

**LAME DUCK ACT: THE PROTECTION OF HUMAN RIGHTS
ACT, 1993**

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Introduction

The Act of 1993 was brought into action as a result of the Vienna Convention on human rights. Since each member state was asked to form a national human rights commission. The Act was basically brought into action for the constitution of National and State Human Rights Commission and to make the protection of human rights better in our country. But since its inception into our society it has not been able to bring about the change for which this Act was made. There are a lot of disabilities which this Act suffers from. Like it has only recommendatory powers, The Commissions have jurisdiction only on matters related to Public servants, the definition of human rights in the Act itself is very narrow and there are many more such disabilities which make the Act a lame duck and The Commissions as toothless tigers.

For me, human rights simply endorse a view of life and a set of moral values that are perfectly clear to an eight-year-old child. A child knows what is fair and isn't fair, and justice derives from that knowledge¹.

-Tom Stoppard

The definition of human rights as per Section 2(d)²:

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¹ http://www.brainyquote.com/quotes/keywords/human_rights.html

² The Protection of Human Rights Act, 1993

“human rights” means 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.

If we analyse the definition the its scope is very narrow and does not take into consideration many aspects that form the part of human rights. It is not proper to limit the human rights only to the rights relating to life, liberty, equality and dignity of the individual even though they are not the most important basic human rights³. The Act does not take into consideration other fundamental rights guaranteed under the constitution. The definition of the Act itself shows the weakness of the Act. The definition here also acts as a Jurisdictional bar, as whenever a crime would not be in accordance with the definition then that crime wont constitute a human rights violation and as a result the criminal would be free and this would lead to grave injustice.

The **Section 29⁴** of the Act specifically says that the provisions of **sections 9, 10, 12, 13, 14, 15, 16, 17 and 18** shall apply to a State Commission and shall have effect.

³ Pg 426 human rights, Dr S.k. Kapoor, Central Law Agency.

⁴Section 29: Application of certain provisions relating to National Human Rights Commission to State Commissions
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:-

- (a) references to “Commission” shall be construed as references 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

The **Section 12**⁵ of the Act deals with the functions and powers of the National Commission. From this section itself we can infer that how the Commissions functions and powers make it a tooth less tiger.

From the **Section 12 (a)(ii)**⁶ we can infer that the Commission can only take into cognizance the human rights violation carried out by a public servant. So this clause itself makes the powers and scope of the Act very narrow the Act can't

⁵ The Section 12 of the Act deals with the functions and powers of the national commission

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court]¹, 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, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(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 organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the protection of human rights.

⁶ Ibid 5

take into consideration human rights violation carried out by any private entity. So who shall look into the matters of these private entities based cases? This question remains unanswered through the medium of this Act. Basically in our country we find that violation of human rights by private entities is in a large number but they go unheard as the Commission cant take cognizance of them. So if we are talking about human rights then any person may he be a public servant or private person should be liable for the violation but its not like that as per this Act.

From the **Section 12 (b)**⁷ we can make out that the Commission can take into account the cases which are pending before a court only and only with the prior permission of that court, if we analyse this subsection we will find that the Commission which has been set up to counter human rights violation has to take the permission from that court the question which arises here is that if the human rights Commission investigates the matter then it would help the court to decide the matter in a better way in that case the court can also prevent the violations of human rights. But as a matter of fact many State Commissions don't take in account the matters already pending in a court, as a result of which the final outcome is the violation of human rights.

The **Section 12(c)** basically gives power to the State Commissions to look into the living conditions of an inmate or visit any place where persons are detained or lodged but as a matter of fact this visit of the Commissions becomes difficult because its an unwritten law that they need to inform the jail authorities or other authorities of their visit beforehand. If we see there is a fault in the system also that when the notice of visit by the Human Rights Commission is received by the jail authorities, they simply change the whole picture of the actuality and a false

⁷ Ibid 5

picture is painted so as to be away from the scanner of violation of human rights. As far as the 2014 report⁸ of **National Crime Records Bureau (NCRB)**, New Delhi, the total capacity of the Indian prisons is **356561** persons and the inmates occupying this capacity are **418536** so we can very well infer what the inmates are getting in prisons basically no one cares about the human rights every inmate has a right to have his own space but the situation is poor.

Also from the same report⁹ as mentioned above 12.4% of inmates in prison die of murders, firing, torture, etc.

