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Article

***1 INDIA'S NATIONAL HUMAN RIGHTS COMMISSION: A SHACKLED COMMISSION?**

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*3 I. Introduction

It is a well-known maxim that independent domestic institutions play an important role in ensuring effective implementation of international human rights standards at the national level. National and domestic human rights mechanisms can take many forms. They comprise courts, ombudsmen and human rights commissions. The effective protection of human rights requires flexible mechanisms that cannot entirely be undertaken within the traditional complaint-oriented court system. Therefore, national human rights commissions, with their "complimentary mechanisms," have lately become the much needed "third force" for the protection and promotion of human rights at the national level. [\[FN1\]](#) Although these institutions are created at the state/country level, it is interesting that the United Nations has defined their normative framework, [\[FN2\]](#) primarily because strengthened institutions can influence national agendas and enhance the effectiveness of the international system for the promotion and protection of human rights. [\[FN3\]](#)

*4 While there has been a recent growth of human rights commissions, [\[FN4\]](#) the United Nations focused attention on them as early as 1946. [\[FN5\]](#) The first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris, in 1991, was a significant event in the establishment of the normative framework of national rights institutions. [\[FN6\]](#) The "Paris Principles" - "principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights" emerged as a result of the Workshop. [\[FN7\]](#) Subsequently, the United Nations Commission on Human Rights, [\[FN8\]](#) the United Nations General Assembly, [\[FN9\]](#) and the Vienna Conference in 1993 [\[FN10\]](#) formally endorsed many of the Paris Principles.

Amnesty International has also come out with guidelines on human rights commissions. [\[FN11\]](#) While Amnesty International emphasizes the important role human rights commissions can play in protecting human rights, it rightly points out that these

institutions cannot and must not replace the traditional legal edifice provided by an independent and impartial judiciary. [\[FN12\]](#)

This article focuses on India's National Human Rights Commission ("NHRC") [\[FN13\]](#) that was established more than six years ago. [\[FN14\]](#) The Indian government set up the NHRC primarily to assuage the international pressure placed upon it by Amnesty International in the wake of the atrocities committed by the police and the armed forces in response to trans-^{*5} border terrorism. [\[FN15\]](#) This article critically evaluates the role of the NHRC, probes its powers and functions, highlights its weaknesses and assesses its constructive results. The Commission's role is assessed against the backdrop of the Paris Principles and the guidelines laid down in the United Nations Handbook on National Human Rights Institutions ("UN Handbook"). Two important questions analyzed are how the Commission's potential effectiveness can be increased and how the Commission can be an effective "third force" in promoting citizens' socioeconomic rights that have been demonstrably ignored by successive governments since independence.

The NHRC is anchored in the Protection of Human Rights Act, 1993 ("PHRA") [\[FN16\]](#) that also provides for the establishment of States Human Rights Commissions ("SHRC") and the Human Rights Courts ("HRC") at the district level in each state. [\[FN17\]](#) The Human Rights Act vests the Commission with a broad mandate. However, the Commission as it stands today, only provides recommendations, and has no effective enforcement mechanism. Despite the positive investigative work of the Commission, this lack of enforcement mechanism has impeded its emergence as a truly powerful protector of human rights on the subcontinent. Therefore, this article argues for enabling the Commission to bring public servants suspected of human rights violations to justice, thus holding them accountable and preventing impunity, and to seek greater implementation of the Commission's recommendations. This article also proposes certain amendments to the Human Rights Act regarding these arguments.

The Paris Principles suggest that local or regional organs must in appropriate circumstances assist national institutions. [\[FN18\]](#) This point merits special attention in India, a vast, pluralist and poor country with a federal structure in which effective promotion of human rights calls for a mechanism that is swift, inexpensive and local. In the six years of its existence, the five-member Commission located in New Delhi has received 120,000 complaints from all over the country. [\[FN19\]](#) In 1998-99 the Commission registered 40,000 complaints. [\[FN20\]](#) As the Commission's visibility increases, it ^{*6} could be paralyzed by a torrential caseload and become unable to adequately carry out its functions. Therefore, to prevent the Commission's potential paralysis and to make protection of human rights fully effective, this article urges for the establishment of SHRCs and HRCs in all the states of the Indian Union ("federation"). This article is based on information regarding the work of the NHRC available through April 2000 although every effort has been made to incorporate relevant developments occurring after this date. The Commission's Annual Reports and monthly newsletters provide some of the main sources for this article. This article comprises ten sections. Part II of the article provides an overview of India's constitutional framework and shows how this aspect was one of the reasons that the Indian Government was disinclined to establish a special machinery for the protection of human rights. Part II also discusses the peculiar circumstances of the late eighties that provided the catalyst for the creation of the NHRC. Part III probes the anatomy of the NHRC, its composition, the degree of financial autonomy it enjoys and analyzes its various functions. Part IV discusses the two major weaknesses in the NHRC, namely its inability to make enforceable orders and to investigate the armed forces' atrocities. An analysis of the NHRC's early functioning, its thrust in certain areas concerning protection of civil liberties and its two concrete results are discussed and analyzed in Part V. Part VI, entitled "A Glance Back and a Look Forward," assesses the NHRC's functioning and highlights certain issues and areas where the Commission needs to focus on in the years to come. Part VII, entitled "How Can the NHRC Be Strengthened," shows how, despite its broad mandate, the Commission is unable to offer any concrete remedy other than what is already provided under the Constitution. This section of Part VII, therefore, urges the Indian Government to make certain amendments to the PHRA that will strengthen the Commission's powers. The

second section of Part VII discusses the steps that the NHRC itself needs to take in order to improve its operational efficiency. Part VIII, entitled "NHRC and ESC Rights," discusses the NHRC's potential to make meaningful contribution to the protection of economic, social and cultural ("ESC") rights. Part IX, entitled "NHRC and the Government," laments the Indian Government's indifferent attitude to the Commission's working and its legitimate concerns and urges it to take the Commission's recommendations more seriously. Finally, the article makes concluding remarks and underscores the fact that ultimately, the Commission's efficacy will not merely depend on its vested powers, but also on the quality of persons who have the privilege of serving on it.

*7 II. India's Sound Constitutional Framework of Human Rights and the Catalyst for The NHRC

A. The Sound Framework and the Indian Government's Disinclination to Establish a Human Rights Commission

India is a functioning parliamentary democracy. Elections to the National Parliament and state legislatures are held regularly on the basis of adult franchise. [FN21] The Constitution guarantees to all citizens certain basic human rights [FN22] and provides for an independent and powerful judiciary to safeguard these rights from legislative and executive encroachment. [FN23] Many of the rights in the Universal Declaration of Human Rights [FN24] and International Covenant on Civil and Political Rights [FN25] are mirrored in the Indian Constitution. [FN26] In addition, the Indian judiciary has since the late seventies shown great zeal in safeguarding human rights on the subcontinent. [FN27] India also has a vigilant press and active non-governmental organizations. Nonetheless, human rights abuses continue to *8 occur in India, and although the efficacy of national human rights commissions was being touted around the globe as recently as 1978, [FN28] the Indian government was disinclined to establish a human rights commission itself. The existence of a democratically elected parliament and a strong judiciary contributed to this disinterest in official circles for creating a special machinery devoted to the protection of human rights. [FN29] However, a conjunction of events in the late eighties sparked the birth of the NHRC.

B. Events Culminating in the Birth of the NHRC

The late eighties was a politically turbulent period in India. During that time, a powerful wave of foreign-funded terrorist violence engulfed the nation--particularly in Kashmir, Punjab and Assam. [FN30] In addition to causing severe loss of human life and property, these insurgency and secessionist movements threatened India's unity and integrity. In a swift and harsh response, the government deployed the army, the paramilitary and the Border Security Forces ("BSF") to trounce these divisive forces. In addition, it enacted draconian laws [FN31] such as the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA") that vested enormous powers in the police. [FN32] *9 The result of giving sweeping powers to the police and the armed forces was the birth of a new evil--state-sponsored terrorism. The armed forces committed excesses on citizens including use of excessive force, wanton killing, rape and torture. [FN33] The police used TADA indiscriminately, victimizing many persons innocent of terrorist affiliation. [FN34] It was at this juncture that Amnesty International and Asia Watch released their scathing reports on India's human rights landscape that ripped off India's democratic facade to reveal the [Indian] authoritarian government's insouciance at and acquiescence in such state-sponsored violence. [FN35] This fuelled an international hue and cry. Amnesty's reports also manifested that abuses including torture, rape, custodial deaths and disappearances--committed by state security agents--were not conjectural, but actual and endemic. [FN36] Many local human rights groups and non-governmental organizations also weighed in with condemnation against the government for failing to establish a credible mechanism to monitor the situation and punish the guilty. [FN37] Fearing indictment in the court of world opinion [FN38] and a consequent fall-out with international financial institutions such as the World Bank, [FN39] the Congress

government, led by Mr. P.V. Narasimha Rao, issued an ordinance establishing the NHRC as a *10 damage control measure. [FN40] Born in such trying circumstances, the Commission officially began life in October 1993. [FN41]

III. The Anatomy, Autonomy and Functions of the NHRC

A. The Anatomy and Autonomy of the NHRC

The Paris Principles mandate that human rights institutions operate independently of government and have the requisite resources and infrastructure to function as credible and effective institutions. [FN42] Functioning independently requires the capacity to make decisions independent of any vested interests. The method of appointment and dismissal of its members, security of their tenure, and criteria for their appointment ensure a certain degree of autonomy for a commission. The UN Handbook recommends that these procedures be established in the commission's founding legislation. [FN43] It also suggests that a "representative body" like Parliament should be responsible for appointing a commission's members. [FN44]

The Human Rights Act sets out the normative framework of the Commission. It provides for a Commission comprised of five members, including the chairperson, three of whom are to be drawn from a pool of former judges of the Supreme Court and sitting and/or past judges of the High Courts. [FN45] The remaining two commissioners are to be men and women "who have knowledge and practical experience in matters relating to human rights." [FN46] Only a former Chief Justice of India can be appointed to head the Commission. [FN47] The President, acting on the advice *11 of the Appointment Committee, [FN48] appoints the Commission's members. [FN49] A commissioner can be removed from office if he "engages during his term in any paid employment outside the duties of his office." [FN50] Further, the PHRA renders the commissioners ineligible for appointment under the Government of India once their five-year term at the NHRC expires. [FN51]

In theory, the President appoints the full-time members of the NHRC. In practice, the ruling party decides who its members should be. [FN52] Nonetheless, the requirement of having three former Supreme Court and High Court judges has minimized the politicization of the Commission and ensured--to some extent--its political neutrality. Further, the judicial content of the Commission's composition adds to its stature and gives a serious and a solemn ring to its recommendations. [FN53] Clearly, the strict appointment criteria laid down for the members of the NHRC goes far beyond the requirements in the Paris Principles. [FN54]

The Paris Principles and the UN Handbook also call for ensuring the pluralist representation of a country's "social forces" in its national commission. [FN55] This recommendation takes on special significance in India, a pluralist society that has increasingly become vulnerable to fascist elements. Human rights violations in India are rooted in deep schisms based not only on acute economic inequalities, but also caste, creed, religion, gender, social status and other characteristics. Ergo, it is not merely the poor, but also women, children, the members of religious, linguistic and ethnic minorities, and the dalits or harijans (untouchables) who are, due *12 to their unequal status, especially vulnerable to human rights abuses. [FN56] The Chairpersons of the National Commission on Minorities, the National Commission on Women, and the National Commission for the Scheduled Castes and Tribes are deemed to be members of the Commission. [FN57] Although the NHRC's composition does not reflect the country's "social forces," the NHRC, with these ex-officio members, is more likely not to be blind to the dismal plight and deaf to the feeble voices of these vulnerable groups. The UN Handbook recommends the provision of "adequate funding" to national commissions and calls for freedom from "financial control which might affect [their] independence." [FN58] For its functioning, the NHRC receives Parliament-approved grants from the government. [FN59] Funding by Parliament as opposed to a particular ministry is believed to ensure a greater degree of autonomy in the Commission's working and minimizes political interference. [FN60]

B. The NHRC's Mandate

Vested with functions that are normally entrusted to human rights commissions, the NHRC was one of the first national human rights institutions established in the Asia-Pacific region reflecting the Paris Principles. [FN61] In some respects, however, it has a broader mandate than other human rights commissions. [FN62] This is due to the peculiar circumstances that acted as the catalyst for the creation of the NHRC in 1993. In performing its various functions under the PHRA, the Commission has *13 essentially four roles to play--protector, [FN63] advisor, [FN64] monitor [FN65] and educator [FN66] of human rights. The Commission has a two-pronged mission-- one urgent, in order to investigate and recommend remedies for immediate wrongs, and another, more measured, to strive for the development of a human rights culture.

1. The Applicable Standards

On the question of what human rights standards are to apply, the PHRA states that they are the "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." [FN67] The only catch in this definition is that the NHRC is mandated to protect only those rights that are enforceable by the courts in India. While the Fundamental Rights in the Indian Constitution are judicially enforceable, the rights contained in International Covenants are not enforceable in India, unless Parliament incorporates them into law by statute. [FN68] While the Indian judiciary has reiterated this aspect, the recent Supreme Court judgment in Vishaka has given an interesting twist to this issue. The Supreme Court held that the provisions in International treaties signed by India, which elucidate the Fundamental Rights, are enforceable, even in the absence of a legislative measure. [FN69] While it remains to be seen how the other Supreme Court judges will receive this innovative interpretation, there can be no doubt that this judgment has sharpened the Constitutional status of human rights-related treaties.

