



## REDESIGNING THE HUMAN RIGHTS COURTS

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The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history. The human rights trace back to Magna Carta (1215 AD), the Petition of Rights (1627 AD) and the Bill of Rights (1688) in the United Kingdom. The Declaration of Rights of the Man (1789) by the French National Assembly had influenced the framing of the Constitution of United States of America and in the 19<sup>th</sup> century these rights became the basic Principles of constitutional law of modern civilized states<sup>i</sup>. The Charter of United Nations (UN) speaks on human rights in its first and fifty sixth articles.

The first article of UN Charter states that one of the aims of United Nations is to achieve international co-operation in 'promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion'<sup>ii</sup>. Article 56 of UN Charter imposed obligation upon its member states to take joint or separate action, in co-operation with the organization, for the achievement of universal respect for, and observance of, human rights<sup>iii</sup>.

In addition to the human rights provisions contained in UN Charter, the UN adopted the Universal Declaration on Human Rights on 10<sup>th</sup> December, 1948 and two important Covenants on Human Rights in 1966, (i.e., International Covenant on Economic, Social and Cultural rights and International Covenant on Civil and Political Rights). Many human rights treaties and declarations have been negotiated under the aegis of the UN to promote human rights.

The Protection of Human Rights Act, 1993 (Herein after called as the PHR Act) was enacted in India, after forty four years of the international declaration. Twenty two years had elapsed since the PHR Act came into force in India<sup>iv</sup>. The main objectives of the Act is to provide for the constitution of the National and State Human rights Commissions and Human Rights Courts (Herein after called as the HRC). Various studies have made so far, especially in analyzing on National and State Human Rights Commissions. But, a detailed study in the area of HRCs still remains unexplored. It is appropriate to examine the effectiveness of the Human Rights Courts and initiations to strengthen the same.

Sections 30, 31 and 37 of PHR Act are relating with the HRCs in the district level, its special public prosecutor and the constitution of special investigation teams respectively. The legal provisions are as follows.

Section 30 - For the purpose of providing for speedy trial of offences arising out of violation of human rights, the State government may, with the concurrence of Chief Justice of the High Court, by notification, specify for each district a Court of Sessions to be a Human Rights Court to try the said offences;

Provided that nothing in this section shall apply if –

- a. A Court of Sessions is already specified as a special court,
- b. A special court is already constituted, for such offences under any other law for the time being in force<sup>v</sup>.

This Section deals with the formation of the Human Rights Courts in the districts.

Section 31 - For every Human Rights Court, the State government shall, by notification, specify public prosecutors or appoint an advocate, who has been in practice as an advocate for not less than seven years, as special public prosecution for the purpose of conducting cases in the court<sup>vi</sup>. This Section advocates for the nomination of a public prosecutor in the district level Human Rights Courts.

Section 37 - Notwithstanding anything contained in any other law for the time being in force, where the government considers it necessary so to do, it may constitute one or more special investigation teams, consisting, of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights<sup>vii</sup>. This Section provides to form the special investigation teams in the district level to deal with the human rights cases also.

National Human Rights Commission has asked many times to the all the States to constitute the Human Rights Courts. As on December 2011, the States of Bihar, Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, West Bengal, Uttarakhand, Uttar Pradesh and Tamil Nadu have constituted Human Rights Courts<sup>viii</sup>.



The Supreme Court of India directed in its judgement in the month of July, 2015, that no reason why the defaulting State governments should not seriously consider the question of specifying Human Rights Court to try offences arising out of violation of human rights.

The PHR Act does not specify human rights offences. The PHR Act does contain definite indications as to what would be construed as such offences. The phraseology, “offences arising out of violation of Human Rights,” defined in Section 2(1) (d) of PHR Act would throw sufficient light, as respects the necessary and requisite parameters for identifying such offences<sup>ix</sup>. The classification of the human rights offences are very necessary for the effective functioning of the Human Rights Courts.

