HUMAN RIGHTS COMPLAINTS: INVESTIGATION AND PROSECUTION

Dr. V. Ramaraj*

Introduction

The Protection of Human Rights Act was enacted in the year 1993. The main objectives of the 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 fulfil, 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. \(^1\) Victim of human rights violations have right to lodge a complaint before the concern police authorities or present the same before the human rights commission or the district human rights court.

A human rights violation is a wrong not only against an individual but is also against the society. It is because of this reason that the state, which represents the collective of people, participates in the criminal trial of an accused. Therefore, it is duty of the welfare State to act on behalf of the victims of human rights violation.

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 human rights complaints, investigation and prosecution are remaining unexplored. It is very essential to examine the same for the promotion and protection of human rights.

Complainant

The complaints against the human rights offences can be divided into three categories: (a) complaint to the National Human Rights Commission, (b) complaint to the State Human Rights Commission and (c) complaint to the police authorities or private complaint at District Human Rights Courts. The investigation and prosecutions procedures are different in these categories. Protection of Human Rights Act, 1993, has not defined the term "complaint" and "offence".

The Section 12 of the Act deals with the various functions of the National Human Rights Commission. This section is applicable to the State Human Rights Commissions also. The first codified function is as follows; 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, into complaint of:- (i) Violation of human rights or abetment thereof; or (ii)

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* The author is an eminent advocate
Negligence in the prevention of such violation, by a public servant; The Section 17 of the Act deals with the inquiry into complaints. Accordingly, sections 12 and 17 of the Act uses the term "complaint".

The section 30 of the Act says that 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; The section 37 of the Act says about the constitution of special investigation teams to investigate the human rights offences. Accordingly, sections 30 and 37 of the Act uses the word "offence".

Criminal Procedure Code, 1973, is applicable for the Human Rights Courts. High Court of Madras clearly mentioned in its judgment that it is legally permissible for the relevant provisions of the Criminal Procedure Code to be swing into operation for the trial of 'Human Rights' expecting matters in respect of specific provisions has been made in the Protection of Human Rights Act. Hence, it is very clear that the definition of the complaint and offence are applicable for the cases before 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.

Criminal Procedure Code, 1973, section 2 (d) defines the complaint, section 2(r) defined the police report and section 2(n) defines the offence. The "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant; The "police report" means a report forwarded by a police officer to Magistrate after the completion of the investigation. The "offence" means any act or omission made punishable by any law for the time being in force.

The procedures of the investigation and prosecutions on complaint to the National Human Right Commission and State Human Right Commissions are the same. The procedures of the investigation and prosecutions on complaint to the police authorities or private complaint at District Human Rights Courts are different. Uniform procedures of the investigation and prosecution on human rights complaints are convenient for the victims of human rights violations.

Investigation

It is noteworthy to know the investigation process in criminal cases before examining the investigation process in the human rights cases. In criminal cases, on receipt of the complaint, the police officer registers the First Information Report under section 154 of the Criminal Procedure Code. A police officer is competent to investigate only cognizable offences. Non cognizable offences cannot be investigated by the police without obtaining prior orders from the courts. The investigation of the complaint begins from the First Information Report.

A police officer can examine witnesses under section 161. However, the statements are not to be signed by the witnesses. Confessions of accused persons and statements of witnesses are recorded under section 164 of the Code. A police officer has the power to conduct searches in emergent situations without a warrant from the court under section 165. A police officer is competent to arrest an accused suspected to be involved in a cognizable offence without an order from the court in circumstances specified in section 41 of the Code. He is required to maintain a day to day account of the investigation conducted by him under section 172.
completion of investigation, a police officer is required to submit a final report to the court under section 173. If a prima facie case is made out, this final report is filed in the shape of a charge-sheet. The accused has, thereafter, to face trial. If no cogent evidence comes on record, a closure report is filed in the Court.

In criminal cases, on receipt of the complaint, if the police officer refuses to register the First Information Report, the complainant has right to file private complaint before the concern court. The procedure is given in Section 200 and 203 of the Criminal Procedure Code. There is no investigation proceedings in the private complaint. Investigation in human rights cases are differ from the criminal cases.

Section 14 of the Protection of Human Rights Act, 1993 deals with investigation, which as follows;

(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 case may be.

(2) For the purpose of instigating 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 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 service 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 court submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or person who conducted to assisted in the investigation) as it thinks fit. This provision is applicable to the National and State Human Rights Commissions.

According to the National Human Rights Commission's regulation (8) 6, on admission of a complaint, the Chairperson/Commission shall direct whether the matter would be set down for inquiry by it or should be investigated. The regulation 17 provides the investigation team for the Commission. The State Human Rights Commission's regulation 21 provides power to issue order for investigation on the complaints and regulation 4 provides the investigation division for the Commission.

Generally, on receipt of human rights complaints, the human rights commissions shall call for reports from the concern Government or authority and proceeds with same. Directing for investigation on the complaints of human rights violations is discretionary power of the human rights commissions. According to the human rights commission's sources, in less than ten percentages of complaints only commissions directed for the investigation.
The Section 37 of the Protection of Human Rights Act, 1993 provides constitution of special investigation teams. The provision as follows; 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. But, Central or State governments have not yet constituted such special investigation teams from 1993 to till date.

