



A Text Study of Human Rights Law with Special Reference to Enforcement System in India

Ramesh Kumar

Research Scholar (Law)

Jiwaji University, Gwalior, Madhya Pradesh, India

Raj Kumar Verma

Research Scholar (Law)

LL.M., UGC-NET (Law) Jiwaji University, Gwalior, Madhya Pradesh, India

ABSTRACT:-

In this regard, Human Rights & its Law are mandatory for the existence of human life. Human Rights & its Law is not only mandatory in India but also in worldwide in the interest and welfare of world human & living creatures. The accessibility of Human Rights & its Law must be for all. In this connection, Human Rights & its Law are available in whole India and also in worldwide for all but in spite of the availability of the enforcement system, Human Rights & its Law is not being able to implement. The Fair, reasonable, satisfactory and other required things, as justice, beyond all the reasonable partialities, is not being able to deliver to the persons concerned. Why is it so? What are the reasons or causes liable for the same, keeping in view the aforesaid things, this research paper has been written which is helpful and beneficial for research scholar, students, Professors, teachers, institutions or organizations, governments, society, to conduct research and other required persons respective.

INTRODUCTION:-

The history of Human rights & its Law is as old as the development & civilization of human. The word 'Human Rights' first of all was used by Thomas Paine which is the English translation of 'Rights of Man' under Francis declaration and with it the term 'Human Rights' has been found in UNO Charter. In the furtherance, pursuance and respect of 'Rule of Law' while complying with the 'Principle of Natural Justice' with equity, good faith, good conscious and justice in democratic India for realising the concept of the Welfare State, not only in India but also in worldwide. Human rights & its Law are mandatory with Universality, without having Human Rights & its Law, Human life is



not possible. No one is something in the world first of all the persons is human, being human, all human has the designation of human which has provided by Nature free of cost that is being human bound with some certain kinds of limitations of liability or liabilities for about to arise consequences having set the accountability or responsibility or liability of the person, the person is made accountable and liable as well as of all the person as corporeal and incorporeal form is started to know as the same limitations or obligation or limitation or jurisdiction of corporeal and incorporeal liability. It is said that Human is the best, supreme and beautiful master piece, incredible, matchless, supernatural, extraordinary creation and the best art of God; God exists, lives in all human and living creatures with other connected things perpetually. In advancement of aforesaid Human Rights Law is the mother of all Laws. Human Rights are the father of all rights. Fundamental Rights are sons of Human Rights. Keeping in view of all above said Human Rights and Human Rights Law are the parents of all laws. All laws origin, create and legislate form Human Rights Law and subject to Human Rights Law. In this respect, nothing is beyond the limitation of Human Rights & Human Rights Law. All rights, duties, obligations, liabilities, responsibilities, accountabilities and limitations etc. are the under Human Rights & its Law.

Human Rights & its Law have been incorporated in India, under Constitution of India which is Supreme Law of our Country Part-III, Article 12 to 35 as Fundamental Rights, Part-IV Article 36 to 51 as Directive Principles of State Policy. It is essential and compulsory over here to say that Rights are uncompleted without duties which have been incorporated Part-IVA Article 51 A (a) to 51 A (k) as fundamental duties in Constitution of India, The Protection of Human Rights Act, 1993 An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matter connected therewith or incidental thereto and subjecting to aforesaid provisions inter alia under various laws have been mentioned. The leading and landmark case laws have been and are delivered by Hon'ble Supreme court as apex court and High courts of India. Many Research Papers, Articles, Magazines, Research Journals, Newspapers and whereas Human rights law is one of subjects of International law therefore many International instruments as Universal Declaration of Human Rights 1948 is one of major foundations or sources of Human Rights & its Law was adopted on



December 10, 1948 which known as the Human Rights Day. The aforesaid declaration is the major source so in pursuance and furtherance of it the main two International covenants have been adopted as extension of the above declaration namely – International covenants on Civil and Political Rights 1966 and International covenants on Social, Economic and cultural rights 1966 along with above said many International Instruments are in existence in connection with Human Rights & its Law.