There is no specific provision in PHR Act as to *locus standi* in the matter of approaching Human Rights Courts for redressal of grievances in relation to violation of human rights, amounting to offences whether cognizable or non- cognizable. In the absence of such a provision, Human Rights Court being a criminal court have to necessarily follow the procedure laid down in the Criminal Procedure Code<sup>x</sup>. To avoid this irregularity, the special procedures for the Human Rights Courts are very essential for the easy access.

There is no time limit for disposing the cases of human rights violations in the Human Rights Courts. National Human Rights Commission already requested the Central government to amend the PHR Act as follows, “Human Rights Court shall, as far as possible, dispose of any case referred to it within a period of three months from the date of framing the charge”. The PHR Act has no clear system to provide compensation to the victims of human rights violations also by the district human rights courts.

In exercise of the powers conferred by Section 30 of PHR Act, 1993, the Governor of Tamil Nadu in suppression of Home Department notification of Tamil Nadu Gazette, dated the 3<sup>rd</sup> January 1996, and with the concurrence of Chief Justice of High Court of Judicature at Madras, specified the list of Courts of Sessions to try offences arising out of violation of human rights, with effect on and from 29<sup>th</sup> January, 1996<sup>xi</sup>. Thirty two district Human Rights Courts of Tamil Nadu State were taken as sample for the research to analysis its effectiveness.

**Details of cases in Human Rights Courts from 1996 to 2010, Tamil Nadu<sup>xii</sup>**

1	Number of cases filed	167
2	Number of cases pending	043
3	Number of convicted cases	7
4	Numbers of cases against the police	129
5	Numbers of cases against the officials(Other than police)	038
6	The cases registered by the police	0
7	The cases filed as private complainant	167

Out of the above pending 43 cases, 10 cases are pending more than 8 years and 17 cases are pending more than 7 years. 11 cases are pending more than 3 years. Long duration to dispose the cases against human rights violations leads to delayed justice to the victims. The entitlement to speedy trial has been repeatedly emphasized by the Supreme Court of India. Though it is not enumerated as a fundamental right in the Constitution, the Apex Court has recognized the same to be implicit in the spectrum of Article 21 of Constitution.<sup>xiii</sup>

For the purpose of providing for speedy trial of offences arising out of violation of human rights PHR Act provided special courts for the human rights justice. The reasons for poor rate of convictions are failure in production of witnesses and documents by the complainants. A witness protection scheme has to be designed.

The above table shows that 77.2 percentage cases are filled against the police officials in the Human Rights Courts in the year 1996 to 2010. No first information report was registered in human rights cases by the station house officer of the police station under the Protection of Human Rights Act. Private complaints were filed and taken on the file of Human Rights Courts in these 15 years. The State government has not established the special investigation teams for human rights under section 37 of the Protection of Human Rights Act in the districts. If the special investigation teams for human rights refuses or drops the proceedings, victims of human rights violations have right to file private complaint before the HRC. In these circumstances, free legal aid should be given to them.



**The complaints reported in Tamil Nadu**

	<b>Institution</b>	<b>1996 -2010</b>
1	Human Rights Courts <sup>xiv</sup>	<b>167</b>
2	State Human Rights Commission <sup>xv</sup> (SHRC)	<b>108717</b>
3	National Human Rights Commission <sup>xvi</sup> (NHRC)	<b>21349</b>
4	<b>TOTAL</b>	<b>130233</b>

The above table shows that in the years 1996 to 2010, total number of incidents in Tamil Nadu were reported to the human rights institutions are 1, 30,233. SHRC received 83.5 percentage complaints in Tamil Nadu and 16.4 Percentage complaints (i.e., incident in Tamil Nadu) were reported to the NHRC. Mere 0.1 Percentage complaints were reported to the HRC. This shows that poor awareness on HRCs among the general public and access to the same is not convenient for them.

It may be noted that National and State Human Rights Commissions have no power to prosecute public servants for human rights violations or to order payment of compensation to the victims. All that the Commission is empowered to do is to make recommendations. But, HRC is only having power to punish the culprits.