The real conditions of the Indian jails has been criticised by the **Human Rights Watch** in their publication¹⁰ named **Prison Conditions in India** and an excerpt from it is given below

The lock-up is a bare room with no piece of furniture at all, usually divided into two parts, the living area and the toilet area, separated from each other by a one foot divider. It is almost always a very poorly ventilated room with usually only one small window built close to the ceiling. There is never a fan in the cell. The lock-up is also poorly lit, usually by just one bulb for the whole room, which is never switched off. In lock-ups in the urban areas, the urinal area is usually enclosed, but without a door. There is normally no commode -- just a pot in a corner which is cleaned out occasionally. The water supply is unpredictable and intermittent at best. The stench is unbearable and flies abound. The under trial is not provided with a change of clothes nor with soap, oil or toothpaste. No mats are provided for sleeping nor are coverlets supplied. The lock-ups are inevitably overcrowded, especially at night. From the uniformity in their filthy and

⁸ <http://ncrb.nic.in/StatPublications/PSI/Prison2014/CHAPTER-2.pdf>

⁹ <http://ncrb.nic.in/StatPublications/PSI/Prison2014/CHAPTER-9.pdf>

¹⁰ ISBN 0-929692-92-6

overcrowded conditions, and in the brutal, dehumanizing treatment meted out by the police to their occupants, it seems lock-ups are specially built to oppress detainees and make their stay a type of deterrent to crime¹¹. The living condition of inmates is very poor and the worst part is the Commissions cannot go on surprise checks.

The Section 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 force¹².

Talks about the setting up of human rights courts in each district but as a matter of fact the later part of the section tells us that the court of sessions if already made special court can't be made human rights court and more over there aren't enough human rights courts in our country. In **September 2011 West Bengal** was the only state to have all functional human rights court in all **19 districts** of

¹¹ <https://www.hrw.org/sites/default/files/reports/INDIA914.pdf>

¹² Supra note 2

West Bengal, but the sad state of affairs of our country the 19 courts were not functional for almost a year.

Section 13¹³ of the Act talks about the powers related to the inquiries carried out by the Commission. It says that the Human Rights Commission will have the powers of the civil court but another question which arises here is whether this much power is enough for the enforcement of Human Rights? Basically this Act demeans the rank of a Hon'ble Justice of either the Supreme Court or the High Court because the chairman for the National Human Rights Commission has to be a retired Chief Justice of the Supreme Court¹⁴ and for the State Commissions he has to be a retired Chief Justice of a High Court¹⁵ it's a matter to be looked into when a person was the chief Justice of a High Court or The Supreme Court then he has a lot of knowledge of law and is one of the best in the country. What is the use of making a person of such high position and intellect a man without power. If it can be thought that the Commission is so important that only a retired Chief Justice shall be the Chairman then it should also be considered that the special powers should also be granted for the protection of human rights.

Section 36¹⁶: 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

¹³ Supra note 2

¹⁴ Section 3(2) The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court.

¹⁵ Section 21 (2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

(a) a Chairperson who has been a Chief Justice of a High Court.

¹⁶ Supra note 2

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.

If we see the first sub clause of the section 36 we can see it itself is barring the Commission from taking into consideration matters which are already pending in State Commissions. What is the use of having a Commission which cannot take into consideration these cases, if the Commission inquiries into the matter it would take into account whether the human rights have been violated or not rather the Human Rights Commission can help the other State Commission to deliver an appropriate order. The Act is restricting the scope of the Commissions set under it.

Moving further we can note that the sub clause (2) of the section says that the Commission cannot take into consideration any case which is older than one year. If we examine closely in our Indian society which is more or less a male dominated, in that case there are a lot of chances that the women who are facing these violations of human rights come up late to seek help but as the luck they have their applications will be rejected because the Act specifically says that the incident should not be older than a year. So if a violation of human rights takes place few years back and comes to the notice after one year has elapsed the Commission becomes helpless and to cut it short we can say that the Act is protecting not the human rights but the violators of human rights. There have been cases when the cases of human rights violation have come out late but we cannot say that the violators can roam about free because they know that they are safeguarded by this very Act.

To deny people their human rights is to challenge their very humanity¹⁷.

- Nelson Mandela

The Act also has provisions contained in **section 19¹⁸**, which restricts it from inquiring into the matter of violation of human rights done by the personals of the armed forces, it can only ask for the report from the Central Government. The National Human Rights Commission by the way of this section can only file its recommendations on account of the report given by the Central Government. There is no power vested in the State Commissions to look into the matters related to the armed forces. Neither does the section 29 of the Act gives it the power to inquire into such matters.