It is mandatory to clarify here that access to human rights and its law for all without having any discrimination. It is expedient to explain the view of Indian Judiciary summarily in connection with Human Rights and its Law as **Menka Gandhi V/s Union of India¹**:- **Hon'ble Supreme Court of India said that** the origin of Human rights is freedom movement. The major purpose to place Human Rights in Constitution of India has to develop the Banyan tree of freedom in India.

Romesh Thapar V/s State of Madras²:- **Hon'ble Supreme Court of India held that** Supreme Court is the protector of Fundamental Rights.

State of Madras V/s B.G.Rao³:- held that Supreme Court is a watchful sentinel of Fundamental Rights.

Neelbati Behra V/s State of Orisa⁴:- in this case Article 5 (9) of International covenants on Civil and Political Rights 1966 with under Article 21 Constitution of India has been applied.

The apex court namely Supreme Court of India can issue the writs, directions and orders under Article 32 and High Courts can issue also the same under Article 226 Constitution of India in the protection and preservation of Human Rights and its Law.

In this respect, it is relevant to mention over here that Dr. Bhim Rao Ambedkar who was the architect of Constitution of India because he was drafted the same. He stated that Article 32 of Constitution of India is the soul of Constitution of India which is guaranteed for the enforcement of fundamental rights as human rights & it's Law in India.

¹AIR 1967 SC 1643.

²AIR 1950 SC 124

³AIR 1952 SC 196

⁴AIR 1993 SC1960



In the light of above, it can be said that such rights which are available, without enforcement or implementation are worthless. Despite, the availability of enforcement system, people is not being able to get the required justice. Enforcement system for Human Rights & its Law is as under, just at a glance: Supreme Court of India, High courts of the state Concerned, The National Human Rights Commission, State Human Rights Commissions, Human Rights Court, Public Grievance system and other required systems. Now a –days, the condition of enforcement system of human rights & its Law is very misery in India. Many reasons or causes are behind the same as under: social economic, political, moral, spiritual, scientific, psychological, technical, cultural, traditional & custom and usage, lack of awareness, literacy, accessibility to people, life style, living standard, culture, thoughts, mind, attitude, atmosphere and practice of people of India.

Enforcement System of Human Rights & Its Law under Constitution of India

U/A-32 Remedies for enforcement of rights conferred by this Part

Right to Constitutional Remedies

a) **U/A 32 Remedies for enforcement of rights conferred by this Part.—**

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

U/A 136 Special leave to appeal by the Supreme Court:-

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.



- (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces

U/A 137 Review of judgments or orders by the Supreme Court.

Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

U/A 139 Conferment on the Supreme Court of powers to issue certain writs:-

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

U/A 226 Power of High Courts to issue certain writs:-

- (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
- (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.



- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

U/A 141 Law declared by Supreme Court to be binding on all Courts:-

The law declared by the Supreme Court shall be binding on all courts within the territory of India.

U/A 142 Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc:-

1. The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
2. Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

U/A 129 Supreme Court to be a court of record:-The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

U/A 215 High Courts to be courts of record:-Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

U/A 144 Civil and judicial authorities to act in aid of the Supreme Court:-All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. 144A. [Special provisions as to disposal of questions relating to

U/A 261 Public acts, records and judicial proceedings:-

1. Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
2. The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament. (3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.