The National Human Rights Commission's following annual reports explains that its initiations to strengthen the Human Rights Courts.

NHRC Annual Report 1997 – 1998: While a number of States have notified the constitution of Human Rights Courts, an ambiguity remains as to the precise nature of the offences that should be tried in such Courts and other details regarding conduct of their business<sup>xvii</sup>.

NHRC Annual Report 1998 – 99: The National Human Rights Commission has drawn attention to the ambiguity as to the precise nature of offences that could be tried and the procedural issues governing the conduct of the business in the Human Rights Courts as envisaged in Sec.30 of the Protection of Human Rights Act 1993. The Commission recognizes that substantive amendments to Sec.30 of the Protection of Human Rights Act, 1993 and other laws are necessary in order to enable the courts designated as human rights courts to fulfill the expectation that they would provide speedy trial of offences arising out of violation of human rights. The Commission, therefore, calls upon the Central Government to undertake the necessary legislation for this purpose at an early date<sup>xviii</sup>.

NHRC Annual Report 2000 – 2001: The Commission has suggested an amendment to Section 30 of the Protection of Human Rights Act, 1993 which provides for Human Rights Courts at the district level. The present provision is inadequate and defective and requires modification, without which Human Rights Courts at the district level, even if formed, cannot function effectively. Many States have designated Human Rights Courts under the provisions of Section 30 of the present Act. However, in the absence of action being taken on the proposed amendment, these courts are not adequately discharging the purpose for which they were designated. This is deeply disappointing. The Commission would like to observe, in this connection, that it is not sufficient to set-up State Human Rights Commissions or to designate courts to serve as Human Rights Courts. The quality of both must be ensured, both in terms of personnel and competence, if this central purpose of the Protection of Human Rights Act, 1993 is to be properly observed<sup>xix</sup>.

NHRC Annual Report 2001 – 2002: A continuing impediment to the proper functioning of Human Rights Courts has, however, been the lack of clarity as to what offences, precisely, can be classified as human rights offences. The Commission has proposed a precise amendment to Section 30 of the Protection of Human Rights Act, 1993, but in the absence of any action being taken on that proposal, these Courts have not been able to adequately discharge the purpose for which they were designated.

The Commission takes this opportunity to reiterate that, both in respect of Human Rights Courts and in respect of State Human Rights Commissions, it is insufficient merely to designate or establish them. Their quality must be ensured, both in terms of personnel and financial autonomy, and they must be extended the support that they need if they are to fulfill the purposes envisaged for them under the Protection of Human Rights Act, 1993<sup>xx</sup>.



### Proposed amendment

1. Where an offence under any law for the time being in force also involves the violation of human rights, the State Government may, for the purpose of providing speedy trial of the offence involving human rights as, specified by notification issued in that behalf by the appropriate Government, and with the concurrence of the Chief Justice of High Court by notification, constitute one or more Human Rights Courts to try the offence.
2. A Human Rights Court shall be presided over by a person who is, or has been a Sessions Judge who shall take cognizance and try the offence, as nearly as may be in accordance with the procedure specified in the Code of Criminal Procedure, 1973. Provided that a Human Rights Court shall, as far as possible, dispose of any case referred to it within a period of three months from the date of framing the charge.
3. It shall be competent for the Human Rights Court to award such sentence as may be authorized by law and the power to decide the violation of human rights shall, without prejudice to any penalty that may be awarded, include the power to award compensation, relief, both interim and final, to the person or members of the family, affected and to recommend necessary action against persons found guilty of the violation:
4. An appeal against the orders of the Human Rights Court shall lie to the High Court in the same manner and subject to the same conditions in which an appeal shall lie to the High Court from a Court of Session.
5. 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.

Reasons: To have a better focus to this laudable provision to have easy access to justice at the District level itself in case of human rights violations which however in its present form is lacking in clarity, the provision is amplified and clarified<sup>xxi</sup>.

