recommendations of different organizations; the external pressure includes pressure from the donor countries particularly USA and other European countries like , Germany, Norway and Sweden. By establishing this commission, India has also shown its international accountability as mentioned in Article 51 of the constitution, one of the Directive Principles of state policy which states that the state shall endeavour to foster respect for international peace and treaty obligations to the UN, UDHR and other treaties on human rights.³³

The need for setting up of the commission can be further analysed in the context of its structure and status. The structure of the commission shows that it is a fully independent body and based on two conceptual pillars, i.e., autonomy and transparency. Being a recommendatory and



investigatory body, the recommendations of the commission are of great importance to the government in order to make up its mind as to what legislative or administrative measures should be adapted to eradicate the evils found, or to implement the beneficial object it has in view. The status of the commission is not confined with its statute only, rather it has its constitutional validity under the commission is also defined in International law particularly in Paris Principle of 1991 and many International workshop on National Institutions for the promotion and protection of Human Rights.

Therefore, the creation of National Human Rights Commission in India can be important mechanism to strengthen human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent impartial and accessible judiciary. In India, this creation of such a human rights commission should go hand in hand with a through review of existing institutions and mechanism – including legal aid programme – in order to make these more effective instruments of human rights protection. These initiative should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable thus ending the impunity now effectively granted to virtually all those who violate human rights.³⁴

The establishment of the NHRC by a Parliamentary Act in October, 1993, has added an entirely a new and additional dimensions to the efforts of the country for the protection and promotion of human rights. While the courts have through formal decisions, interpreted the constitution and the law of land in terms of the Universal Declaration of Human Rights, and various covenants to which India is a party, and have come to the rescue of victims of human rights, it is envisaged that the NHRC would undertake a variety of tasks aimed at promoting a culture of human rights. As a watchdog body the NHRC has so far done credible job not only promoting human rights in the country but also in enhancing the image of the nation in the community of states. The initial skepticism, that sooner or later the NHRC will end up as another government type institution with its usual quota of lethargy and indifference has withered, as the commission has successfully maintained its image of objectivity, impartiality and integrity and, in fact, assured the role of a model institution that will act as a catalyst in keeping in the executive and legislative wings of the govt. to stick to their task. Indeed, the NHRC has become the central focal point for enforcement of the new generation of human rights while protecting the basic social order, and in a given threat perception the integrity and security of the state. However, it can not be said that the commission's achievements have been miraculous or extraordinary in promoting and protecting human rights. Ethos of the country that human rights violations have ceased to occur. But one can honestly agree upon the point that it has brought a fresh hope to those who seek redressal of their grievances, and there is an awareness now, as perhaps never before of the meaning of human rights in India. Which is really an appreciable and commendable contribution in promotion and protection by the NHRC for future generation as a dynamic and progressive institution of India.

References:-

1. Commission on Human Rights Resolution 1992/54 of 3 March 1992.
2. General Assembly Resolution 48/134 of 20 December 1993.
3. The Human Rights Commission of Sri Lanka was established under the Human Rights Commission of Sri Lanka Act, No. 21 (1996) and became operational in September 1997. The Commission of Sri Lanka Act, No. 21 (1996) and became operational in September 1997. The National Human Rights Commission (NHRC) of Nepal is an independent and autonomous statutory body established in the year 2000 under the Human Rights Commission 1997.
4. The Commission was constituted by an Act of Parliament. The Act is divided into eight Chapters consisting of 43 Articles. Special powers conferred to the Commission under Article 19(c) which says, "the Commission shall regulate its own procedure." There are 19 Articles under Procedural Regulations.
5. The fourteen states are: Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. See <http://www.nhrc.in>, visited on 12 April 2005.
6. See for details: The Protection of Human Right Act 1993 with Procedural Regulations.
7. Manoj Kumar Sinha, Implementation of Basic Human Rights (Manak Publications, New Delhi, 1999), pp. 183-191. Articles 12 to 35 of the Indian Constitution deal with Fundamental Rights.
8. Articles 38 to 51-A contain the Directive Principles of State Policy. The idea to have such principles in the constitution has been borrowed from the Irish Constitution. The Directive Principles are not enforceable by the Court.
9. India ratified both instruments on 10th April 1979.
10. D.D. Basu, Human Rights in Constitutional Law (New Delhi, Prentice Hall, 1994).
11. Manoj, note 8, pp.201-208.
12. According to section 4 of the Act, "Selection of Chairperson and members of the Commission is made on the recommendations of a committee consisting of the Prime Minister, Speaker and leader of the opposition in the House of the People (Lok Sabha) and Deputy Chairman and leader of the opposition in the Council of States (Rajya Sabha)."
13. Section 5 of the Act.
14. Section 6 of the Act.
15. Section 7 of the Act.
16. Section 8 of the Act.
17. Section 9 of the Act.
18. Section 10 of the Act.
19. Section 11 of the Act.
20. The Commission has decided to intervene in the pending court proceeding in the Punjab & Haryana Court relating to the disappearance of Harjit Singh. Human Rights Newsletter, vol.2, n.7(1993), p.1.
21. National Human Rights Commission Report, Second Annual Report, 1994-1995 (New Delhi-1994-95), pp. 12-16.
22. National Human Rights Commission Report, First Annual Report, 1993-1994 (New Delhi-1993-94), pp. 28-29.
23. Second Report, note 12, p.27.
24. Section 8(7) of Procedural Regulation.
25. Section 8(8) of Procedural Regulation.
26. National Human Rights Commission Report (2002-2003), (New Delhi, 2003), p.170.
27. Ibid., p.170.



28. *Ibid*, p.168.
29. *National Human Rights Commission of India v. State of Arunachal Pradesh*, AIR 1996 SC 1233.
30. Article 21 of the Indian Constitution provides, "No one shall be deprived of his life or personal liberty except according to procedure established by law."
31. East Pakistan got Independence in 1971, presently known as Bangladesh.
32. Manoj Kumar Sinha, "National Human Rights Commission v. State of Arunachal Pradesh" *Indian Journal of International Law*, vol 37, n.1(1997).
33. Writ petition (civil) No. 42/97. Sanjay Parikh, a public-spirited lawyer on behalf of the Indian Council of Legal Aid and Advice and others, filled this petition.
34. Author has personally seen the file and appeared before the Commission couple of occasions along with Sanjay Parikh advocate.