2. Protective Functions

a. Investigating Alleged Human Rights Violations

The NHRC's primary function is to receive complaints and initiate investigations into violations of human rights [FN70] by public servants or their abatement thereof. [FN71] Human rights violations in India stem as much from the abuse of power by public officials as by the dereliction of their *14 public duties. [FN72] It is no wonder that the commission is empowered to receive complaints (that have been filed within one year of the commission of the alleged human rights violation) or investigate on its own "negligence in the prevention of human rights violations by public servants." [FN73] In accepting complaints, the Commission is mandated to confine its substantive consideration to those complaints that have been filed within one year of the perpetration of the alleged human rights violation. [FN74]

b. Suo Moto Investigations

A human rights commission is a "complimentary mechanism" established to ensure that the rights of all citizens are fully protected. This complementarity implies that the complaint function of a national human rights institution is able, and should be able, to offer something that the legal system cannot. A traditional court cannot act until its jurisdiction is invoked. However, the complementarity of a human rights commission lies in its ability to "search" for human rights violations. The NHRC can also do this via its power of inquiring suo moto into the violation of a right. [FN75] This is a powerful mandate whose potential must not be left untapped. In the course of conducting inquiries, the NHRC only has the same powers as a civil court trying a suit under the Indian Code of Civil Procedure. [FN76] These include the power to compel the discovery and production of any documentary or other evidence, [FN77] the power to summon the attendance of witnesses [FN78] receiving evidence on affidavits, [FN79] the power to call for the production of any public records [FN80] and

the power to examine such witnesses under oath. [FN81] In other words, these powers are not available to NHRC or individuals undertaking investigations on its behalf in the course of its activities beyond the conduct of inquiries, including when undertaking investigations.

The Commission has developed its own procedures that are to be applied to all investigations. [FN82] Although the power to conduct public inquiries into allegations of human rights violations is not explicitly *15 vested in the NHRC, such authority flows by implication from some of its other vested powers. [FN83]

c. Intervening and Initiating Litigation

An important power of the Commission is to intervene in legal proceedings that involve the infringement of a fundamental right. [FN84] The Commission is of course required to take the permission of the concerned court before intervening. [FN85] In addition, the Commission is also permitted to approach the Supreme Court or High Court for such directions, orders or writs as that Court may deem necessary. [FN86] Although the Act does not specifically state the circumstances in which the Commission may approach the above named Courts, this power of referral amounts to a power to initiate new litigation. [FN87]

3. Monitoring and Advisory Functions

The peculiar circumstances that sparked the birth of the NHRC have influenced the way the Commission's monitoring and advisory roles have been framed. For instance, Amnesty and Asia Watch's reports indicted the Indian government for the brutal and depraved conditions under which prisoners and inmates of state-run welfare homes are required to live. [FN88] Accordingly, the Commission has been entrusted with the task of visiting prisons and other institutions where persons are lodged for treatment, reformation or protection, to study their living conditions and recommend measures for improving them. [FN89] The Commission is mandated to review the safeguards provided under the Constitution or existing laws with a human rights content and recommend amendments and measures for their effective implementation. [FN90] Although the Human Rights Act does not expressly confer authority on the Commission to draft new legislation, this authority flows by implication from the powers vested in the Commission. [FN91]

*16 The NHRC's advisory functions include the power to advise and assist the government in the domestic implementation of international standards. It is explicitly mandated to study treaties and other international human rights instruments and recommend measures for their effective implementation. [FN92] Given the broad scope of this function, it involves the authority to render an opinion on the advisability of ratifying a particular human rights instrument. [FN93]

4. Educational Functions

The Educational functions which the PHRA specifies include research [FN94] and dissemination of information, spreading of human rights literacy [FN95] through working with the media, releasing publications, conducting seminars, workshops and symposia and the encouragement of non-governmental organizations and other human rights institutions. [FN96] A necessary tool in protecting human rights is to know about the rights to which every person is entitled to and the mechanisms that are available to enforce those rights. The educational task of the commission therefore, takes on special urgency in a far-flung nation like India where a vast majority of the citizens are illiterate and steeped in ignorance. [FN97]

In addition, there is a general clause that allows the NHRC to perform "such other functions, as it may consider necessary for the promotion of human rights." [FN98] This umbrella clause endows the Commission with a potentially wide mandate.

IV. Normative and Structural Weaknesses of the NHRC

A human rights commission is an institution set up and funded by the state; yet, its principal function is to investigate the state and the state's agents for violating citizens'

rights. This paradoxical aspect takes on added significance in India where the state and its agents (police and the armed forces) are the biggest human rights violators. Exposure of human rights violations may, under these circumstances, delegitimize particular politicians and police officials, and harm the prestige of the armed forces. Therefore, skepticism about the government's earnestness to create a truly strong institution with far reaching powers to investigate the state's abuses and take action against the delinquent officials is appropriate. *17 Government-created commissions like the NHRC are no purer than the politics that give birth to them. [FN99] They have an impressive facade, but are deviously designed--deliberately deprived of crucial powers--even if vested with a broad mandate. [FN100] A close reading of the Commission's post-investigative powers makes this clear. The UN Handbook sets out certain crucial powers that a national commission needs to have to facilitate its follow-up of complaints and provide remedies for violations. [FN101] Unfortunately, the NHRC has very few of those powers. In fact, the NHRC is akin to a standing Commission of Inquiry on human rights violations empowered to report to the government as an executive magistrate does in inquiries under section 174 of the Indian Code of Criminal Procedure. [FN102]

A. Enforcement and Implementation

1. Absence of Power to Prosecute Public Servants and Make Enforceable Orders
The NHRC is, in essence, a purely recommendatory body that has in its arsenal only the powers to recommend [FN103] and to initiate litigation. [FN104] It does not have the power to make determinations and enforceable orders. In cases where its inquiry discloses the violation of human rights or negligence in the prevention of its violation by a public servant, it can neither initiate proceedings for prosecution against the delinquent official nor can it award appropriate compensation to the victim or her family members. [FN105] All that it can do is recommend to the appropriate authorities: a) to prosecute the errant public servants; [FN106] b) to take any other action with a view toward remedying or preventing a fundamental right violation [FN107] and c) to grant interim relief to the victim or the members of her family. *18 [FN108] In addition, the Human Rights Act does not specifically make the recommendations of the Commission binding on the concerned government or the authority. [FN109] But it lays down a time frame (one month) within which the government or the authority must respond to the Commission about the action it has taken on the Commission's recommendations. [FN110] While the Commission must provide a copy of its investigation results to the complainant [FN111] it is also mandated to publish its investigation results and decisions along with the government's action taken in that regard. [FN112]

2. Prohibition on Investigating Armed Forces' Atrocities
It was adverse international opinion against the armed forces' brutal atrocities that led to the establishment of NHRC. The armed forces have sweeping powers when they are called to quell internal disturbance, giving them ample scope to commit human rights abuses. [FN113] Despite these factors, the PHRA precludes the NHRC from investigating violations committed by the armed forces. [FN114] When the Commission receives a complaint of human rights violations by the armed forces, the only weapon in its meager arsenal is to call for a report from the government. [FN115] The Commission may make recommendations on the basis of this report. [FN116] Indeed, this restrictive procedure that it lays down for the Commission's investigations into violations by the armed forces has "driven a huge hole in the jurisdiction of the Commission." [FN117] The Human Rights Act unarguably renders the Commission a deeply ineffectual institution for checking human rights violations by both public servants and the armed forces.

*19 V. The NHRC's Early Functioning: The Protection of Civil Liberties and the Concrete Results

A. The NHRC's Early Concerns: Protecting Civil Liberties

Endowed with a broad mandate, but lacking coercive investigative authority, the NHRC gathered its nucleus staff and valiantly embarked upon the mission of protecting human rights in a country marked by many states [\[FN118\]](#) habituated to torture and brutality as instruments of governance. Initially, human rights activists viewed the Commission's activities with skepticism. How they must have wondered: could this body credibly investigate police atrocities perpetrated by the very police personnel from whom it needed assistance? Many thought that it would be a spineless institution, serving as a stooge which would exonerate the government from charges of human rights violations. To understand the Commission's work in the early years and its rationale for prioritizing certain human rights issues, one needs to examine the actual conditions prevailing in India when the Commission came into force. An example of a "paradigm petition" then beginning to trickle into the Commission's office in New Delhi perhaps best summarizes those conditions. It might go something like this:

My name is Narayan. Six months back, three policemen came to my hut and asked for my son, Krishna, who is nineteen years old. They told me that they wanted him for questioning regarding terrorist activities in the area. I honestly told them that my son was not involved with any terrorist groups. They did not believe me and instead kicked and beat me and threatened to kill my family and me unless we confessed to having connections with the terrorist groups. A couple of weeks later, my son and I were returning from our job in the fields when we were accosted by a group of policemen who took him away in a jeep for questioning. I begged them to allow me to accompany my son to the police station, but they did not let me. Krishna did not come home that night, so I went to the police station. There they denied any knowledge of him. I related my sad story to the Village Sarpanch (head) and pleaded with him to help me trace the disappearance of my son (by the police). But, the Village Sarpanch got the same reply from all the police stations in my district, namely, that the police knew nothing about my son. Please help me. [\[FN119\]](#)

The first decisive step the Commission took was to send a missive to all the state governments directing District Magistrates and police superintendents to report to it cases of custodial deaths and rapes within 24 *20 hours of their occurrence. [\[FN120\]](#) Significantly, the Commission added that failure to submit such reports would lead to a presumption (on the Commission's part) that an effort was being made to suppress the occurrence. [\[FN121\]](#) The Commission had been prescient. The kinds of cases that subsequently appeared before it clearly suggest that civil liberties' protection had reached its nadir in India. Within six months of its establishment, the Commission had received 496 cases for investigation. [\[FN122\]](#) Not surprisingly, 105 of the admitted cases were categorized under "custodial deaths," cases involving "police excesses," and "excesses by armed forces." [\[FN123\]](#)

Using its suo moto investigative powers, the Commission uncovered evidence of grave human rights violations such as custodial deaths, custodial rapes, atrocities against women and armed forces' excesses. [\[FN124\]](#) While a considerable proportion of the Commission's registered cases arose out of suo moto investigations that had a journalistic provenance, [\[FN125\]](#) a few such cases had their origin in reports by foreign non-governmental organizations such as Amnesty International and International PEN. [\[FN126\]](#) The Commission's first suo moto investigation involved the indiscriminate firing by BSF of innocent civilians in the Bijbehara District of the State of Jammu and Kashmir, resulting in the deaths of about 60 civilians. [\[FN127\]](#) Initially, the Commission's suo moto actions focussed on civil liberties' abuses. However, once it had consolidated its role, the Commission showed a growing concern for socioeconomic abuses. [\[FN128\]](#) Forsaking procedural formalities--in order to render itself accessible to the general populace--the Commission charged no fee [\[FN129\]](#) and began to accept complaints submitted to it in a variety of ways, including by fax or telex messages. [\[FN130\]](#) The Human Rights Act empowers the Commission to receive complaints from a victim or "any person" on his behalf. [\[FN131\]](#) Skeptical of the Commission's abilities, non-governmental organizations have approached the Commission only to test its response and uncharted potential, rather than to obtain concrete results. The Commission received complaints from an array of non-governmental organizations, *21

including the Tamil Nadu State Legal Aid Board, [FN132] Andhra Pradesh People's Union for Civil Liberties ("APPUCL"), [FN133] All Assam Student's Union [FN134] ("AASU"), and the People's Union for Civil Liberties ("PUCL"). [FN135]

The Commission began to sit in the first and third week of every month, except holidays. It arranged for complaints to be heard before a bench of two members within two weeks of receipt of the complaint. [FN136] The Chairman himself, or one or more members of the Commission, would direct a special sitting of the Commission to consider specific matters of urgency. [FN137] As the volume of cases increased, the Commission instituted single member benches. [FN138]

In conducting inquiries, the Commission has been compelled to resort to the mandated procedure of calling for reports from concerned authorities for investigating complaints.

[FN139] What this means in practice is that when the Commission calls for a report, it is reliant on the public servants' version of events, or more usually, on the version of events as given by the alleged perpetrators themselves. In such instances, what invariably occurs is a distortion of truth to protect the guilty. Furthermore, the abysmal facilities in Indian mortuaries coupled with the unholy nexus between the politicians, police and the medical staff have led to the submission of doctored post-mortem reports to the Commission which have made a mockery of criminal investigations and justice.

[FN140] To obliterate these corrupt practices, the Commission issued a directive requiring all state governments to submit videotapes of all post-mortem examinations of custodial deaths along with the written reports of the post-mortem examinations.

[FN141] Under the Human Rights Act, the Commission proceeds to inquire into a complaint on its own when it does not receive the report that it has called for from the government or the concerned authority within the stipulated time. [FN142]

Distressingly, there have been several such instances where the Commission has been compelled to undertake investigations of grave abuses such as custodial deaths and rapes on its own. [FN143] In addition, there have been instances in which the Commission has had to "monitor closely" the state police's investigations. *22 [FN144]

Not surprisingly, in many cases, the state police personnel's investigations have been shoddy, compelling the Commission to entrust the investigation to the Central Investigation Division ("CID"). [FN145] The lack of impartiality in state police-conducted investigations has been acute in states like Uttar Pradesh, Tamil Nadu, and Bihar.