Human Rights Commissions And Their Recommendatory Power

The **section 18¹⁹** talks about the recommendatory powers of the Commissions. A Commission which is entrusted with an important task to counter human rights

¹⁷ http://www.brainyquote.com/quotes/keywords/human_rights.html

¹⁸ 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.

¹⁹ Steps during and after inquiry¹ [The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:- (a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority – (i) to make payment of compensation or damages to the complainant 1 Subs. by Act 43 of 2006 12 13 or to the victim or the members of his family as the Commission may consider necessary; (ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons; (iii) to take such further action as it may think fit; (b) approach the Supreme Court or the High Court concerned for such

violations has no binding power. Human Rights Commissions are recommendatory bodies as a result of which people don't take the orders passed by them seriously its always required that a government body should have more teeth so that people take them seriously and at no point of time the officers working in the department should feel helpless. As, such powers make a mockery out of the whole system.

Commissions make recommendations to government, which include: payment of compensation to the victim or to her/his family; disciplinary proceedings against delinquent officials; the registration of criminal cases against those responsible; instructions to take particular action to protect human rights and/or to refrain from actions that violate human rights²⁰.

directions, orders or writs as that Court may deem necessary; (c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary; (d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative; (e) 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; (f) 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.]

²⁰http://www.humanrightsinitiative.org/publications/nl/articles/india/needed_more_effective_hr_comm_india.pdf

However, they can only make recommendations, without the power to enforce decisions. This lack of authority to ensure compliance has unfortunate consequences²¹.

Cases where the recommendations are rejected out rightly: Governments often reject the recommendations given by these Commissions or they give long notes as to how the recommendations are not in accordance with the public interest basically this interest if that of the government not public.

Partial compliance of recommendations: one of the examples is when the Government takes into account only one part of the recommendation if its many fold like, if the recommendation asks for compensation and disciplinary inquiry then only one is taken into account also in many cases if compensation is asked for, reduced compensation is given.

Late compliance by Government: it takes about 3-4 weeks for the Government to comply with the recommendation which lead to delay in justice. Like in the case involving **Custodial death of Ram Kishore — complaint by Uttar Pradesh Parjapati Samaj Vikas Parishad**²². The UP Government did not sanction the said amount of three Lakhs in time²³.

Justice delayed is justice denied

-William E. Gladston

²¹ Ibid

²² **Case No.483-LD/93-94**

²³ <http://nhrc.nic.in/cdcases.htm>, accessed on 31st july 2016.

Recommendations:

- 1) The definition of human rights should be deeper and its scope should be wide.
- 2) The powers of the Commissions should not be recommendatory but like those of the high courts, that is their verdict should carry weight and their order need not need approval from the Government.
- 3) The Act should take into consideration not only the public servant but also the private persons.
- 4) The Commissions should be allowed to visit jails etc. on surprise visits.
- 5) There should be provisions to take into account the violations done by armed forces.
- 6) The Commissions should be allowed to deal with matters already in court so as to help the court in deciding the case in a better way.
- 7) The time bar of 1 year old should be lifted and increased to at least 10 years.
- 8) The concept of human rights court should be made even more clear since its very vague in the Act. The whole composition and aim of such courts be given.
- 9) The Commissions should have powers like the power of suspending a public servant etc. so that there is a deterrent effect.
- 10) A special investigation team should be permanently assigned to the Commissions for providing speedy inquiries.
- 11) The strength of officials in the Commissions should be increased since the number of complaints is very high and officials are less.
- 12) Special provisions for the protection of human rights of the prisoners of war and inmates of jails.

Conclusion:

The Protection of Human Rights Act, 1993, is basically a mere formality since it was important for our law makers at that time to show the willingness of India to safeguard the human rights since the international community stressed upon these violations of human rights. The law makers in India just for the name sake made this law. A law which should have been a go getter for justice. After the analysis of the Act it can be concluded that it's a lame duck Act since it talks about setting up of Commissions but does not provide it powers to exercise to respond to violation of human rights. The Act itself narrowed down its scope. It does not take into account the violations other than those done by public servant. Human rights are one of the vital elements of a successful democracy. But here we can see that our Government has no intention on taking severe actions against the violators of human rights. Though there are a lot of obstacles in the path of the Human Rights Commissions, they have done a commendable job. The Commissions have taken care and have tried to curb violations like prison deaths, rapes, custodial torture etc. It's important for India to have a very strong law to deal with the matters related to human rights. Since India is a welfare State and its prime concern is the welfare of the people then this law should be revamped and a better version of it should be put into force.