NHRC Annual Report 2002 – 2003: It remains a matter of regret to the Commission that the promise of section 30 of the Protection of Human Rights Act, 1993, has not been fulfilled even ten years after the adoption of the Act. The Commission has proposed a precise amendment to section 30 of the PHR Act in the annual report for 2001-2002. Regrettably, in the absence of any definitive action having been taken on that proposal, these Courts have not been able to adequately discharge the purpose for which they were designated. The Commission therefore requests the Central Government to give this matter the attention it deserves. The objectives of the Protection of Human Rights Act, 1993 should not be thwarted by difficulties of the kind that at present persist, despite clear recommendations having been made on how to resolve them<sup>xxii</sup>.

NHRC Annual Report 2003 – 2004: The Commission time and again has stated that in order to give a better focus to this laudable provision and to provide justice at the district level itself in case of human rights violations, the section 30 of the PHR Act needs amendment. Further the lack of clarity as to what offences, precisely, can be clarified as human rights offences, has been the biggest impediment in the effective functioning of human rights courts, which have been set up by some of the States. It urged the Central Government through its annual reports for necessary amendment. It is rather unfortunate that the Central and State Governments have so far failed to resolve issues that are creating impediments in the setting up of fully functioning Human Rights Courts. We do hope that by the time the next annual report is written, action would be taken to accomplish this so that the Commission is not required to repeat the same observation year after year<sup>xxiii</sup>.

NHRC Annual Report 2004 – 2005: It has been more than 12 years since the Protection of Human Rights Act, 1993, entered into force. It is a matter of great regret that even after so many years, there has been lack of clarity as to what offences, precisely, can be classified as human rights offences. For its part, the Commission has proposed a precise amendment to Section 30 of the Act, which may be seen in Annexure-I of the annual report for 2001-02<sup>xxiv</sup>.

Due to the failure of action by the Central government to bring the necessary amendment in PHR Act relating with the human rights courts, the NHRC's annual reports from the year 2004-2005 are not speaking on Human Rights Courts. It is not requesting the States, who have formed the HRCs, to establish the Human Rights Courts.

Highlighting some anomalies and shortcomings in the PHR Act 1993, the Madras High Court has expressed the hope that lawmakers will enact appropriate amendments to make it "workable". Justice S Nagamuthu of the Madurai bench of Madras High Court said sections 2(d) and 30 of the Act were vague. A conjoint reading of these two provisions may lead one to believe that all offences committed by public servants relating to human rights shall be tried only the human rights courts<sup>xxv</sup>. This is one of the landmark judgments in relating with the effectiveness of the Human Rights Courts



The National Human Rights Commission has taken effective initiations to redesign the Human Rights Courts (HRC). In order to fulfil the lacuna and strengthen the HRCs, it is essential to concentrate on the following measures for the effective functioning of the same. Political will is very essential for the same.

1. There is no clear classification of human rights violations and punishments in Human Rights Courts. This has led to so much of confusion and chaos in identifying the nature of cases filed in the HRC.
2. The study identified that a special rules should be framed for HRC for the trial of human rights violation cases. But at present, the HRCs are following only the criminal rules of practice. A witness protection scheme has to be designed.
3. There is no time limit for disposal of human rights cases filed in the HRCs. This has resulted in enormous time consuming process and leads to unnecessary delay in delivering justice to the victims.
4. Another major problem identified in this study is, victims of human rights violations will have to approach the civil courts in order to get the compensation. And the study recommends that, powers should be given to HRCs to award the compensation for the victims of human rights violations.
5. There is a special investigation team is available for NHRC and SHRCs. A special investigation team at the district level should be established for the benefits of victims of human rights violations without fail.
6. At present, no human rights cases are normally registered in the police station on the basis of complaints presented by the victims of human rights violations. Special Public Prosecutor will represent cases if registered by the Police only.
7. This study found that, free legal aid is available for Civil and Criminal and HRCs. But, in practice more support should be given to victims of human rights violations from the State sponsored free legal aid centre, which is functioning in all the court campus.
8. As far as the awareness about working of HRCs, the study found that poor awareness among the public is existing. This naturally responsible for filing of less number of cases in the HRCs. In this regard, the government, NHRC, SHRC, NGOs and other stockholders should create awareness among the people about the HRCs and its functioning.