[FN146] As its caseload quickly metastasized, growing within three years from 496 to 7,000, the Commission augmented its pool of investigative staff [FN147] and began to deputize its own investigation team to undertake investigations. [FN148]

Following in the Indian Supreme Court footsteps, [FN149] the Commission has also appointed session judges, [FN150] chairmen of tribunals [FN151] and non-governmental organizations [FN152] to aid it in its investigations as investigators or observers.

[FN153] Representatives of non-governmental organizations have weighed in, assisting the Commission's investigation team in many cases involving violence against women.

[FN154] The Commission has used their services not merely to seek the information about the cases but have also relied on them to have female victims interviewed.

[FN155] The Commission has even invited foreign non-governmental organizations to serve as advisors to assist it in its investigations. [FN156] In certain cases concerning "encounter deaths," [FN157] the Commission has held a public inquiry. [FN158]

*23 An enforceable right to compensation for unlawful arrest or detention is an internationally recognized principle. [FN159] Although the NHRC is not specifically empowered to award compensation to a victim of human rights abuse, it has taken many opportunities to strongly urge the State to pay compensation to victims or their families. The Commission has recommended an adoption of a uniform rate of compensation in respect of death, permanent disablement and serious injury. [FN160] But the Commission did not rest with this recommendation. It advised the government concerned to recover the amount paid as compensation from the delinquent public servants. [FN161] Interestingly, states have agreed to abide by this directive and accordingly have paid compensation to the victims' families and recovered like amounts from the delinquent servants. [FN162] The Commission has also closely monitored the enforcement of this rule, and in one case, has sought the intervention of the Supreme

Court to have its directions--that the State government has not consented to carry out--enforced. [\[FN163\]](#)

However small and tentative, these are steps in the right direction that have the potential to obliterate violence in custody and inject the rule of law into the administration of justice. While the Commission's directions carry no legal sanction and have not eliminated the occurrence of custodial deaths, they have ensured that many more custodial death cases have come to its notice that would have been swept under the state's rug under the guise of "suicides." Since the issuance of its first directive, there has been an increase in reported custodial deaths. [\[FN164\]](#) In fact, some of the complaints that the Commission has received owe their origins to reports submitted to the Commission in response to these instructions. [\[FN165\]](#) Another new practice that will need time to entrench concerns the videotaping of post-mortem reports. Some states have agreed to this second directive of the Commission and have begun to send videotapes of post-^{*24} mortem examinations. [\[FN166\]](#) Despite the Commission's positive work in this regard, it is clear that its investigation of custodial deaths and other police atrocities have been hampered on several occasions by the lack of cooperation by law enforcement and state or central government officials, and by the slovenly and superficial investigations of state police. [\[FN167\]](#) While it is difficult and too early to gauge the overall impact of the Commission's work on the human rights landscape, the Commission's thrust in the protection of civil liberties has nonetheless produced two concrete results worth noting.

B. The NHRC's Concrete Results

1. Contributing to the Demise of TADA

During the first ten months of the Commission's existence, most of the great army of victims were those who were scooped up by the police under TADA and tossed into prison under the guise of national security. [\[FN168\]](#) It is to its credit that the Commission did not concede much to the government regarding domestic security concerns. Accordingly, the Commission began to closely monitor TADA's implementation. [\[FN169\]](#) After a few months collecting evidence all over the country from bureaucrats, senior police officials, journalists and non-governmental organizations, the NHRC Chairman publicly voiced his decision to seek a review of the Supreme Court's judgement wherein the latter had upheld TADA's validity. [\[FN170\]](#) As the date for consideration of the extension of the dreaded statute neared, the Commission launched a furious initiative to block its renewal. In a letter addressed to all members of Parliament including the Prime Minister, the NHRC chairman strongly recommended the removal of TADA from the statute book. [\[FN171\]](#) What really marked the Commission's recommendations was the categorical impact of its conclusions:

The TADA legislation is, indeed, draconian in effect and character and has been looked down upon as being incompatible with our cultural traditions, legal history and treaty obligations. . . . I remind you that you have entrusted the Commission with the charge of maintaining human rights and the Commission is finding it difficult to do so unless this draconian law is removed from the statute book. [\[FN172\]](#)

^{*25} In 1995, Parliament relented and allowed TADA to lapse. [\[FN173\]](#) NHRC was the decisive force for the demise of TADA and was perhaps its earliest and most tangible achievement.

2. India's Signing of the UN Convention on Torture

The average Parliamentarian, political party worker or Indian citizen is woefully ignorant of India's international human rights law obligations. The NHRC must be commended for raising awareness among political parties and public citizens on custodial deaths and situating this domestic problem in the overall international human rights context. Fortunately, the Commission's campaign inspired the United Front [\[FN174\]](#) ("UF") to list accession to the UN Torture Convention in its "Common Minimum Program"--the party manifesto. [\[FN175\]](#) The Commission repeatedly drew the then Congress-led government's attention to the rampant use of torture in detention centers that

contributed to the phenomenal rise in incidents of custodial deaths. Advising the government of the desirability of, and its obligations to adhere to, international standards in the treatment of detainees, the Commission boldly urged then Prime Minister, Mr. P. V. Narasimha Rao to accede to the United Nations Convention on Torture. [\[FN176\]](#) Although the Congress government did not act on the Commission's recommendation, the UF government, led by Mr. I.K. Gujral, signed the UN Convention on Torture on October 14, 1997 when it had a chance to form the government in fall 1997. [\[FN177\]](#)

VI. A Glance Back and a Look Ahead

October 3, 1999 marked the Commission's sixth anniversary. Despite severe doubts about its independent functioning, the Commission has surprised domestic and international observers with its decisive and credible actions in certain areas that behoove an independent national institution. It is fair to conclude that the NHRC has not been a total disappointment. However, the Commission has come in for criticism for focusing on softer human rights issues such as spreading awareness of human rights and ignoring human rights issues with major relevance for India. The Commission, some human rights activists claim, is very legalistic and bureaucratic in its approach to its functions. [\[FN178\]](#)

Ideally, a human rights commission needs to be accessible, effective and credible. Regarding accessibility, the commission has come a long *26 way since 1993 when its total caseload for the first six months was about 500 complaints. [\[FN179\]](#) Since then, the Commission has received about 120,000 complaints with about 40,000 complaints in 1998-99 alone. [\[FN180\]](#)

Whether the Commission will be perceived as an effective institution for the protection of human rights in India will largely depend on what enforcement powers it has, what kind of recommendations it makes, and how far and how much the Central Government and states take seriously, and respect, the Commission's views and recommendations. The quality of the Commission's reasoning and decision making will depend on how substantive and elaborate they are on the issues of law and fact that are raised and considered in the complaints. Effective recommendations will be concrete; they will state the particular law that has been violated and what action needs to be taken against which public servant. Evasive recommendations will on the other hand only give general directions and will make measurement of their compliance difficult. For instance, in 1993, in a suo moto investigation into the BSF's use of excessive force that killed many innocent civilians, the Commission made certain recommendations regarding the manner in which the security forces should discharge its functions while assisting the civilian administration in maintaining law and order. The government accepted and acted upon these recommendations. [\[FN181\]](#) Interestingly, since then, no instance alleging the excessive use of force of the kind and scale that marked the tragic incident in Bijibehera has apparently come to the Commission's notice. [\[FN182\]](#)

Given the immense magnitude of the task of promoting human rights in the Indian subcontinent, the NHRC will have to prioritize its work if it seeks to be an effective institution. For this, the Commission needs to identify concrete goals, methodologies to be used for their accomplishment, and the time frames in which it proposes to meet the goals. The Commission must also concentrate its energies in those areas in which its status as a complimentary mechanism give it a distinct advantage to protect human rights.

A. Prioritizing

One matter that the NHRC needs to focus on is reviewing existing or proposed legislation. The Commission must adopt a coherent approach to this vital function. For instance, the government has proposed introducing a new bill similar to TADA. Human Rights groups have strongly attacked the new bill on the grounds that it aims to suppress political freedom under the guise of ridding the country of terrorism. There is also *27 widespread concern, both in India and abroad, about the many other pieces of legislation that provide sweeping powers to the police and the armed forces, thereby

increasing their potential to abuse citizens' human rights. For instance, the Tamil Nadu Prevention of Terrorist Activities Act, 1998 ("POTA") is as draconian as TADA but so far the NHRC has not made public any decision it has taken to review this legislation.

[FN183] The Human Rights Committee has expressed grave concerns over the Jammu & Kashmir Public Safety Act and the National Security Act, none of which have caught the attention of NHRC as yet. [FN184] NHRC must focus on reviewing legislation since in the performance of this task, it can play an important role in reminding the government of its international obligations and adhering to international human rights standards.

The Commission is uniquely situated to contribute to the development of a rich human rights jurisprudence and must exploit its potential in this regard. This opportunity stems from its powers to intervene in any proceedings involving human rights violations,

[FN185] initiate new litigation, [FN186] review the constitutional and legal safeguards for human rights protection and recommend measures for their effective

implementation. [FN187] While it is still too early to attempt an authoritative evaluation of the jurisprudence being developed by the NHRC, a few tentative conclusions may be

drawn. The NHRC intervened in proceedings before the Supreme Court to express its view that the Armed Forces (Special Powers) Act ("AFSPA") was unconstitutional since it did not "meet the requirements of anti-arbitrariness and reasonableness under Article

14, 19 and 21 of the Constitution read with the ICCPR." [FN188] By approaching the Supreme Court under Article 32 for seeking the protection of Chakma refugees from

possible expulsion from India by the All Arunachal Pradesh Students Union ("AAPSU"), the Commission made a case for bringing foreigners within the expanding ambit of

Article 21. [FN189] Amenable to the NHRC's argument, the Supreme Court ruled that the State was bound to protect the life and liberty of every human being, including

non-citizens and groups of persons, e.g., the AAPSU, from any assaults. [FN190]

*28 Allegations of miscarriage of justice in death penalty sentencing are not new in India. In fact, today a growing number of human rights organizations and activists in

India are raising concerns about the continuing use of the death penalty. Some civil rights attorneys and activists have called for the abolition of the death penalty and an

amendment to Section 302 of the Indian Penal Code for this purpose. [FN191] Under the rule of law, the application of the death penalty in an unjust and racially discriminatory

manner is unacceptable. In April 1999, the UN Commission on Human Rights has also urged governments to institute a moratorium on executions. [FN192] Recently, the

Andhra Pradesh People's Union for Civil Liberties ("APPUCL") filed a clemency petition with the President of India regarding the death sentence given to two juvenile dalit

(untouchable) men. [FN193] The APPUCL's request to the Commission to intervene in the proceeding and take a stand on the abolition of death penalty was turned down by

NHRC. [FN194] India's international obligations have weighed heavily with the Commission while making its recommendations on a variety of issues. At a time when

positive steps are being taken towards abolition of the death penalty worldwide, this article strongly urges the NHRC to seize the earliest opportunity to study the various

ramifications of this issue and give its recommendations to the government.

As a party to international instruments like the UN Convention on Torture, ICCPR, ICESCR and the Convention against Racial Discrimination, India is required to submit

regular reports to the Committees established under these instruments to oversee their implementation. [FN195] These reports are required to be accurate, detailed and well

written. They must contain credible details of the steps the reporting state is taking towards implementing its international obligations. [FN196] The Committees established

under these instruments are comprised of experts who examine *29 these reports and give valuable input concerning ways in which human rights may be implemented at the

national level. [FN197] The NHRC has stressed the importance of India adhering to international standards by acceding to international human rights treaties. It has

however ironically desisted from participating in or contributing to the preparation of the treaty reports. Today the NHRC is over six years old, and given its activities in the field

of human rights, it is in an excellent position to comment on and contribute to these reports. The NHRC must take the initiative to establish contact with various ministries

regarding the various aspects of the effective implementation of the treaties. Such

supervision would expose the failures of the government and the obscurities in its submitted reports, and compel the government to be more forthright in its submissions.

B. Annual Reports

The Commission is mandated to submit an annual report to the Central [[Federal] Government [\[FN198\]](#) which, in turn, places it before Parliament along with its memorandum outlining the action it has taken or proposes to take on the Commission's recommendations. [\[FN199\]](#) Since its establishment, the Commission has submitted five Annual Reports to the government of which only four have been published and released to the public. [\[FN200\]](#) That the Commission is disinclined to adopt a confrontational approach with the government is reflected in its relatively restrained criticism of the government's human rights performance. There is nothing unusual in this attitude. Reports are important, in part because they collate many cases of abuses and reveal a pattern of delinquency by public servants, attracting far more attention than conclusions in the case of individual complaints. It will be very beneficial if the NHRC can include information about the follow-up on its recommendations in its annual reports. Currently, the "Statement of Category of Cases Admitted for Disposal" published in the annual reports does not have a special entry marked for *30 socioeconomic abuses. [\[FN201\]](#) Information on complaints concerning violations of socioeconomic rights must be made an integral part of this Statement in the Annual Report.

The Commission can add new dimension to its reporting efforts by occasionally attempting thematic reports. For instance, it might look critically at the nation's problem of child labor and prepare an action-oriented study. A competent report can credibly expose the lacunae in the overall strategy of eradicating child labor by illuminating a general pattern of state delinquency together with analysis of the problem.

