



## HUMAN RIGHTS COURTS: AN ILLUSION OR REALITY

**Dr.V.Ramaraj**

*The Author is an Eminent Advocate.*

The United Nations General Assembly in December, 1948 adopted the Universal Declaration of Human Rights, which was a significant step towards formulating and recognizing such rights. It was, then, followed by an International Bill of Rights which was binding on the covenanting parties. Since the Universal Declaration of Human Rights was not legally binding and since United Nations had no machinery for its enforcement, the deficiency was removed by the UN General Assembly by adopting in December, 1965 two covenants for the observance of human rights viz. (i) the Covenant on Civil and Political Rights; and (ii) the Covenant on Economic, Social and Cultural Rights. The first covenant formulated legally enforceable rights of the individual while second required the States to implement them by legislation. These covenants came into force in December, 1976 after the requisite number of member States ratified them. Many of the States ratified the Covenants subsequently at the end of 1981. These Covenants thus become legally binding on the ratifying States and since India is a party to the said Covenants<sup>i</sup>. The Protection of Human Rights Act was enacted in India, after Forty four years of the international declaration.

The President of India promulgated the Protection of Human Rights Ordinance, 1993 on 28<sup>th</sup> September, 1993 to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in the States and Human Rights Courts for better protection of human rights and for matters connected therewith. The ordinance was shortly thereafter replaced by the Protection of Human Rights Act, 1993. The significance of the human rights and the need for their protection and enforcement is thus beyond the pale of any debate. The movement for the protection of such rights is not confined only to India alone. It is a global phenomenon<sup>ii</sup>. Since the issue is rampant all over the world and thus it has been globalised.

The main objectives of the Protection of Human Rights Act is to provide for the constitution of the National and State Human Rights Commissions and Human Rights Courts for better protection of human rights and for matters concerned therewith or incidental thereto. Thus, it has a twin objectives to fulfill, namely, establishment of institutional structure, both Central and State levels, and to create enforcement machinery in terms of Human Rights Courts for better protection of human rights<sup>iii</sup>. The Act has created awareness about the importance of human rights and legitimately it reached a global status.

Twenty two years had elapsed since the Protection of Human Rights Act came into force in India. Various studies have been made so far, especially in analyzing on National and State Human Rights Commissions. But, a detailed study in the area of setting up the Human Rights Courts still remains unexplored.

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>iv</sup>. It is a matter of regret that many States have not set-up the Human Rights Courts. This article focuses on the setting-up of Human Rights Courts in Indian States. It is appropriate to examine the initiations to setting up the Human Rights Courts and essential measures to constitute the same all over the India.

Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system is each country, reflecting international human rights norms, should therefore be a principal objective of the organization. These activities are especially important in countries emerging from conflict<sup>v</sup>.

Section 30 of the Protection of Human Rights Act, 1993: 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>vi</sup>.



**This Section deals with the formation and formulation of the Human Rights Courts.**

Section 31 of the Protection of Human Rights Act, 1993 provides for a public prosecutor or an advocate, who has been in practice as an advocate not less than 7 years, shall be appointed by the State Government for every Human Rights Courts. Such a person shall conduct the cases in the Human Rights Courts shall be called the Special Public Prosecutor<sup>vii</sup>. This Section advocates for the nomination of a public prosecutor for the Human Rights Courts.

Section 37 of the Protection of Human Rights Act, 1993 says that "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>viii</sup>. The special investigation teams are very important for the administration of the human rights justice.

Here it would be worthwhile to make a distinction between Human Rights Commission and Human Rights Court in order to further understand the scope of Human Rights Courts.

- I. Human Rights Courts are part of independent judiciary. National and State Human Rights Commissions are quasi-judicial institutions.
- II. Human Rights Courts are headed by the sitting judges of Court of Sessions. National and State Human Rights Commissions are headed by retired judges accompanied by the non-judicial members.
- III. Human Rights Courts have powers to punish the offenders. National and State Human Rights Commission's findings are recommendations only.
- IV. Human Rights Courts have all powers of a criminal court trying a case under Criminal Procedure Code, 1973. National and State Human Rights Commissions have all the powers of a civil court trying a suit under Code of Civil Procedure, 1908.

National Human Rights Commission (NHRC) urged all the states and Union Territories to constitute and notify a Court of Sessions to be a Human Rights Court in each district as, envisaged by Section 30 of the Protection of Human Rights Act, 1993. Under a federal system such as ours, it is evident that concrete responsibilities must rest with individual States both to promote and protect human rights and redress grievances. The decentralization of the complaint disposal mechanism thus becomes a necessity, not least so as to provide a redressal mechanism that is readily accessible and inexpensive in terms and time and cost<sup>ix</sup>.

In a letter to all Chief Minister's on October 4, 1994, the Chairperson of the NHRC has requested them to set up Human Rights Courts in the districts in terms of Sec. 30 of the Protection of Human Rights Act, 1993. The National Human Rights Commission's following annual reports shows that its initiations to set up the Human Rights Courts.

**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. It will be recalled that, under section 30 of the Act, the State Government may by notification specify for each district a Court of Session to be a Human Rights Court to try the said offences<sup>x</sup>. It is authentically understood that the said offences means human rights violations.