No first information report was registered in human rights cases by 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 Tamil Nadu from 1996 to 2011. To avoid this defect, a special investigation team for human rights should be appointed under section 37 of the Protection of Human Rights Act in the districts. If the special investigation team for human rights refuses or drops the proceedings, victims of human rights violations have right to file private complaint before the Human Rights Courts.

On receipt of direct complaints, the district special investigation team has to register First Information Report and proceed the investigation in accordance with the Criminal Procedure Code and file the report to the district human rights court for trial, which was explained earlier. The complaints of human rights violations will be against the public servants. Hence, these teams have to under the control of existing Inspector General of Police, investigation division of State Human Rights Commissions.

The investigation division of the State Human Rights Commissions shall come under the control of existing Director-General of Police, investigation agency of the National Human Rights Commissions. Thus, National Human Rights Investigation Agency (NHRIA) has to established independently like Central Bureau of Investigation. On receipt of complaints, the human rights commissions shall call for investigation report from the concern district special investigation team and proceed to the inquiry. Hence, the proposed system shall provide the investigation in each and every complaint.

Prosecution

The public prosecutor is vested with the primary responsibility to prosecute cases in the court. After the charge-sheet is filed in the court, the original case papers are handed over to him. The trial in India involves various stages. The first and foremost is the taking of cognizance of a case by the court. The second step is to frame charges against the accused, if there is a prima facie case against him. The third step is to record the prosecution evidence. The fourth step is to record the statement of the accused. The fifth step is to record the defence evidence. The sixth step is to hear the final arguments from both sides, and the last step is the pronouncement of judgement by the Court.

It is for the public prosecutor to establish the guilt against the accused in the court beyond a reasonable shadow of doubt. The evidence is in three forms, namely, oral evidence (i.e., statements of witnesses); documentary evidence; and circumstantial evidence. Forensic evidence also plays an important role in varied crimes. The prosecutor has an immense role. He has to prove the facts. He has to prove the circumstances, and then he has to draw the inferences and convince the court that the arraigned accused alone is guilty of the offences that he has been charged with.

The section 31 of the Protection of Human Rights Act, 1993 says that 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.

It is the duty of the State to prosecute cases in the courts of law. The State governments have constituted cadres of public prosecutors to prosecute cases at various levels in the subordinate courts and the
High Court. In human rights cases, allegations are against the public servants, it may be against the Central or State governments or public authorities under the same, therefore, the public prosecutor of the district human rights court shall be appointed and attached with the State Human Rights Commissions by establishing the Director of Human Rights Prosecution and Director -General of Human Rights Prosecution has to be established in the National Human Rights Commission, which will be controlling authority for the State Directorates.

There is no provision for the prosecutors in the human rights commissions as per the existing Protection of Human Rights Act, 1993. The proposed directorate of human rights prosecutions, which will have prosecutors, have to assist the victims of human rights violations in the National and State Human Rights Commissions.

Conclusion

Twenty first century has witnessed enormous development in the scientific enquiry of human rights violations and resulting strategies to be adopted to deal with the problem of human rights violations and the offender. In order to strengthen the rights of victims of human rights violations by way of proper investigation and prosecution, it is essential to concentrate on the following measures in India.

(a) Uniform procedures of the investigation and prosecution on human rights complaints are convenient for victims of human rights violations in National Human Rights Commission, State Human Rights Commissions and District Human Rights Courts.

(b) The District Special Investigation Team has to be established in the each and every district in India for human rights cases. The District Special Investigation Teams have to under the control of existing Inspector General of Police, investigation division of State Human Rights Commissions.

(c) The investigation division of the State Human Rights Commissions shall come under the control of existing Director-General of Police, investigation agency of the National Human Rights Commissions. Thus, National Human Rights Investigation Agency (NHRIA) has to established independently like Central Bureau of Investigation.

(d) On receipt of direct complaints, the District Special Investigation Team has to register First Information Report and proceed the investigation in accordance with the Criminal Procedure Code. On receipt of complaints, the human rights commissions shall call for investigation report from the concern district special investigation team and proceed to the inquiry.

(e) Special Public Prosecutors' role is very important in the District Human Rights Courts. They shall be appointed and attached with the State Human Rights Commissions by establishing the Director of Human Rights Prosecution and Director -General of Human Rights Prosecution has to be established in the National Human Rights Commission, which will be controlling authority for the State Directorates.

(f) The proposed directorate of human rights prosecutions, which will have prosecutors, have to assist the victims of human rights violations in the National and State Human Rights Commissions.

In order to realize the above said findings, the Protection of Human Rights Act, 1993 should be amended accordingly.


x Dr. V. Ramaraj, Ph.D., Thesis - Administration of Justice in Human Rights Court of Tamil Nadu since 1996, Bharathiyar University, 2012, p.214.

xi Madan Lal Sharma, Op.Cit.,