VII. How Can the NHRC Be Strengthened?

True, through the Commission some grievances have been redressed and a few individuals have received justice and even compensation. But other than this, the Commission is unable to provide any special or concrete remedy to the hapless victims. Indeed, it offers nothing more than what has already been provided under the Indian Constitution. [\[FN202\]](#) Thus, the very purpose of creating special machinery for the promotion of human rights stands unfulfilled and defeated. Lacking powers to prosecute the delinquent public servants, to award compensation to the victims and to make enforceable recommendations, the Commission as it stands today, remains a shackled institution. In actual practice, it is an ineffective and woefully feeble protector of human rights.

A. What the Government Must Do

1. Proposed Amendments to the Human Rights Act, 1993

a. Full-fledged Adjudicative Powers

Therefore, it is imperative that the government vest the Commission with the explicit power of prosecuting delinquent public servants when it has found sufficient evidence of a human rights violation. The Commission must also be empowered to refer any person for prosecution who without lawful excuse obstructs the Commission in the performance of its functions. This will give teeth to the system. Only then can the Commission's investigative functions act as a powerful disincentive to violative behavior. The Commission must also be empowered to order the government to pay interim compensation to the victims or their family members. *31 [\[FN203\]](#) Until this is done, the Commission will be unable to directly do much for the victims and their families. As mentioned earlier, the government's implementation of the Commission's recommendations is crucial to the Commission's success in fulfilling its mandate. Therefore, there should be a "statutory ensurement" that the NHRC's recommendations receive "full and faithful consideration" by the government. [\[FN204\]](#) Thus, the NHRC should be given enforceable powers to ensure implementation of its decisions and

recommendations. The Human Rights Act must include a procedure for the referral to a judicial authority in cases where the government authorities fail to comply with the NHRC's recommendations. Implementation by the government also needs to be restricted in time. The NHRC must also be empowered to compel the attendance of any person, including experts and representatives of government agencies, to attend hearings and provide information. [\[FN205\]](#)

In a recent complaint submitted to the NHRC by the Andhra Pradesh People's Union for Civil Liberties ("APPUCL") that concerned "encounter deaths," the NHRC directed the Andhra Pradesh government to have the investigation of the alleged homicides by the police be conducted by the Central Intelligence Division ("CID"). [\[FN206\]](#) These orders given by NHRC in 1996 have yet to be implemented. [\[FN207\]](#) The APPUCL has therefore filed a writ petition in the A.P. High Court. [\[FN208\]](#) The APPUCL's argument is that while it concedes that the Commission's recommendations lack mandatory force, in matters pertaining to protection of life and liberty under Article 21 of the Constitution, the Commission's recommendations should be made enforceable by the High Court. [\[FN209\]](#) The A.P. High Court has given a "notice before admission" to the government and the Court has also impleaded NHRC as the respondent no. 2 (second party). The case is pending adjudication and the A.P. High Court's decision will be significant in this regard.

b. Creation of an Independent Investigation Team

To conduct an effective investigation the Commission must have certain resources at its disposal, including trained staff and police personnel. Under the PHRA, the government is required to provide police and other investigative staff to the Commission for the performance of its investigative functions. [\[FN210\]](#) The PHRA also permits the Commission to ***32** utilize the services of any officer or agency of the central or state government with their respective concurrence. [\[FN211\]](#) In other words, the Commission's investigation team is invariably drawn essentially from the existing police personnel, however a majority of the complaints received by the Commission concern atrocities and excesses committed by some of these officials. [\[FN212\]](#) In these circumstances, ensuring a truly professional, impartial and independent team for the Commission may be well nigh impossible. [\[FN213\]](#) It is therefore necessary that the Commission be provided a separate investigation team. The PHRA is relevant in this regard. [\[FN214\]](#) Under its provisions, the government is authorized to constitute one or more "Special Investigation Teams" consisting of as many police officers as it sees fit for investigating and prosecuting offences arising out of violations of human rights. [\[FN215\]](#) This section needs to be amended so that a permanent "Special Investigation Team" ("SIT") is set up exclusively for the Commission to assist it in investigating human rights violations. In making all appointments for this team, the government must be mandated to act in consultation with the NHRC. Also, the government should make all transfers from the SIT in consultation with the Commission. Appointments to this SIT should be made from new recruits at least for a decade. They must be made to undergo training for a period of three to five years. Providing the Commission with an impartial and professional investigation team will contribute immensely to making the Commission a powerful guarantor of civil liberties.

The Indian government may do well to emulate the Philippines Human Rights Commission and provide for "Quick Reaction Teams" comprised of a lawyer, an investigator and a medical doctor, operating around the clock to respond to cases requiring immediate attention. [\[FN216\]](#)

c. Power To Investigate Armed Forces' Atrocities

The restriction placed on the Commission's powers contained in Article 19 should be removed and the Commission should be allowed to inquire into violations by the armed forces in areas where they have been deployed by the Central Government and to submit a report to the government. In preparing these reports, the Commission should be mandated to name the Commanding Officer of the concerned areas where the army would have been called. [\[FN217\]](#) The commanding officer should be ***33** empowered to add his dissent to the report, if he so decides, along with reasons for his dissent.

[\[FN218\]](#) With these powers the Commission can contribute substantially to the protection of fundamental rights in the subcontinent. The Human Rights Committee's concluding observations on its examination of India's periodic report on its implementation of the ICCPR are worth repeating in this regard:

The Committee regrets that the National Human Rights Commission is prevented by Clause 19 of the Protection of the Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the Central Government. . . . The Committee recommends that these restrictions be removed. [\[FN219\]](#)

d. Greater Financial Autonomy

Moreover, the Commission will not be able to meet the people's expectations unless the government provides material and financial support to allow it to function as the independent and effective third force that it should be. As it stands today, the NHRC's budget is not "secured," since the government has the final say in deciding the actual amount that the Commission receives for discharging its functions. [\[FN220\]](#) Thus, there is a potential for governmental interference in the Commission's spending. Although in practical terms it would be a political blunder for the government to withhold the money due to the Commission, a theoretical possibility exists for such a scenario. Given the Commission's broad mandate and its evolving role in the realm of socioeconomic rights, this dependency on the government for its finances has far reaching implications for its continuance as a strong and credible institution. Therefore, the [Federal] Government must, after due appropriations by Parliament, pay to the Commission the sum of money that Parliament has approved. The NHRC should be given complete autonomy to spend such sums of money as it thinks necessary for performing its functions.

e. Broadening the Definition of Human Rights

The definition of "human rights" [\[FN221\]](#) laid down in the Human Rights Act should be broadened to include the full range of human rights enshrined in international standards. These rights should include, but are not limited to, human rights from those regional and international treaties to which India is a party and those rights contained in the Indian Constitution. [\[FN222\]](#)

*34 f. Removal of One-year Time Limit on Accepting Complaints

The restriction that prevents the Commission from considering complaints filed one year after the alleged violation is problematic. This restriction must be removed.

g. An Urgent Need For the Establishment of State Human Rights Commissions and Human Rights Courts

The Commission has already received at least 120,000 complaints. [\[FN223\]](#) Given the Commission's increasing visibility and rising human rights awareness among citizens, its caseload is bound to increase. A body several times the size of the NHRC and working without pause cannot cope with the torrent of cases flooding its office daily from every sinister nook and corner of India. Therefore, it is imperative that the state Human Rights Commissions and Human Rights Courts be established in all states and the districts. The PHRA provides for a three-tier mechanism that is well-suited for the protection of human rights in a federal system in a country the size of India. The three institutions envisaged by this act are the NHRC at the national level, State Human Rights Commissions [\[FN224\]](#) ("SHRC") at the state level and the Human Rights Courts ("HRC") at the district level. Structured along the lines of the NHRC, the State commissions have been vested with the same functions in theory. Presently, only ten of twenty-five states have established SHRCs. Some other states have cited the scarcity of finances and personnel for their inability set up similar commissions. [\[FN225\]](#) Even in states where the SHRCs are set up, it is imperative that they are adequately staffed and allowed to function smoothly. Therefore, all state governments should prioritize establishing SHRCs in their states as a matter of urgency. The largest number of complaints to NHRC emanates from the delinquent states of Uttar Pradesh, Bihar and New Delhi. [\[FN226\]](#)

The need for state human rights commissions in these regions is therefore particularly acute. Since the Human Rights Act provides a mutual exclusion rule of jurisdiction, the NHRC has rightly called for "careful coordination" of the NHRC and state commissions' work. However, care should be taken so that this rule does not operate to disadvantage victims, since state governments may, under pressure of local politics, resist the more rigorous investigation by the National Commission, and consequently, favor their own personnel's investigations of complaints. It is imperative that the NHRC maintain overall control of the State Commissions' docket. [\[FN227\]](#)

***35** The provision pertaining to Human Rights Courts in the PHRA is quite terse. It provides, without elaboration, only that the State governments shall establish Human Rights Courts to provide "speedy trial of offenses arising out of violations of human rights." [\[FN228\]](#) There is no method or manner provided for appointing public prosecutors for the Human Rights Courts. Further, it provides no schedule of offences and penalties and does not prescribe a procedure to govern the proceedings before the Human Rights Courts. What is envisaged is not the creation of a new system of courts, but merely the designation of already existing District Sessions Courts as Human Rights Courts with the District and Additional Sessions judge acting as human rights judge. [\[FN229\]](#) However, these courts are already overloaded with work of a special nature. [\[FN230\]](#) In addition, in states where these courts have been designated to hear human rights cases, [\[FN231\]](#) without proper guidelines in the Human Rights Act as to their mandate and powers, there has been utter confusion in their functioning. [\[FN232\]](#) Two cases have arisen in the states of Andhra Pradesh and Tamil Nadu regarding the issue of the Constitution and the jurisdiction of Human Rights Courts. The Andhra Pradesh High Court held that Section 30 of the PHRA [\[FN233\]](#) did not explicitly vest any power in the Human Rights Courts to take cognizance of any offense as a court of original jurisdiction unless a magistrate commits the case to it. [\[FN234\]](#) The Commission had cooperated with the Madras High Court and had made submissions to it when issues relating to the powers and jurisdiction of the Human Rights Courts were raised. However, the Madras High Court adopted a rigid stance and was not amenable to the PUCL arguments and gave a less than satisfactory judgment. The Madras High Court held that section 30 of the ***36** PHRA, as it stood, provided no guidelines as to the functioning of the Human Rights Courts. The Court suggested to the Federal government that it make necessary amendments to the Human Rights Act, the Indian Evidence Act ("IEA") (as per the recommendations of the Law Commission), and the Indian Penal Code ("IPC") to provide succor and relief to human rights victims. It pointed out that the Human Rights Courts could not be strengthened unless they were vested with clear-cut powers, and that this, in turn, could be possible only if the deficiencies in the IPC, IEA and PHRA were removed by amendments. [\[FN235\]](#) Operating at the district level, the Human Rights Court has the potential to be a useful institution capable of providing victims of human rights violations with real and accessible fora in which to vindicate their basic human rights. It is, therefore, critical that the various state governments expend resources and energy to address the problem of establishing Human Rights Courts in their states. The Central Government must take the lead and provide flesh and muscle to the skeletal contour of the Human Rights Court as laid down in the Human Rights Act. A national institute that is rendered weak or ineffective by its founding legislation can increase its technical competence, but in the absence of legislative change it will never completely overcome its structural inadequacies. Therefore, to address all the above concerns, the Protection of Human Rights Act should be amended.

2. NHRC's Parallel Efforts and Cooperation on the International Front

There must be parallel efforts on the part of the NHRC to strengthen its "operational efficiency." In its third Annual Report the Commission has proposed setting up regional offices in other states and circuit benches for speedier disposal of cases. [\[FN236\]](#) The NHRC must take steps toward implementing this at its earliest opportunity. The efficiency and human rights sensitivity of the NHRC staff will have a crucial impact on its overall functioning as well as its public image. The NHRC should draw up special

training programs in domestic and international human rights law, gender sensitive investigations and other modern investigative techniques, including forensic science, for its staff members. The Commission needs to set and make public its concrete and ascertainable goals, methodologies proposed to be used for their accomplishment and the time frames in which they will be met. It must conduct periodic reviews and evaluation of its programs in this regard. It will be commendable if the Commission can conduct public evaluations of its activities and report on the results.

***37** The NHRC can also enrich its methods and work by developing cooperative relationships with other foreign national human rights commissions. A beginning already has made been in this regard. A memo of understanding has been signed between the NHRC and the Canadian Human Rights Commission for staff exchanges, the sharing of information, and documentation and training materials. [\[FN237\]](#) This is a welcome development and augurs well for the strengthening of strong links between national rights institutions all over the world.

VIII. NHRC and ESC Rights

The current trend of recognizing the importance of protecting ESC rights [\[FN238\]](#) is mirrored in the Human Rights Act, which charges the Commission with protecting rights contained in both the Covenants. Interestingly, the same year that the NHRC was born, the Vienna Declaration in June 1993 stated that:

[a]ll human rights are universal, indivisible and interdependent and interrelated. . . . While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. [\[FN239\]](#)

This admission of the indivisibility of human rights is a welcome break from the past, where a distinction between civil and political rights on the one hand and economic, social and cultural rights on the other has always been drawn and maintained. International human rights law has traditionally not only placed civil and political rights and ESC rights in two distinct groups, it has also emphasized the protection of the former and downplayed the realization of the latter. The reasons for this approach are beyond the purview of this essay.