THE ENFORCEMENT SYSTEM IN RESPECT OF HUMAN RIGHTS & ITS LAW UNDER THE PROTECTION OF HUMAN RIGHTS ACT 1993:-

THE NATIONAL HUMAN RIGHTS COMMISSION

U/S 3 Constitution of a National Human Rights Commission:-

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

- (a) Chairperson who has been a Chief Justice of the Supreme Court;
- (b) One Member who is or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

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

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

U/S 4 Appointment of Chairperson and other Members:-

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of---

- (a) The Prime Minister —Chairperson
- (b) Speaker of the House of the People — Member



- (c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member
- (d) Leader of the Opposition in the House of the People — Member
- (e) Leader of the Opposition in the Council of States — Member
- (f) Deputy Chairman of the Council of States — Member

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

- (2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee

U/S 10 Procedure to be regulated by the Commission:-

- (1) The Commission shall meet at such time and place as the Chairperson may think fit.
- (2) The Commission shall regulate its own procedure.
- (3) All orders and decisions of the Commission shall be audited by the Secretary-General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

FUNCTIONS AND POWERS OF THE COMMISSION:-

U/S 12 Functions of the Commission:-

- (a) The Commission shall perform all or any of the following functions, namely :
 - inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of
 - (i) violation of human rights or abetment thereof or
 - (ii) negligence in the prevention of such violation,

By a public servant;

- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- (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;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the protection of human rights.

U/S 13 Powers relating to inquiries:-

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of witnesses and examine them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is



committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

U/S 14 Investigation:-

- (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- (2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Commission.
 - (a) Summon and enforce the attendance of any person and examine him;
 - (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report subbed to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

U/S 15 Statement made by persons to the Commission:-

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:



Provided that the statement —

- (a) is made in reply to the question which he is required by the Commission to answer; or
- (b) is relevant to the subject matter of the inquiry.

U/S 16 Persons likely to be prejudicially affected to be heard:-

If, at any stage of the inquiry, the Commission-

- (a) considers it necessary to inquire into the conduct of any person; or
- (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

It shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Chapter IV

PROCEDURE

U/S 17 Inquiry into complaints:

- (i) The Commission while inquiring into the complaints of violations of human rights may-call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it;

Provided that-

- (a). if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

- (ii) Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

U/S 18 Steps after inquiry:-

The Commission may take any of the following steps upon the completion of an inquiry held under this Act namely:



- (1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) Subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;
- (5) The Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

U/S 19 Procedure with respect to armed forces:-

- (1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :
 - a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
 - b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.
- (2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.
- (3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.
- (4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

STATE HUMAN RIGHTS COMMISSIONS

U/S 21 Constitution of State Human Rights Commissions:-



(1) A State Government may constitute a body to be known as the (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court;
- (c) one Member who is, or has been, a district judge in that State;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

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

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

U/S 22 Appointment of Chairperson and other Members of State Commission:-

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

- (a) the Chief Minister — Chairperson
- (b) Speaker of the Legislative Assembly — Member



(c) Minister in-charge of the Department of Home, in that State — Member

(d) Leader of the Opposition in the Legislative Assembly — Member

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

- (3) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy in the Committee.

U/S 29 Application of certain provisions relating to National Human Rights Commission to State Commissions:-

- (4) The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely :-
- (5) (a) references to "Commission" shall be construed as refer ences to "State Commission";
- (b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;
- (c) in section 12, clause (f) shall be omitted;
- (d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;

Chapter VI

HUMAN RIGHTS COURTS:-

U/S 30 For the purpose of providing speedy trial of offences arising out of violation of human rights, the State:-

Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

U/S 31 Special Public Prosecutor For every Human Rights Court:- the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

U/S 36 Matters not subject to jurisdiction of the Commission:-

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



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

U/S 37 Constitution of special investigation teams:-

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

U/S 38 Protection of action taken in good faith:-

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

U/S 39 Members and officers to be public servants:-

Every Member of the Commission, State Commission and every officer appointed or authorized by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Remedy and Suggestion –

Remedies and Suggestions in respect of promotion, education, research, literacy, respect, protection and preservation of Human Rights & its Law in the interest and welfare of world people and living creatures are as under-

1-First of all primary, middle, higher, doctoral, post-doctoral and others education system must be reformed & which is required to alter, amend, vary must be done.