**NHRC Annual Report 2003 – 2004:** 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. Hence, it is hoped 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>xi</sup>. It is noteworthy that the formation of the Human Rights Courts has become inevitable.

**NHRC Annual Report 2004 – 2005:** It has been more than 12 years since the Protection of Human Rights Act, 1993, entered into force. The Commission has been deeply concerned towards the non-fulfillment of the promise of Section 30 of the Protection of Human Rights Act, 1993, which provides for speedy trial of offences arising out of violation of human rights by designating, in each district, a Court of Session to be a Human Rights Court to try the offences<sup>xii</sup>.

In a landmark judgment, in the month of January, 2000, the Allahabad High Court has issued mandamus, directing the State of Uttar Pradesh to complete the formality to constitute a State Human Rights Commission within three months. It also directed the State Government to specify for each district, a Court of Session to be the Human Rights Court in terms of



Section 30 of the Protection of Human Rights Act<sup>xiii</sup>. As a result of the verdict, the State of Uttar Pradesh established the Human Rights Courts.

In April, 2011, the Supreme Court appreciated the demand for setting up of special courts for dealing with cases of human rights but refused to pass any direction on the petition in this regard saying the issue has to be raised before high courts. The court was hearing a public interest litigation filed by an NGO, Asian Centre for Human Rights, seeking a direction for the Centre to set up exclusive courts for dealing with the cases of human rights.<sup>xiv</sup> This order is a mile stone in relating with the formation of the Human rights Courts.

Asian Centre for Human Rights filed a public interest litigation before the Delhi High Court in August, 2011 and it had attached an order by the Supreme Court, whereby it asked them to approach high courts of all the states, asking them to fulfill their obligations under the Protection of Human Rights Act.<sup>xv</sup> The High Court bench directed the government to set up Human Rights Courts within the stipulated time frame and file a compliance report.<sup>xvi</sup> As a result of the verdict, the State of New Delhi established the Human Rights Courts.

The Supreme Court of India stated in its verdict that no reason why the State governments should not seriously consider the question of specifying human rights Court to try offences arising out of violation of human rights. There is nothing on record to suggest that the governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. The least which the State governments can and ought to do is to take up the matter with the Chief Justices of High Courts of their respective States and examine the feasibility of specifying Human Rights Court in each district within the contemplation of Section 30 of the Act<sup>xvii</sup>. It is noted that the directions from the Supreme Court made a deliberate attempt to found the Human Right Courts in every district.

Further, the apex court directed, in the last week of July, 2015, that the State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up or specifying Human Rights Courts<sup>xviii</sup>.

It is true that a plain reading of the provisions of the law may give the impression that the setting-up of a Human Rights Court rests in the discretion of the State government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression.

A plain reading of the above would show that the Parliament has used the word 'may' in section 30 of the Protection of Human Rights Act, 1993, while providing for the setting-up of a Human Rights Court. In contrast, the Parliament has used the word 'shall' in sub-Section 3(3) while providing for constitution of a National Commission.

A few States expressed that the setting up of the Human Rights Courts entails substantial amount of expenditure. Most of the ruling parties in the States are not showing interest in favour of constituting Human Rights Courts. They may feel that their acts may come under the eye of the Human Rights Courts. There is no political will for constituting the same.

The word 'may' has been often read as 'shall' or 'must' when there is something in the nature of the thing to be done which must compel such a reading. In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise<sup>xix</sup>.

Many States had its own law on right to information prior to the Right to Information Act, 2005, which is central Act. The Act repealed the State's laws on right to information and the central law fixed a date for operation of the same. Likewise, the Protection of Human Rights Act, 1993 has to be amended. The powers to constitute the Human Rights Courts have to be taken up from the State to Central government, if a State has not ready to establish the same with in a specific period.

It is very clear that the National Human Rights Commission has taken effective steps to constitute the Human Rights Courts at the district level. High courts of Uttar Pradesh and Delhi have issued direction to establish the Human Rights Courts. The Apex Court's verdict has given more strength to form the same courts. The reports of National Human Rights Commission s are evidence for the State's unwillingness to constitute the Human Rights Courts as per the law.

In order to constitute the Human Rights Courts at district level in all the States, it is essential to concentrate on the following measures.



- I. The States, which have not established the Human Rights Courts , have to initiate necessary steps to establish the same. The political will is very essential for the same.
- II. The National Human Rights Commission and the Central government have to assist the States to create the rights machineries in the district level.
- III. If the States are not ready to form the court for the human rights at the district level, the Central government has to form the same by way of necessary amendment in the law. The Section 30 of the Protection of Human Rights Act, 1993 has to be modified as suitable.

Establishing the Human Rights Courts will give easy access to the justice for the victims of human rights violations. It is the duty of the State governments to set up the Human Rights Court in the own district of the victims, which is useful for easy access to the justice and delivering speedy justice. It is time to strengthen the Human Rights Courts for the better promotion and protection of human rights.

The present condition of the Human Rights Courts seems to be an illusion at the peripheral level. If the district court of human rights is constituted all over the India, the human rights will be preserve to the core.

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