It is interesting to note that the Indian Constitution--framed during the late forties--implicitly acknowledges the important of ESC rights. The Constitution contains "Directive Principles of State Policy" [\[FN240\]](#) which are such socioeconomic principles as providing free and compulsory education to all children up to the age of fourteen.

[\[FN241\]](#) While, these principles are non-justiciable, [\[FN242\]](#) they are constitutionally deemed to be "fundamental ***38** in the governance of the country" and which the "State" is mandated "to apply in the making of laws." [\[FN243\]](#) Regrettably, successive governments have ignored this constitutional mandate. Consequently, despite five decades of self-rule and economic growth, India remains one of the poorer countries in the world, with a vast majority of its citizens suffering in abysmal poverty and illiteracy, lacking basic health care and suffering from malnutrition and environmental degradation. [\[FN244\]](#) Unfortunately, it is the children and women on whom the impact of this deprivation is heaviest.

Ironically, it is the judiciary--the least democratic organ in the polity-- that has taken the people's suffering seriously. [\[FN245\]](#) It has done this against the backdrop of the Constitution's Directive Principles. Such decisions of the Indian Supreme Court as those concerning the right to a livelihood [\[FN246\]](#) and an education [\[FN247\]](#) and bans on child labor [\[FN248\]](#) are apt examples of the Court's valiant attempts to fill in the vacuum caused by the inaction of the government.

Viewed against this backdrop, the creation of NHRC with a mandate to protect even ESC rights is very welcome. But a question that arises in this regard is whether the NHRC, despite its broad mandate, is capable of playing a meaningful role in the promotion of economic, social and cultural rights. The first doubt relates to the nature of the NHRC's composition. The Commission is a judge-controlled body and is therefore bound to adopt a legalistic approach to protection of economic, social and cultural rights. However, ESC

rights do not lend themselves to total fulfillment through a legal based approach. Without belittling the Indian Supreme Court's contribution in this regard, it is recognized that promotion of ESC rights requires a multi-pronged approach. The second question that arises is whether the Commission has the time, expertise, resources and, above all, the inclination to prioritize protection of socioeconomic rights. The police and armed forces' brutal atrocities were the catalyst for the creation of the Commission. Accordingly, its first priority has been to protect civil liberties. Lastly, unlike civil and political rights that are negative in nature, fulfilling economic, social and cultural rights requires allocation of financial resources, planning and implementation of a devised action plan - in short an affirmative action by the government. All this is certainly beyond the purview of the NHRC.

The NHRC must be commended for recognizing and repeatedly emphasizing--since its inception--the indivisibility, interdependence and *39 inter-relatedness of human rights. [FN249] This attitude has shaped the performance of its varied functions under the PHRA. Despite some limitations, the NHRC definitely has the potential to make a meaningful contribution to the protection of ESC rights.

A. Conducting Suo moto Investigations Regarding Violation of Socioeconomic Rights

Although the Commission was compelled to prioritize the protection of civil liberties in its initial years, it made initial and successful forays into the uncharted areas of socioeconomic rights' protection. In its very first year of inception, the Commission accepted a complaint concerning the death of children caused by malnutrition in the State of Orissa. [FN250] The Commission did not accept the government's pleas of lack of financial resources, and insisted that the government pay compensation to the victims' family members. [FN251] The Commission has also entertained complaints relating to death and disability arising from water supplies poisoned by arsenic or fluoride. [FN252] More recently, the Commission took suo moto cognizance of a press report about the contamination of life-saving fluids at a major hospital in New Delhi. [FN253] The Commission must continue to be governed by this holistic approach to protection of human rights in performing its investigative tasks and exercising its powers of investigation.

B. Scrutinizing Public Policy

Just as a "proactive" approach for the protection of civil liberties is crucial to minimize instances of their abuse, so also does effective protection of socioeconomic rights call for treating the symptoms of their abuse rather than merely remedying their violations. To accomplish this, the Commission must scrutinize legislation involving socioeconomic rights, identify their inadequacies from a human rights perspective, and exert tremendous pressure on the government to fill the lacunae by necessary amendments. Many social evils like child marriage, child-labor, [child]-bonded labor and child prostitution continue to bedevil Indian society. [FN254] This is not due to an absence of legislation banning these practices, but rather to loopholes in them and a lack of political will to ensure their robust implementation. For instance, the Commission took suo moto *40 action against the large-scale performance of child marriages in Rajasthan. [FN255] The Commission found that in the absence of a legal mandate for the compulsory registration of marriages and since the offence of child marriage is not made cognizable and non-bailable by the Child Marriage Restraint Act, this abhorrent social practice has become entrenched. [FN256] The Commission has recommended that the government amend the Act to remove such loopholes. [FN257] Similarly, the problem of child labor can be traced to the shortcomings in the Child Labour Act (Prohibition and Regulation Act) and Factories Act and their tardy implementation. Thus far, there have been conspicuously few prosecutions and fewer convictions under the legislation banning child labor. [FN258] Therefore, equally vital is the need for the Commission to identify the delinquent officials and fix accountability for their brazen breaches of the relevant acts. In formulating a strategy to protect socioeconomic rights, the Commission needs to embark on activities that have the potential to bring positive results in stirring parliament to remove legislative

inadequacies and ensuring sound implementation of the laws. In *PUCL v State of Tamil Nadu*, the Supreme Court requested that the Commission take up the task of overseeing the implementation of the laws relating to bonded labor. [FN259] This is a welcome opportunity and it is hoped that the Commission will seize the occasion and be able to bring about lasting change.

The Commission must also subject public expenditure patterns in matters of education and health care to rigorous scrutiny and pinpoint areas that require governmental attention. This task takes on a special urgency in the current "globalization" era in which many areas of public importance are increasingly being left to a market that may not be working. The NHRC has repeatedly stressed the futility of tackling the problem of child labor and child marriage in the absence of free and compulsory education for children. It has therefore strongly urged the government to take urgent steps to implement the constitutional mandate of providing free and compulsory education to all children.

[FN260] In order not to loosen its tenacious grip on this problem, the Commission needs to constantly scrutinize and monitor public spending on education.

**41* In performing any of these tasks, the Commission could be regarded as promoting a dialogue with the executive branch on economic and social rights and raising public awareness rather than being involved in a power struggle. Indeed, one scholar has suggested that national parliaments extend strong support to ombuds-type institutions and commissions' operations in its combat against socioeconomic evils such as child poverty. [FN261]

C. Working With NGOs and Professional Groups

Indian society is plagued with many social evils whose eradication requires input and active participation from, not only the state, but also from civil groups such as lawyers, doctors and paramedical groups, social workers, research institutions and non-governmental organizations. For instance, two such social evils that harm and violate the rights of female children are female feticide and infanticide. [FN262] The deep and pervasive bias against the birth of female children has resulted in the wide misuse of sex-determination tests to abort female fetuses. [FN263] In attacking this evil, the Commission would require accurate medical data and other information. It would also require the expertise and support of the Medical Council of India [FN264] in suggesting suitable amendments to the regulations concerning the code of medical ethics so as to subject errant doctors to disciplinary proceedings. [FN265] All this points to a greater strengthening of ties between the NHRC and non-governmental organizations and professional groups.

It is heartening that the NHRC has already begun to take steps in this direction. [FN266] In studying the problems of female feticide and infanticide, the Commission has been working closely with two NGOs, Adithi in Bihar and the Madras School of Social Work in Tamil Nadu. [FN267] Relevant information and reports from these bodies will enrich the Commission's work and enable it to make sound recommendations. The Commission's success in other areas, including banning child prostitution, preventing school drop-outs and implementing the ban on child labor is largely dependent on the type of programs it devises and its ability to get non-governmental organizations to interact with it regarding these issues.

**42* IX. The NHRC and the Government

A national commission is a body set up by the state and funded by the state, but mandated to investigate violations committed by the state and its agents. Therefore, although it is required to act independently of the government, this independence cannot mean a total severance from the state. Indeed, there are specific links between the Commission and the State. [FN268] While the State ought not hinder the Commission's work in any way, the Commission must not overstep the limits of its mandate. Although the Act does not make the Commission's recommendations binding, [FN269] meaningful protection of human rights requires the government to abide with the Commission's recommendations. The government's ignorance of the Commission's recommendations is bound to have an adverse impact on the Commission's morale.

Thus, ideally, the government and the commission would be required to cooperate with one another and function harmoniously to fulfill their fundamental and overriding responsibility, namely, protecting citizens' fundamental rights. Regrettably, successive Indian governments have shown indifference to the NHRC's recommendations and its legitimate concerns.

A. NHRC's Proposed Amendments to the PHRA

Within six months of its inception, the Commission had smelled the stench of human rights abuses seeping out of states like Uttar Pradesh, Bihar and New Delhi. [\[FN270\]](#) Eager to stem such practices, but shackled by its weak enforcement mechanism, the Commission was unable to emerge as a powerful actor on the scene. Accordingly, in March 1994, the Commission sought some additional powers and proposed a few amendments to its founding legislation, the PHRA. [\[FN271\]](#) These amendments were proposed to "remove ambiguities and impediments concerning [the Commission's] competence and autonomy." [\[FN272\]](#) In sum, they were designed to strengthen the Commission's capacity to effectively protect human rights in the subcontinent. By March 1996 the Central Government was informed of the inadequacies of the Human Rights Act three times. [\[FN273\]](#) Since the government seemed to have ignored the Commission's earlier requests, the NHRC's Chairperson, a former Chief Justice of India, pursued the matter [*43](#) with the government. [\[FN274\]](#) Regrettably, the Home Minister came up with a patronizing response. He advised the Chairman that the PHRA had been "carefully worked out" and that the government needed to gain more experience in the Commission's working before it could contemplate amending the act! [\[FN275\]](#) It is a bit rich for the government to suggest this to the Chairperson, who has first hand experience in the working of the Human Rights Act and is most knowledgeable about its inadequacies. The Commission's recent appointment of a high-level advisory committee, headed by a retired Supreme Court judge, to recommend changes to the PHRA is welcome. This Advisory Committee has sought the views and suggestions of human rights activists, non-governmental organizations and the general public. [\[FN276\]](#) The government's ostensible reason in establishing the NHRC was to "better protect human rights." [\[FN277\]](#) But there has been no clear and firm commitment on its part to support the rule of law, including complying with and implementing recommendations as well as decisions issued by NHRC. Indeed, it has clearly resisted arming the Commission to enable it to be an effective protector of human rights. Distrust of the government's good faith in this regard is, therefore, appropriate. This distrust is heightened by the Government of India's public position on the NHRC's powers in relation to investigating alleged violations by the armed forces. In response to the Commission's recommendation that armed and paramilitary forces should report deaths and rape in custody to the NHRC within 24 hours, the government pointed out that it would not shift from the position laid down in the PHRA. [\[FN278\]](#) The Commission is bound to be a disappointment unless the government agrees to amend the PHRA and thereby strengthen its protective potential. [\[FN279\]](#) Agreeing to the Commission's request for legitimate powers will enable the Commission to emerge as an appropriate mechanism for India to fulfil her international human rights obligations. Therefore, this article strongly urges the government of India to accept the Committee's recommendations and undertake expeditious amendments to the PHRA.

[*44](#) B. Government's Indifference to NHRC's Recommendations

Successive Indian Governments have been notorious for the dereliction of their constitutional and other governing responsibilities. As far back as 1985, the Indian Law Commission ("ILC") had in its 113th report made two crucial recommendations. One was to insert a provision in the Indian Evidence Act, 1872 that would have introduced a rebuttable presumption that injuries sustained by a person in police custody were caused by a police officer. [\[FN280\]](#) The second recommendation concerned the amendment of the Indian Code of Criminal Procedure to obviate the necessity of seeking governmental sanction for the prosecution of a public servant in certain circumstances. [\[FN281\]](#) Despite NHRC's endorsement of the ILC's views, [\[FN282\]](#) the government has

made no move to implement these recommendations.

Certain legislative inadequacies have crippled the sound implementation of the Child Marriage Restraint Act. [\[FN283\]](#) The Commission has identified these loopholes, and to facilitate the Act's proper implementation has urged the government to amend it accordingly. [\[FN284\]](#) However, here too the government has been passive, maintaining that the implementation of the act is the responsibility of the state governments and that the proposed amendments impinge on issues relating to personal laws. [\[FN285\]](#) Since a state in which human rights zeal is uniform among all political parties is rare, in situations like these, the NHRC needs to devise ways to enhance its influence in the advisory process and simultaneously bring pressure on the government to perform its legitimate functions. The Commission's public relations cell can use the media and non-governmental organizations to embarrass the government and expose its insensitivity to pressing human rights issues. Morton Krajeum, Director of the Danish Center for Human Rights, opines that a government will eventually realize the benefits of entering into a consultative process with its human rights commission if it perceives the institution to be a body conducting professional work of high quality. [\[FN286\]](#)

C. Annual Reports

Yet another indication of the government's political apathy towards NHRC and its work is the shameful absence of meaningful debate and discussion on the Commission's recommendations contained in its Annual Reports and/or the government memoranda in Parliament. *45 Sadly, even the opposition parties have not demanded any debate or discussion on the findings of NHRC. The Annual Report of the NHRC for 1996-97 was tabled in Parliament by the Union Home Minister, Mr. L.K. Advani, on June 10, 1998. It is imperative that the government place the Commission's annual report before Parliament at its earliest opportunity and engages in a fruitful discussion over its findings. It is desirable that the Parliamentary Standing Affairs Committee considers the Commission's annual report. It is also imperative that Parliament holds an active and open discussion on the performance of the state officials and the findings of the Commission. The Home Minister must be required to respond to specific queries regarding the behavior of public security agents and the armed forces. These parliamentary proceedings should be telecast live to the public.