In order to realize the above said findings the Protection of Human Rights Act, 1993, has to be amended accordingly. It is the responsibility of the Central government for better administration of human rights justice by way of redesigning Human Rights Courts. Political will is essential for the same.

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<sup>i</sup> Judgment, *Criminal Law Journal*, 1996, p.125.

<sup>ii</sup> Levein & Leah, *Human Rights- Questions and Answers*, UNESCO, 2004.

<sup>iii</sup> Chinnavyran.c, *Protection of Human Rights*, Law House, Gingee, 1999, p.3.

<sup>iv</sup> Dr.V.Ramaraj, Designing the State Human Rights Commissions, *International Journal of Multidisciplinary Research Review*, Vol.1, Issue – 8, Oct -2015. Page - 201

<sup>v</sup> *The Protection of Human Rights Act*, Gazette of India, Extra, Part II, Sec 1, 10<sup>th</sup> Jan.1996.

<sup>vi</sup> *Ibid.*,

<sup>vii</sup> *Ibid.*,

<sup>viii</sup> Data obtained from NHRC, vide reply letter dated 4<sup>th</sup> October 2011 for the application under the RTI Act. (Reference No 16(1) PIO/2005(RTI)/5342)

<sup>ix</sup> “Tamil Nadu Pazhankudi Makkal sangam Vs. Government of Tamil Nadu”, *The Madras Law Journal Reports (Criminal)*, Madras, 1997, p.669.

<sup>x</sup> *op.cit.*, p.685.

<sup>xi</sup> Notification No II (2)/H.O/136(K)/96, TN Government Gazette Extra Part II S.2, Issue No 28, January 18, 1996.

<sup>xii</sup> Data received by the applications under the Right to Information Act from the district HRCs in Tamil nadu

<sup>xiii</sup> Raj Deo Sharma Vs. State of Bihar, 1998(5) SCALE p.477.



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<sup>xiv</sup> Data received by the applications under the Right to Information Act from the district HRCs in Tamil Nadu.

<sup>xv</sup> Data obtained from SHRC, Tamil Nadu, vide reply letter dated 18<sup>th</sup> October 2011 for the application under the RTI Act. (Reference No 12400/SHRC/RTI)

<sup>xvi</sup> Data obtained from NHRC, vide reply letter dated 25<sup>th</sup> October 2011 for the application under the RTI Act. (Reference No 16(1) PIO/2005(RTI)/5400)

<sup>xvii</sup> Annual Report, 1997-98, National Human Rights Commission, New Delhi, 1998.

<sup>xviii</sup> Annual Report, 1998-99, National Human Rights Commission, New Delhi, 1999.

<sup>xix</sup> Annual Report, 2000-01, National Human Rights Commission, New Delhi, 2001.

<sup>xx</sup> Annual Report, 2001-02, National Human Rights Commission, New Delhi, 2002, pp.136-13.

<sup>xxi</sup> *Ibid.*, pp.257- 259.

<sup>xxii</sup> Annual Report, 2002-03, National Human Rights Commission, New Delhi, 2003, p.166.

<sup>xxiii</sup> Annual Report, 2003-04, National Human Rights Commission, New Delhi, 2004, p.174.

<sup>xxiv</sup> Annual Report 2004-05, National Human Rights Commission, New Delhi, 2005, p.184.

<sup>xxv</sup> [http://zeenews.india.com/news/state-news/human-rights-act-has-anomalies-madras-hc\\_653564.html](http://zeenews.india.com/news/state-news/human-rights-act-has-anomalies-madras-hc_653564.html), dated September 07, 2010