2-- Spread Human Rights Literacy among various sections of society and promote awareness of the safeguards available for the protection & preservation of these rights through



publications the media and other available means. The access of knowledge, literacy with minimum good standard atmosphere must be reached to all people.

3- Human Rights & its Law education must be imparted to all section of people and also must be included in syllabus of schools, colleges, universities level.

4- All section of people must be aware with various mediums as- Seminars, Conferences, workshops etc.

5- The strongest steps, measures and remedies must be taken, adopted against malicious litigation, false cases, abuse the judicial procedures and the system for the same strict laws must be adopted, enacted in public and justice interest.

6- Encourage the efforts of Non-Governmental organization and institutions working in the field of Human Rights.

7- Police & jail system, remand homes, establishments and others institutions where persons are kept, custody, detained or lodged for the purpose of treatment, reformation, protection must be reformed.

8- Study centers for education and research of Human rights & its laws must be established and promoted separately.

9- Vacated or vacant post of judges or judicial officers in respect of Indian judiciary must be filled as a result large pendency of cases must be decreased which is one of major obstacles in path of justice in judicial process.

10- Indian Judicial service (IJS) must be initiated in the interest of people who have not been constituted so far from the date of the enforcement of Constitution of India.

11- Our judicial system is required to amend reform, alter and vary accordance with time and circumstances.

12- The State Human Rights Commissions have not been established in the States must be established without delay.

13- The National Human Rights Commission & the State Human Rights Commissions must be more empowered.

14- Human Rights Courts must be established separately.



- 15-The protection of Human Rights Act 1993 must be amended and reformed the system.
- 16- Vacated or vacant posts in Human Rights Commissions must be filled.
- 17- The access of Human Rights & its Law with Human Rights Commissions must be for all and to each person without any discrimination.
- 18-The procedure in connection with filing complaints to Human Rights Commissions are required to reform effectively and must be easier accordance with facility of people but subject to Law and preventive abuse of process.
- 19- The question in respect of large pendency in the Courts must be solved which is one of major obstacles in the path of law & justice.
- 20- Speedy justice must be delivered without having violations of Human Rights and its Law with respect to aforesaid slept Governments must be awakening mandatorily because sovereignty is found in people for welfare of people.
- 21-No one must be deprived from his life & personal liberty and precious time of Human life by the system, procedures, people governments and laws while abusing the laws with malafide.
- 22-The Code of Criminal Procedure 1973 & The Code of Civil Procedure 1908 and other procedures must be amended and reformed and time bound delivery of justice must be ensured in the interest of people.
- 23-Limitation for delivery of justice must be made accordance with time and circumstances.
- 24- To prevent the violation of Human rights & its Law the philosophical, psychological reformatory measures, remedies must be taken applied with the help of respective specialists.
- 25- The special attention must be paid in respect of the training of Advocates and Advocate training centers must be established, reformed, advanced and promoted with the most effective way; The Bar Council of India & The State Bar Councils must be taken the strongest reformatory steps with relation to above for interest & welfare of Advocates and people.
- 25-Injustice, atrocities, exploitation crime, offence, and other act against Human & Humanity and living creatures must not be favoured and tolerated.



26-Collectively efforts for the protection & preservation of Human Rights & its Law must be made by us with co-ordination of governments, other institutions and establishments in the interest and welfare of world human & living creatures.

27-Human Rights Law Officers must be engaged, appointed, employed & recruited by the National Human Rights Commission and The State Human Rights Commissions for inquiry investigation or for other works with respect to it, awareness, literacy, promotion, protection and preservation of Human Rights & its law.

28- Abuse of systems, procedures, laws and other connected things must be prevented strictly under Rule of Law and subjecting to the Principle of Natural Justice.

29-Our system is mainly based on evidences, witnesses, which may be planned, premeditated, tempered, and false & fabricated in consequence of all must be reformed and preventive measures must be taken accordance with requirement, time & circumstances.