Although the Commission has submitted the fifth Annual Report to the government, it has not been published and released to the public--supposedly because the reports cannot be published unless they are tabled before Parliament. Interestingly, the Commission's own regulations make it mandatory for the Commission's secretariat to publish the annual report "with utmost expedition." [\[FN287\]](#) Regrettably the people's representatives flagrantly abuse all conventions and constitutional norms [\[FN288\]](#) and the NHRC has made no reference to this even in its newsletter. The PHRA should be amended to include a time limit for tabling the Annual Reports of the NHRC and the memorandum of action by the government.

X. Concluding Remarks

January 26, 2000 marked the fiftieth anniversary of the Indian Constitution. Tragically, this historic event coincides with the worst times ever faced by the nation. The Nation is beset with such pernicious trends as politically and socially contrived violence against Christians and Muslims, [\[FN289\]](#) grave atrocities against dalits (untouchables) by the upper caste groups, [\[FN290\]](#) politicization of the bureaucracy and law enforcement machinery *46 and the criminalization of politics. Needless to say, the cures for these ills lie primarily in the hands of India's political class. The functioning of the NHRC must therefore be situated in this overall political context. The critical factors in the operation of the Commission rest on the political will of India's leaders to make the commission more than an exercise in empty rhetoric.

However, this does not mean that the Commission functions at the mercy of the government and its activities will be crippled by the lack of enthusiasm of state bureaucracies. Indeed, like any institution, the Commission's efficacy will depend, not only on the powers with which it is vested, but also on the quality of persons who have

the privilege of serving on it. Courageous commissioners with vision and a genuine commitment to the protection of human rights can breathe life into the Commission's mandate and mold it into an effective "third force" for promoting human rights on the subcontinent. In the absence of this political will and courageous commissioners, the Commission will be akin to a "beautiful and an ineffectual angel beating in the void its luminous wings in vain." [\[FN291\]](#)

[\[FNa1\]](#). LL.B. (India), LL.M. (USA), M.A. (Int'l Law) (U.K.); Research Scholar, National Human Rights Commission (NHRC), India (Fall 1999); Recipient of the Human Rights Fellowship awarded by the Danish Center for Human Rights (DCHR), Denmark (April, 2000). I dedicate this article to the Rotary Foundation, United States whose Ambassadorial Scholarship, of which I am a grateful and proud recipient (1990-1991), proved catalytic to my career as a human rights scholar. I wish to express my deep-felt gratitude to Mr. Justice M.N. Venkatachaliah, Chairman, NHRC and Mr. Sudarshan Agarwal, member, NHRC, India, for giving me an opportunity to work for the NHRC. I also thank Dr. Ranbir Singh, Director, NALSAR, for his encouragement and overall support. I had productive discussions with Justice Seetha Rama Reddy, former Judge, Andhra Pradesh High Court, Mr. K.G. Kannabiran, well-known civil rights attorney and President, People's Union for Civil Liberties (PUCL) and Dr. K. Balagopal, former Secretary, Andhra Pradesh Committee for Civil Liberties (APCLC) regarding the role of the NHRC in protecting human rights. I am deeply indebted to them for their valuable comments and for giving their time so freely. I also wish to thank Dr. Lone Lindholt, Ms. Kristine Yigen and B. Laura at the Danish Center for Human Rights, Denmark, and Ms. A. Suneetha, doctoral student, University of Hyderabad, Department of Human Rights, Ms. J. Vijayalaxmi, A.P. High Court and Professor Krishna Deva Rao, NALSAR, for providing me with research materials for this article. A very special thanks to Mr. A.V. Achar and Dr. Mark P. Gibney, Belk Distinguished Professor, University of North Carolina at Asheville, for their cheerful and perennial support in a variety of ways for all of my academic endeavors, including the preparation of this article. Lastly, Mr. John Seguin, Editor-in-Chief, BUILJ and his staff deserve a very special thanks for their excellent editorial assistance.

[\[FN1\]](#). U.N. Center for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, PP 216, 19 (1995), U.N. Sales No. E.95.XIV.2 [hereinafter UN Handbook].

[\[FN2\]](#). See id. P 25; see also Brigit Lindsnaes and Lone Lindholt, National Human Rights Institutions: Standard-Setting and Achievements, in Human Rights and Development Yearbook 1998: Global Perspectives and Local Issues at 3 (providing a detailed account of the background for the development of the United Nations' Paris Principles of 1991 for the establishment and functioning of national institutions) [hereinafter Lindsnaes and Lindholt].

[\[FN3\]](#). See generally Anne Galagher, Making human rights treaty obligations a reality at the national level: Identifying and working with new actors and partners, in The Future of the United Nations Human Rights Treaty System (1998).

[\[FN4\]](#). The Decade of the 1990s has witnessed the establishment of national institutions in many parts of the world: Africa (Cameroon in 1991, Chad in 1994, Ghana in 1993, Nigeria in 1996, Senegal in 1997, South Africa in 1995, Uganda in 1996 and Zambia in 1997); Asia-Pacific Region (India in 1993, Indonesia in 1994 and Sri Lanka in 1997); Latin America (Mexico in 1990 and Costa Rica in 1993); Europe (Latvia in 1995); Commonwealth of Independent States of the former Soviet Union (Kazakhstan in 1996 and Georgia in 1997).

[\[FN5\]](#). See UN Handbook, supra note 1, P 20.

[FN6]. See id. P 25.

[FN7]. See id.; see also Principles Relating to the Status and Functioning of National Institutions, G.A. Res. 48/134, U.N. ESCOR, Annex (1993), reprinted in UN Handbook, supra note 1, at 37, Annex I [hereinafter Paris Principles].

[FN8]. See id.; Commission on Human Rights Res. 1992/54, Annex, U.N. ESCOR, Supp. 22, E/1992/22, ch. II, sec. A (1992), U.N. Doc. A/48/134 Annex (1993).

[FN9]. See UN Handbook, supra note 1, P 25; G.A. Res. 48/134, U.N. ESCOR (1993).

[FN10]. The Vienna Declaration and Programme of Action, World Conference on Human Rights, U.N. Doc. A/[CONF.157/25](#), pt. I, ch. III (1993); see also UN Handbook, supra note 1, P 30.

[FN11]. See Mario Gomez, Sri Lanka's New Human Rights Commission 20 Hum. Rts. Q. 281, 283 (1998).

[FN12]. See id. at 283.

[FN13]. The terms "NHRC" and "the Commission" shall be used interchangeably throughout the remainder of this article.

[FN14]. See supra note 4; see also infra note 41.

[FN15]. See generally Amnesty International, India: Torture, Rape and Deaths in Custody (1992) (describing the atrocities and representing such international pressure on the Indian government) [hereinafter Amnesty International].

[FN16]. Protection of Human Rights Act, 1993 (India); National Human Rights Commission, The Protection of Human Rights Act, 1993 (1994) [hereinafter PHRA or Human Rights Act].

[FN17]. See id. §§ 21, 30. The discretion to establish human rights commissions and human rights courts at the state level rests with each state of the Indian Union or Federation. See id.

[FN18]. See Paris Principles, supra note 7, at 37.

[FN19]. See NHRC Launches Human Rights Cells in State Police Headquarters, Hum. Rts. Newsl. (NHRC, India), April 1999, at 1.

[FN20]. See id.

[FN21]. The 13th general elections to the Indian Parliament and legislatures of some of the states was held in October 1999. The Bharatiya Janata Party (BJP) along with its allies formed the new government and Mr. A.B. Vajpayee was sworn in as the Prime Minister.

[FN22]. See India Const. pt. III.

[FN23]. See id. arts. 13, 32.

[FN24]. See Universal Declaration of Human Rights, G.A. Res. 217 A (III) (1948), reprinted in UN Handbook, supra note 1, at 41.

[FN25]. See International Covenant on Civil and Political Rights, G.A. Res. 2200 A (1966), U.N. GAOR, reprinted in UN Handbook, supra note 1, at 46 [[hereinafter ICCPR].

[FN26]. The Indian Constitution came into force in 1950 and India signed the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic Social and Cultural Rights [ICESCR] in 1979. See generally Vijayashri Sripati, Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead 14 Am. U. Int'l L. & Pol'y 405 (1998). The Indian Constitution and the International Bill of Rights are both products of the post World War-II era. See id. Interestingly, the human rights content in both the Indian Constitution and the International Bill of Rights have a common provenance: The U.S. Constitution and the U.S. Bill of Rights. See id. Consequently, many of the ICCPR rights are explicitly mentioned in the Indian Constitution. See id. Thus, many rights articulated in the ICCPR were available to Indian citizens twenty-nine years before India became a signatory to the ICCPR. See id. Part IV of the Indian Constitution is termed "Directive Principles of State Policy" and contains certain socioeconomic principles. See id. Many of these principles correspond to the rights articulated as economic, social and cultural rights in the ICESCR. See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A. (XXI) (1966), reprinted in UN Handbook, supra note 1, at 43 [hereinafter ICESCR]. Rights contained in the ICESCR shall be referred to as ESC rights throughout the remainder of this article.

[FN27]. See generally Sripati, supra note 26.

[FN28]. See UN Handbook, supra note 1, P 4. In September, 1978 the Seminar on National and Legal Institutions for the Protection and Promotion of Human Rights was held in Geneva. This Seminar approved a set of guidelines for the structure and functioning of national institutions.

[FN29]. See PHRA, supra note 16, at Statement of Objects and Reasons. India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly on 16th December, 1966. Id. The human rights embodied in the aforesaid Covenants stand substantially protected by the Constitution. Id. (emphasis added).

[FN30]. See generally Tarik Jain & Ghulam Sarwar, Kashmir Problems: Challenge and Response (1990) (describing this turbulent and violent period); see also Paula Newberg, Double Betrayal: Repression & Insurgency in Kashmir (1995) (describing this turbulent and violent period).

[FN31]. See e.g., The Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983, India A.I.R. Manual; The Punjab Disturbed Area Act of 1983, India A.I.R. Manual; The Chandigarh Disturbed Areas Act of 1983, India A.I.R. Manual; The Jammu and Kashmir Act (The Public Safety Act) of 1978.

[FN32]. See C.I.S. Supp. (1987), The Terrorist and Disruptive Activities (Prevention) Act of 1987 of the Indian Parliament, New Delhi, 3 Sept. 1987 [[hereinafter TADA]. The Indian Evidence Act of 1872 makes a confession to a police officer in the absence of a magistrate inadmissible as evidence in court. (The Indian) Evidence Act of 1872, India A.I.R. Manual. In addition, Article 20(3) of the Indian Constitution, one of the citizens' Fundamental Rights, provides, "No person accused of any offence shall be compelled to be a witness against himself." However, the special provisions in TADA made the confession before a police officer admissible in a court of law (clause 15) and thereby eroded the guarantee of fair trial for accused persons. The other draconian provisions under TADA provided for raising the presumption of guilt and shifting the burden on the accused to establish his innocence (clause 21); drawing the presumption of guilt for possession of certain unauthorized arms in specific areas (clause 5); providing protection

to witnesses, such as keeping their identity and address secret and requiring avoidance of the mention of their names and addresses in order or judgments or in any records of the case accessible to the public (clause 16); and modifying the provisions of the Code of Criminal Procedure particularly in regard to the time set for investigation and grant of bail (clause 20).

[FN33]. See generally Amnesty International, *Amnesty International Report (1989)* (reporting atrocities) [hereinafter *Amnesty International Report 1989*]; see also Amnesty International, *supra* note 15.

[FN34]. See V.R. Krishna Iyer, *Rowlatt Act, TADA & POTA II*, *The Hindu*, Aug.4, 1998, at 12.

[FN35]. See Amnesty International, *supra* note 15.

[FN36]. See *id.*

[FN37]. See generally K.G. Kannabiran, *Justice Bains and Security of State*, *PUCL Bull.*, June 1992, at 2 (explaining the need for an effective mechanism to either prevent or punish transgressions).

[FN38]. The Prime Minister, P.V. Narasimha Rao, had, in view of his impending state visit to the United States in early 1994, postponed the testing of the nuclear weapons in 1993.

[FN39]. It is significant to note that at the 1993 World Conference on Human Rights at Vienna, the Indian delegation was led not by the External Affairs Minister but by the Union Finance Minister, Dr. Manmohan Singh, who categorically stated that the newly established National Human Rights Commission was a purely autonomous body. See K.G. Kannabiran, *Protection of Human Rights Act: PUCL Suggestions for Amendment*, *PUCL Bull.*, Jan. 1999, at 5.

[FN40]. See PHRA, *supra* note 16, at Statement of Objects and Reasons. The PHRA states that growing concern in the country and abroad about issues relating to human rights led to its enactment. See *id.*

[FN41]. The proposal for a human rights commission bill was originally contained in a Human Rights Commission Bill that was introduced in the Lok Sabha (House of Representatives) on May 14, 1993. However, once this bill was introduced in Parliament, the committee procedure for debating and discussing its contents were skirted. While the bill was still pending in Parliament, the government issued a preemptory ordinance, the Protection of Human Rights Ordinance of Sept. 28, 1993, establishing the NHRC. Thus, the NHRC came into existence on Oct. 12, 1993. In November 1993, Parliament enacted the Human Rights Act of 1993. It is thus quite clear that an informed public debate did not precede the establishment of the NHRC. See Rajeev Dhawan, *One Step Forward*, 38 *J. Indian L. Inst.* 362 (1996).