30- Merely death penalty cannot prevent the violation of Human Rights & its Law in aforesaid connection, when all reformatory steps, measures, possibilities, remedies, other connected, incidental facts and etc. with respect to above are closed, failed and ended absolutely, wholly, exclusively, entirely and exhaustively in consequence of all in case of rarest of rare, exceptional, extraordinary, the most exceptional, & extraordinary, the death penalty must be imposed, punished, awarded and sentenced in the interest & welfare of world human and living creatures.

31-The National Human Rights Commission and the State Human Rights Commissions must be empowered for punishment, penal sentence in only petty cases.

32-Further more Human Rights Law Officers must be posted in Jails, Police Stations, other such institutions and establishments for promotion, education, research, literacy, protection and preservation of Human Rights & its Law.

33-Such other incidental, amended, inserted, substituted and required or other functions and acts are expedient, necessary, compulsory & mandatory accordance with social change, time circumstances for promotion, education, research, literacy, protection and preservation of Human Rights & its Law in the interest of world people and living creatures must be made, subject to law and adopting the dictum of Natural Justice.



34- The Vigilance Department separately of Human Rights & its Law must be established, reformed and advanced.

35- The National Human Rights Commission and States Human Rights Commissions, Indian Judiciary, other Institutions, and agencies must be more vigilant, watchful sentinel for Protection and preservation of Human Rights & its Law.

36- Media must be more effectively co-operative with co-ordination of people collectively to assist of all section of people without having any discrimination with veracity, truthiness for Protection and preservation of Human Rights & its Law.

To sum up Law is the instrument of social change. We want to get the goal of justice by medium of Law with collective efforts, co-ordination and co-operation with feeling of humanity of society, governments, agencies, institutions, establishments and us the aforesaid remedies and suggestions are not exhaustive; all are subject to change, amend, alter & vary accordance with time and circumstances for the interest & welfare of world human and living creatures.

CONCLUSION: –

In a nut shell, Human Rights are the universal, inalienable, indispensable, Natural, basic or fundamental rights of individuals which are mandatory, essential and compulsory for the existence of human. The access of Human Rights & its Law must be for all without having any discrimination. Human rights are inherent to all human beings. These rights all interrelated, interdependent and indivisible. Human Rights & its Law have been placed under supreme law that is Constitution of India in our country. **Romesh Thapar V/s State of Madras AIR 1950 SC 124** held that Supreme Court is the protector and watchful sentinel of Human Rights and its Law under Article – 32 and can issue Writ, direction and order High Courts have power to the same above said under Article – 226, Constitution of India for the protection and preservation of Human Rights and its Law as well as above the inheritance power has been vested in High Courts only in criminal cases but in civil cases all Civil Courts subject to law have inheritance power for preventing abuse of process and for the ends of justice. The Special Leave Petition can be filed under Article 136 Constitution of India. **Rupa Ashok Hurra V/s Ashok Hurra AIR 2002 SC1771** It is the leading & landmark Judgment delivered by the Constitutional Bench of Hon'ble five Justices of Supreme Court, in this case propounded the Rule of Curative Petition; the Supreme Court of India has power in respect of Curative Petition. District & Session Court, Tribunals, other courts, Human Rights Commissions also



are functioning in India for the protection and preservation of Human Rights & its law with aforesaid the provisions pertaining to Human Rights Court have been mentioned under section 32 of The Protection of Human Rights Act 1993 and other Institutions, NGOs, Societies and establishments are in existence. Recently India has been elected in second time as a member of United Nations Human Rights Council (UNHRC) .India got 162 votes, with India 15 countries for three years have been elected which is worth appreciating and welcoming for our Country.

Indian Judiciary has played & is playing a key role for promotion, education, research, literacy, respect, protection and preservation of Human Rights & its Law in the interest and welfare of people and living creatures by means of Judicial Review, Judicial Activism, public interest Litigation, Writs etc. which worth remarkable & has gone down history and with it delivered many leading, landmark judgments. Various ambiguities have been found in respect of The National Human commission and State Human Commissions because Whether the establishments of said commissions are mandatory or not ?