[FN42]. See Paris Principles, *supra* note 7, at 37.

[FN43]. See UN Handbook, *supra* note 1, P 74.

[FN44]. See *id.* P 79.

[FN45]. See PHRA, *supra* note 16, § 3(2)(a), (c).

[FN46]. *Id.* § 3(2)(d). Unfortunately, so far neither a woman nor a human rights activist has been appointed to the Commission in this category.

[FN47]. See PHRA, supra note 16, § 3(2)(a).

[FN48]. The Appointment Committee includes the following members: The Prime Minister is the chairperson, the Speaker of the Lok Sabha (House of Representatives), the Union Home Minister, the Leaders of the Opposition in the Lok Sabha (House of Representatives), the Rajya Sabha (Council of States) and the Deputy Chairman of the Rajya Sabha. See PHRA, supra note 16, § 4.

[FN49]. See PHRA, supra note 16, §4.

[FN50]. Id. § 5(2)(b).

[FN51]. See id. § 6(3) The term of office of the NHRC members is 5 years. See id.

[FN52]. The Prime Minister in consultation with the Opposition Party leaders appoints the Commission's members. See PHRA, supra note 16, §4.

[FN53]. See Chidanda Reddy S. Patil, *Compensatory Jurisprudence of the National Human Rights Commission of India*, 25 *Indian Bar Rev.* 79, 81 (1998) (quoting Justice Malimath, NHRC member). "The government cannot wash away the recommendations made by the commission. The Commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it." Id. (emphasis added).

[FN54]. See Paris Principles, supra note 7, at 37. The UN Handbook strengthens the appointment criteria established by the Paris Principles for commission members to ensure independence in decision-making procedures, staff professionalism and public credibility. See UN Handbook, supra note 1, PP 77, 79.

[FN55]. See UN Handbook, supra note 1, P 82.

[FN56]. See Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (visited Oct. 1, 1999) <[http:// www.hrw.org/reports/1999/india](http://www.hrw.org/reports/1999/india)> [hereinafter Human Rights Watch].

[FN57]. See PHRA, supra note 16, § 3(3).

[FN58]. Lindsnaes & Lindholt, supra note 2, at 16; see also UN Handbook, supra note 1, PP 73,76.

[FN59]. The PHRA states that the "Central [Federal] Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of the Act." PHRA, supra note 16, § 32(1) (emphasis added).

[FN60]. See Lindsnaes & Lindholt, supra note 2, at 16; see also UN Handbook, supra note 1, P 75.

[FN61]. See Lindsnaes & Lindholt, supra note 2, at 10.

[FN62]. See PHRA, supra note 16, § 12(d), (e). The PHRA states: The Commission shall perform all or any of the following functions, namely (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation (e) review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures. Id.

[FN63]. See id. § 12(a). A closer reading of the Commission's powers show that it has only partial protective powers. See generally PHRA, supra note 16, § 12 (describing the Commission's powers).

[FN64]. See id. § 12(d)-(f).

[FN65]. See id.

[FN66]. See id. § 12(c).

[FN67]. Id. § 2(d).

[FN68]. India follows the dualist approach with regard to the relationship between international law and municipal law. See V. R. Krishna Iyer, *The Dialectics & Dynamics of Human Rights in India: Yesterday, Today and Tomorrow - Tagore Law Lectures* 273 (1999).

[FN69]. See *Vishaka*, A.I.R. 1997 S.C. 3011, 3014.

[FN70]. See PHRA, supra note 16, § 12(a)(i).

[FN71]. See id.

[FN72]. See Vijayashri Sripati, [Human Rights in India: Fifty Years After Independence \(1947-1997\)](#), 26 *Denv. J. Int'l L. & Pol'y* 93 (1997).

[FN73]. PHRA, supra note 16, §§ 36, 12(a)(ii).

[FN74]. See id. § 36(2).

[FN75]. See id. § 12(a).

[FN76]. See id. § 13.

[FN77]. See id. § 13(1)(b).

[FN78]. See id. § 13(1)(a).

[FN79]. See id. § 13(1)(c).

[FN80]. See id. § 13(1)(d).

[FN81]. See id. § 13(1)(e).

[FN82]. See NHRC Ann. Rep. annexure I at 37-38 (1993-94).

[FN83]. See NHRC Ann. Rep. 11 (1995-96).

[FN84]. See PHRA, supra note 16, § 12(b).

[FN85]. See id.

[FN86]. See id. § 18(2).

[FN87]. See *National Human Rights Comm'n v. State of Arunachal Pradesh*, A.I.R. 1996 S.C. 1234, 1237.

[FN88]. See Sripati, *supra* note 72, at 112; see also generally Upendra Baxi, *The British Raj Prisons: An Unfought Battle for Human Dignity*, in, *The Crisis of the Indian Legal System* 155-57 (Upendra Baxi, ed. Delhi, 1982).

[FN89]. See PHRA, *supra* note 16, § 12(c). The NHRC is required to obtain the permission of the concerned state government prior to making its visits to these institutions.

[FN90]. See *id.* § 12(d).

[FN91]. NHRC Ann. Rep. 18 (1995-96).

[FN92]. See PHRA, *supra* note 16, § 12(f). For a detailed list of the human rights treaties to which India is a signatory see NHRC Ann. Rep. 35 (1996-97).

[FN93]. See NHRC Ann. Rep. 12-13 (1995-96).

[FN94]. See PHRA, *supra* note 16, § 12(g).

[FN95]. See *id.* § 12(h).

[FN96]. See *id.* § 12(i).

[FN97]. See *Largest Number of Adult Illiterates in India*, Report (XINHUA News Agency), Apr. 4, 1998 (discussing the South Asia Human Development Report for 1998) [hereinafter *Literacy Report*].

[FN98]. PHRA, *supra* note 16, § 12(j).

[FN99]. See Walter Fernandez, *The Wadhwa Commission*, *The Hindu*, Sept. 11, 1999, at 10. (pointing to the lack of credibility in commissions set up by the government in the wake of massive human rights violations); Rajeev Dhawan, *The Wadhwa Commission*, *The Hindu*, Oct. 5, 1999, at 12 (stating how in the past, government appointed commissions have "distorted the truth and have protected the politicians who appointed it" and that the government has rejected some commission's reports since they stated the truth).

[FN100]. See *infra* notes 101-117 and accompanying text (discussing the NHRC's weaknesses).

[FN101]. See UN Handbook, *supra* note 1, PP 268-82. These powers include powers to recommend matters for investigation; to refer cases to other agencies; to determine relief; to make enforceable orders; and to publish decisions. See *id.*

[FN102]. See *Commissions of Inquiry Act (1952) (India)*.

[FN103]. See PHRA, *supra* note 16, § 18(2).

[FN104]. See *id.* § 18(3).

[FN105]. See *id.* § 18(1), (3).

[FN106]. See *id.* § 18(1).

[FN107]. See *id.*

[FN108]. See *id.* § 18(3).

[FN109]. See id. § 18(1)-(6).

[FN110]. See id. § 18(5).

[FN111]. See id. § 18(6).

[FN112]. See id. § 12(d).

[FN113]. See supra notes 30-33 and accompanying text.

[FN114]. See PHRA, supra note 16, § 19.

[FN115]. See id. § 19(a).

[FN116]. See id. § 19(b).

[FN117]. These were the comments of the member from Canada during the Human Rights Committee's deliberations regarding India's report on its implementation of the ICCPR. See Amnesty International, Amnesty International Report - ASA/20/26/98 (visited Sept. 25, 1999) <[http:// www.Amnesty.org/ailib/aipub/1998/ASA/32002698.html](http://www.Amnesty.org/ailib/aipub/1998/ASA/32002698.html)> [hereinafter Amnesty International Report].

[FN118]. Uttar Pradesh, Bihar and Punjab are examples of such states.

[FN119]. This is a fictional paradigm petition created as an example by the author and based on actual petitions submitted to the NHRC.

[FN120]. See NHRC Ann. Rep. 9-10 (1993-94).

[FN121]. See id. Similar instructions have been given to those in charge of juvenile homes.

[FN122]. See NHRC Ann. Rep. annexure III at 46 (1993-94).

[FN123]. See id.

[FN124]. See id. at 9.

[FN125]. See id. at 13, 17-18, 21-22.

[FN126]. See id. at 14-15, 23.

[FN127]. See id. at 9.

[FN128]. See NHRC Ann. Rep. 5, 25 (1995-96).

[FN129]. See NHRC Ann. Rep. annexure I at 39 (1993-94).

[FN130]. See id.

[FN131]. See Human Rights Act, supra note 16, § 12(a).

[FN132]. See NHRC Ann. Rep. 14 (1993-94).

[FN133]. See id. at 18.

[FN134]. See id. at 20.

[\[FN135\]](#). See NHRC Ann. Rep. 41 (1994-95).

[\[FN136\]](#). See NHRC Ann. Rep. 59 (1995-96).

[\[FN137\]](#). See id.

[\[FN138\]](#). See id.

[\[FN139\]](#). See Human Rights Act, *supra* note 16, § 17(i).

[\[FN140\]](#). See NHRC Ann. Rep. 15 (1995-96).

[\[FN141\]](#). See id.

[\[FN142\]](#). See Human Rights Act, *supra* note 16, § 17(i)(a).

[\[FN143\]](#). See NHRC Ann. Rep. 44 (1995-96).

[\[FN144\]](#). See id.; see also NHRC Ann. Rep. 60 (1996-97).

[\[FN145\]](#). See NHRC Ann. Rep. 60 (1996-97).

[\[FN146\]](#). See id.

[\[FN147\]](#). See NHRC Ann. Rep. 44-46 (1996-1997). By Sept. 27, 1999 the Commission's investigation Division had 59 police officials who were exclusively investigating 170 cases. See Reply to Author's Questionnaire (unpublished Reply on file with the author).

[\[FN148\]](#). See NHRC Ann. Rep. 44-46 (1995-96); NHRC Ann. Rep. 58-60 (1996-97).

[\[FN149\]](#). The Indian Supreme Court has devised novel procedural innovations such as appointing civil society groups, non-governmental organizations, scholars, social workers and journalists to investigate alleged human rights violations of fundamental rights. See generally Sripati, *supra* note 26 (describing some procedural innovations).

[\[FN150\]](#). See NHRC Ann. Rep. 13 (1993-94).

[\[FN151\]](#). See id. at 14.

[\[FN152\]](#). See NHRC Ann. Rep. 27 (1994-95).

[\[FN153\]](#). See NHRC Ann. Rep. annexure I at 42 (1993-94).

[\[FN154\]](#). See NHRC Ann. Rep. 60 (1996-97).

[\[FN155\]](#). See id.

[\[FN156\]](#). See Manoj Mitta, *A Shackled Watchdog*, *India Today*, Jan. 15, 1994, at 171.

[\[FN157\]](#). "Encounter Deaths" refer to wanton killings of persons by the Indian Police that the police willfully mischaracterized, obviously to evade punishment, as deaths that have resulted or occurred in their routine encounters with subservient groups. See *Fake Encounter Deaths: NHRC Orders Solatium*, *The Hindu*, Apr. 18, 2000, at 10.

[\[FN158\]](#). See NHRC Ann. Rep. 11 (1995-96).

[FN159]. Article 9(5) of ICCPR states: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. International Covenant on Civil and Political Rights, Art. 9(5), reprinted in UN Handbook, supra note 1. The Indian Supreme Court has enthusiastically been at the forefront of developing the remedy of damages for breaches of fundamental rights. From 1983, damages have been awarded by the Supreme Court for illegal detention, custodial deaths and police atrocities resulting in death or otherwise. While the quantum of compensation awarded in these cases has varied according to the facts of each case, the amounts have however been pretty much as the individual judges have willed it. See, e.g., Rudul Shah v. State of Bihar, A.I.R. 1983, 4 S.C.C. 141, 148; Nilabeti Behera v. State of Bihar, A.I.R. 1993 S.C. 1960, 1966.

[FN160]. See NHRC Ann. Rep. 43 (1994-95).

[FN161]. See NHRC Ann. Rep. 12-15 (1995-96).

[FN162]. See id.

[FN163]. See NHRC Ann. Rep. 59 (1996-97).

[FN164]. See NHRC Ann. Rep. 12 (1995-96).

[FN165]. See id.

[FN166]. See id. at 15; see also Lakshadweep, Daman & Diu & Dadra Haveli Accepts the Commission's Recommendations on Compulsory Video-filming of Post-mortems, Hum. Rts. Newsl. (NHRC, India), Jan. 1999, at 2.

[FN167]. See NHRC Ann. Rep. 12, 44 (1995-96); NHRC Ann. Rep. 60 (1996-97).

[FN168]. See Amnesty International Report 1989, supra note 33.

[FN169]. See NHRC Ann. Rep. 8-10 (1994-95).

[FN170]. See id. at 9.

[FN171]. See NHRC Ann. Rep. annexure I at 53-57 (1994-95).

[FN172]. Id. at 55-57.