In this connection, India has twenty nine States and seven union territories but total twenty four Human Rights Commissions have been constituted so far in which Meghalaya State has constituted the State Human Rights Commission but Chairperson/Members has not been appointed so far. The renaming states have not constituted the State Human Rights Commissions in their States. The list of States where the State Human Rights Commissions have been set up: - 1.Andra Pradesh 2.Assam 3.Bihar 4.Chhattisgarh 5.Gujrat 6.Himachal Pradesh 7.Jammu & Kashmir 8. Jharkhand 9.Karnataka 10.Kerala 11.Madhya Pradesh 12.Maharashtra 13.Manipur 14.Orissa 15.Punjab 16.Rajasthan 17.Tamil Nadu 18.Sikkim 19.Uttar Pradesh 20.West Bengal 21.Goa 22.Uttarakhand 23.Haryana 24. Meghalaya; Presently Chairperson's and member's posts are vacant in respect of Himachal Pradesh State Human rights Commission. Constitution of State Human rights Commission has been notified but the appointment of chairperson or member in respect of Meghalaya State Human rights Commission has not been done.

The post of Human Rights Law Officer or Human Rights Officer has not been found in The National Human Rights Commission as per conferred information by the National Human Rights Commission. Having been perused above records and facts, we come to the finding with respect to the condition of Human Rights & its Law are miserable, extremely misery, worth considering, reviewing, revising and most required for due deliberations.

In case of the role of The National Human rights commission & Human rights commissions have no power of penalty, have no separate independent agency for inquiry and investigation for the same are dependent on Government agencies in spite of all above said have played and are playing important role in case of Police custody, atrocities, exploitation, torture, fake encounters, death and others which is worth praising but are required to more empowered subject to law while amending



the Protection of Human Rights Act 1993. Human Rights Courts under the said act must be constituted separately. Here it is worth describing that Constitution of India has been enforced with some provisions on 26 November, 1949 which is known as the Day of Law or constitution Day and whole has been enforced on 26 January, 1950 which is known as the Republic Day but since then 'All India Judicial Service' has not been constituted so far, Now is the controversial issue, magnum largest issue in respect of our system and Government of India is in question? Why is it so? Human Rights & its Law in historical perspective, the history of Human Rights & its Law originally is as old as the development & civilization of Human & their humanity which have developed bit by bit but due to some selfish, self-seeking ill feelings, grudges, thinking, thoughts abstracts and feelings have produced and got produced as a result fights, conflicts, wars have been waged that is the destruction of human being and Humanity have been done and got done in consequence of it the First & Second world wars, war between India- Pakistan and India-China etc. namely Human and their humanity destructed on the widest level. The condition of Human Rights & its Law in ancient India up to a specific limit used to good with spiritualism in good faith but not exhaustively. The people mostly effected by the Ramayan, Mahabharat, Geeta etc. but from the existence of crimes & violation of Human Rights & its Law cannot be refused. In medieval and modern India the condition of Human Rights & its Law was very misery, anxious as Dark Age. The destruction of Human and their humanity were on extreme; make & be slave under compulsion, slavery, inhuman, degrading treatment castes & religious issues, atrocities, exploitation Fiercely, flagrantly were in existence and people were highly or highest suffered and murdered. Now in present scenario, the condition of Human Rights & its Law are not good so far, in spite of existence of the respective, protective machineries, mechanism still Human Rights & its Law are being violated, contravened, and infringed grossly, grievously rashly, heinously, brutally, cold blooded murders openly, broad day light on the widest level. Every section of people are suffering from the system, crime, corruption, degrading, inhuman treatment castes & religious issues, atrocities, exploitations and the act against human & their humanity which is the most required to reform and prevented.