[FN173]. See NHRC Ann. Rep. 23 (1995-96).

[FN174]. The United Front is an amalgamation of three political parties.

[FN175]. See NHRC Ann. Rep. 12-13 (1995-96).

[FN176]. See id. at 13.

[FN177]. See India Accedes to the UN Convention on Torture, The Hindu, Oct. 15, 1997, at 13.

[FN178]. See Kuldip Nayar, The National Human Rights Commission: A Non-Starter, The Hindu, July 24, 1999, at 10.

[FN179]. See NHRC Ann. Rep. 9 (1993-94).

[FN180]. See NHRC to Chair the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights for the Fourth Consecutive

Year, Hum. Rts. Newsl. (NHRC, India), June 1999, at 4.

[FN181]. See NHRC Ann. Rep. 9 (1993-94).

[FN182]. See NHRC Ann. Rep. 11 (1996-97).

[FN183]. See Iyer, *supra* note 34. The Prevention of Terrorist Acts of 1998 (POTA) was passed in the State of Tamil Nadu. The legislation allows for detention without charge, for up to a year, widens the scope of preventive detention and suspends other safeguards normally available under the Indian Constitution. See *id.*

[FN184]. See Amnesty International, Amnesty International Report - ASA/20/26/98 (visited Sept. 25, 1999) <<http://www.Amnesty.org/ailib/aipub/1998/ASA/32002698.html>>.

[FN185]. See Human Rights Act, *supra* note 16, § 12(b).

[FN186]. See *id.* § 18(2).

[FN187]. See *id.* § 12(d).

[FN188]. NHRC Ann. Rep. 24 (1995-96).

[FN189]. See National Human Rights Comm'n v. State of Arunachal Pradesh, A.I.R. 1996 S.C. 1234, 1236.

[FN190]. See *id.* at 1234.

[FN191]. Interview with Dr. K. Balagopal, Former Secretary, Andhra Pradesh Committee for Civil Liberties (APCLC), in Hyderabad (Sept. 12, 1999).

[FN192]. In April 1999, the UN Commission on Human Rights passed a resolution (1999/61) calling on all States that still maintain the death penalty to progressively restrict the number of offenses for which the death penalty may be imposed, to establish a moratorium on executions with a view to completely abolish the death penalty and to make information regarding the imposition of the death penalty public. See International Commission of Jurists, Report of a Mission Concerning the Administration of the Death Penalty in the United States, 19 Hum. Rts. Q. 168, 168-70 (1997). India abstained in the vote on this resolution. See *id.* The International Commission of Jurists [ICJ] has also urged countries, including India, to take the necessary measures to ensure that there is greater compliance with international obligations. See *id.*

[FN193]. See Interview with Dr. K. Balagopal, *supra* note 191.

[FN194]. See *id.*

[FN195]. See UN Handbook, *supra* note 1, P 211.

[FN196]. See *id.*

[FN197]. See *id.*

[FN198]. See Human Rights Act, *supra* note 16, § 20(1).

[FN199]. See *id.* § 20(2).

[FN200]. Since its establishment in 1993, the NHRC has submitted five Annual Reports.

They are the First Annual Report that covers the period of October 1993 to March 1994; the Second Annual Report that covers the period of April 1, 1994- March 31, 1995; the third Annual Report that covers the period April 1, 1995- March 31, 1996; the Fourth Annual Report that covers the period of April 1, 1996- March 31, 1997 and the fifth annual report for the period of April 1, 1997- March 31, 1998. The fifth annual report has been submitted to the government, however it has not yet been placed before Parliament. See NHRC, National Human Rights Commission (visited Oct.8, 1999) <<http://www.nhrc.nic.in.html>>.

[FN201]. See NHRC Ann. Rep. annexure III at 45 (1993-94). All abuses that do not fall within civil and political rights' violations are termed as "Other" complaints. See id.

[FN202]. Under Article 32 of the Indian Constitution, any citizen, whose fundamental rights have been violated, can invoke the Court's writ jurisdiction for the enforcement of her fundamental rights. See India Const. art. 32. Unfortunately, the only meager benefit that the victim derives from approaching the NHRC is some publicity for her case. See Kuldip Nayar, *supra* note 178, at 10.

[FN203]. See Human Rights Act, *supra* note 16, § 18(1).

[FN204]. Amnesty International, *supra* note 184.

[FN205]. See id.

[FN206]. See Writ Petition No. 17750 of 1999.

[FN207]. See id.

[FN208]. See id.

[FN209]. See id.

[FN210]. See Human Rights Act, *supra* note 16, § 11(b).

[FN211]. See id. § 14(1).

[FN212]. See, e.g., NHRC Ann. Rep. annexure III at 45 (1993-94).

[FN213]. Indeed, the Commission has faced some difficulties in this regard. See, e.g., NHRC Ann. Rep. 44 (1995-96).

[FN214]. See Human Rights Act, *supra* note 16, § 37.

[FN215]. See id.

[FN216]. See Gomez, *supra* note 11, at 296.

[FN217]. See K.G. Kannabiran, Suggestions for Amendment to the Protection of Human Rights Act, PUCL Bull., Feb. 1999, at 9.

[FN218]. See id.

[FN219]. Amnesty International, *supra* note 185.

[FN220]. See PHRA, *supra* note 16, § 32(1); see also *supra* note 59.

[FN221]. See Human Rights Act, *supra* note 16, § 2.

[FN222]. See Amnesty International, *supra* note 184.

[FN223]. See Hum. Rts. Newsl., *supra* note 180.

[FN224]. See Human Rights Act, *supra* note 16, § 37.

[FN225]. See Kerala Sets Up State Human Rights Commission, Hum. Rts. Newsl. (NHRC, India), May 1999, at 2.

[FN226]. See NHRC Ann. Rep. 60 (1996-97).

[FN227]. See Rajeev Dhawan, *Step by Step*, 41 J. Indian L. Inst. 360 (1999).

[FN228]. Human Rights Act, *supra* note 16, § 30.

[FN229]. See *id.*

[FN230]. The District and Additional Sessions Judge is the special judge for trying offenses under the Narcotics Drugs and Psychotropic Substances Act of 1985 (NDPS), TADA and the Scheduled Castes and Scheduled Tribes Atrocities Act of 1983.

[FN231]. See NHRC Ann. Rep. 41 (1995-96).

[FN232]. See *id.* The PUCL filed a petition in the Madras High Court requesting the Court to lay down the proper procedures to be followed by the Human Rights Courts. The Tamil Nadu High Court gave an order in this regard in June 1997; however, this decision has not been reported in the official law reporters. See, e.g., Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., June 1998, at 20-21; Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., July 1998, at 21-22.

[FN233]. See *A. Govardhan Reddy v. Superintendent of Police, Adilabad District*, 1997 (5) A.L.D. 761, 767; Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., June 1998, at 20-21; Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., July 1998, at 21-22.

[FN234]. See *A. Govardhan Reddy*, at 767.

[FN235]. See Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., June 1998, at 20-21; see also Madras High Court Judgement: Scope and Powers of District Human Rights Courts, PUCL Bull., July 1998, at 21-22.

[FN236]. See NHRC Ann. Rep. 41 (1995-96).

[FN237]. See NHRC Looks Forward To More Interaction With Canada, Hum. Rts. Newsl. (NHRC, India), Aug. 1999, at 4.

[FN238]. See ICESCR, *supra* note 26.

[FN239]. The Vienna Declaration and Programme of Action, World Conference on Human Rights, GAOR World Conference on Human Rights, P 5, U.N. Doc. A/ [CONF.157/25](#), pt. I, ch. III (1993).

[FN240]. See India Const. pt. IV.

[FN241]. See *id.* at art. 39.

[FN242]. See *id.* at art. 37.

[FN243]. *Id.*

[FN244]. See Literacy Report, *supra* note 95.

[FN245]. See generally Sripati, *supra* note 26 (explaining this situation).

[FN246]. See *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984, 3 S.C.C. 161, 163.

[FN247]. See *Mohini Jain v. State of Karnataka*, J.T. (1992) 4 S.C. 292 (India); *Unni Krishnan, J.P. v. State of Andhra Pradesh*, A.I.R. 1993, S.C. 2178, 2179.

[FN248]. See *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 S.C.C. 756, 769.

[FN249]. See NHRC Ann. Rep. 9 (1993-94); NHRC Ann. Rep. 7 (1994-95); NHRC Ann. Rep. 6 (1995-96); NHRC Ann. Rep. 6 (1996-97).

[FN250]. See NHRC Ann. Rep. 39 (1994-95).

[FN251]. See *id.* at 39-40.

[FN252]. See NHRC Ann. Rep. 5 (1995-96).

[FN253]. See *Government Asked to Revamp I.V. Drug Supply System By the Commission*, Hum. Rts. Newsl. (NHRC, India), May 1999, at 2.

[FN254]. See *M.C. Mehta v. State of Tamil Nadu*, (1996) 6 S.C.C. 756, 757; see also NHRC Ann. Rep. 25-30 (1995-96).

[FN255]. See NHRC Ann. Rep. 25 (1995-96).

[FN256]. See *id.*

[FN257]. See *id.*

[FN258]. See *Action Plan For Eradicating Child/bonded Labor Launched in U.P.*, Hum. Rts. Newsl. (NHRC, India), May 1999, at 1-2; *Commission Sets Up Control Action Group On Bonded Labor*, Hum. Rts. Newsl. (NHRC, India), Nov. 1998, at 1-2; *NHRC Reviews the Progress of Eradication of Child Labor in the Glass Industries in Ferozabad*, Hum. Rts. Newsl. (NHRC, India), Nov. 1998, at 2.

[FN259]. See *Commission Sets Up Control Action Group On Bonded Labor*, Hum. Rts. Newsl. (NHRC, India), Nov. 1998, at 1-2;

[FN260]. See NHRC Ann. Rep. 30 (1995-96).

[FN261]. See *Geraldine Van Bueren, Combating Child Poverty: Human Rights Approaches*, 21 Hum. Rts. Q. 680, 706 (1999).

[FN262]. See NHRC Ann. Rep. 27 (1995-96).

[FN263]. See *id.*

[FN264]. See *id.*

[\[FN265\]](#). See id.

[\[FN266\]](#). See id.

[\[FN267\]](#). See id.

[\[FN268\]](#). See UN Handbook, *supra* note 1, P 68.

[\[FN269\]](#). See Human Rights Act, *supra* note 16, § 18(5).

[\[FN270\]](#). See NHRC Ann. Rep. 58 (1996-97).

[\[FN271\]](#). See NHRC Ann. Rep. annexure VI at 50-52 (1993-94). The proposed amendments relate to the definition of human rights falling within the competence of the Commission, matters that had an impact on the administrative and financial autonomy of the Commission, and powers relating to inquiries and remedies for violations.

[\[FN272\]](#). Id. at 33.

[\[FN273\]](#). See, e.g., NHRC Ann. Rep. (1994-95); NHRC Ann. Rep. (1995-96) (calling on the government to consider proposed amendments).

[\[FN274\]](#). See K.G. Kannabiran, The Protection of Human Rights Act 1993: PUCL Suggestions for Amendment, PUCL Bull., Jan. 1999, at 5.

[\[FN275\]](#). See id.

[\[FN276\]](#). See Establishment of High-powered Advisory Committee, Hum. Rts. Newsl. (NHRC, India), June 1998, at 2.

[\[FN277\]](#). Human Rights Act, *supra* note 16, Statement of Objects and Reasons.

[\[FN278\]](#). See Government Rejects NHRC Plea on Army, The Hindu, July 9, 1998, at 13.

[\[FN279\]](#). During the publication of this article, the Ahmadi Committee submitted its recommendations to the NHRC. See Panel Moots Changes to Human Rights Act, The Hindu, Oct. 20, 1999, at 11.

[\[FN280\]](#). See NHRC Ann. Rep. 14 (1995-96).

[\[FN281\]](#). See id.

[\[FN282\]](#). See id.

[\[FN283\]](#). See NHRC Ann. Rep. 25 (1995-96); NHRC Ann. Rep. 33 (1996-97).

[\[FN284\]](#). See NHRC Ann. Rep. 33 (1995-96).

[\[FN285\]](#). See NHRC Ann. Rep. 33 (1996-97).

[\[FN286\]](#). See Morton Krajeum, The Role of National Institutions for the Promotion and Protection of Human Rights, Jul 5, 1999 (transcript on file with the author).

[\[FN287\]](#). NHRC Ann. Rep. annexure I at 42 (1993-94). Regulation 17 of the NHRC states: "The Secretariat of the Commission shall be responsible for the printing of the Annual Report and Special Reports with utmost expedition and in any case, not later than one month of the finalization of the same." (emphasis added).

[\[FN288\]](#). See 14 Law Panel Reports not presented in Parliament, *The Hindu*, Sept. 11, 1999, at 10 [reporting that the government has not placed 14 reports submitted by the 15th Law Commission of India before Parliament and noting that the 15th Law Commission was constituted in September 1997].

[\[FN289\]](#). See Walter Fernandez, *The Wadhwa Commission*, *The Hindu*, Sept. 11, 1999, at 12 (arguing that the recent politically contrived attacks on Christians and Muslims must be situated within the growth of fascism in Indian society and must be treated as human rights violations).

[\[FN290\]](#). See Human Rights Watch, *supra* note 56.

[\[FN291\]](#). Iyer, *supra* note 68, at 259.

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