IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.09.2020

Delivered on: 05 .02.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

AND

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.41791/2006, 31071/2005, 3861/2010, 7151/2010, 7152/2010, 16751/2010, 13164/2010, 24646/2010, 26496/2010, 28551/2010, 12823/2011, 14942/2011, 20045/2011, 20073/2011, 20883/2011, 20950/2011, 23997/2011, 28616/2011, 1870/2012, 6519/2012, 10063/2013, 19297/2013, 19562/2013, 32041/2014, 22760/2017, 25166/2017, 28604/2018, 28611/2018, 29295/2018, 29300/2018, 30709/2018, 30867/2018, 33652/2018, 7201/2019, 17071/2019, 17577/2019, 27708/2019, 35379/2019, 685/2020, 4456/2020, 4980/2020, 5139/2020, 5143 to 5147/2020 and W.P.(MD) Nos.15492/2012,25881/2019 and 27187/2019 and Connected Writ Misc.Petitions

W.P.No.41791 of 2006:

Abdul Sathar .... Petitioner

Versus

1.The Principal Secretary to Government,
Home Department,
Fort St. George,
Chennai-600 009

2.The Secretary to Government,
Public Department,
Fort St. George,
Chennai-600 009

3.The State Human Right Commission,
rep. by its Acting Chairperson,
Greenways Road, Chennai-600 028.
4.Poovarasu

5.The Registrar,
National Human Rights Commission, GPO Complex,
Manav Adhikar Bhavan, C-Block,
INA New Delhi-110 023.

6.The Secretary to Government,
Union of India,
Ministry of Social Justice, Shastri Bhavan,
C-Wing, Dr.Rajendra Prasad Road,
New Delhi-110011.

7.The Home Secretary,
Union of India,
Ministry of Home Affairs,
North Block, New Delhi-110001. .. Respondents

(R5 to R7 impleaded as per the Court
order dated 26.06.2019 made in
WMP No.17549 of 2019 in
WP.No.41791 of 2006)

Prayer: Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the recommendation made in SHRC case No.73/47 of 2004 dated 03.08.2006 on the file of the third respondent and quash the same.

For Petitioner .. Mr.R.Srinivas
Mr.Arun Anbumani

For Respondents .. Mr.Sankara Narayan,
Addl.Solicitor General
assisted by Ms.M.P.Jaisha,
Central Govt.Standing Counsel
Ms.Narmatha Sampath, AAG
Mr.B.Vijay, Amicus Curie

Preferatory Note

M.SUNDAR, J.

It is often said that interpretation is a journey of discovery, which is not akin to a regular journey of discussion and dispositive reasoning which predominantly turns on 'construction'. Interpretation (unlike construction) is more in the nature of determining the idea of legal meaning of a Statute. Interpretation is a jurisprudential journey as it is the process of sifting a statute and/or it is provisions to seek the intention of the Legislature. In this order, we had embarked upon such a jurisprudential journey, which under the normal circumstances should have reached its destination before the dawn of December 2020, but that was not to be owing to the Corona virus pandemic and consequent lock down, which is now widely and commonly referred to as 'Covid-19 situation'; Covid-19 was something which we did not portend or presage when this journey commenced on 17.02.2020 and

thereafter we had no means of prophesying that it would impact one of us and personal staff of another of us.

2. We are much conscious over the joint effort to raise the efficiency and therefore, we feel it appropriate to state as to why there is a little delay in delivering this judgment, though it is not imperative for us to narrate the reasons, we believe that keeping a clear conscience is always better. We can speak only through our order with none to articulate these facts if this order is assailed in the Apex Court. Owing to conflict of judgments with regard to human rights violations, these batch of cases were referred to us by constitution of a Special Bench by the then Hon'ble Chief Justice, for a firm judicial pronouncement on the said aspect. These matters were heard by us on several listings / days in virtual Courts (Web hearing on a video conferencing platform) and finally judgment in this case was reserved on 29.09.2020.

3. The Hon'ble Supreme Court in the case of *Balaji Baliram Mupade and another vs. The State of Maharashtra and Others [Civil Appeal No.3564 of 2020 (SLP(C) No.11626 of 2020), decided on 29.10.2020,* referring to its earlier decision in *Anil Rai vs. State of Bihar* reported in

2001 (7) SCC 318, was pleased to hold as under:

> "3.... It is not necessary to reproduce the directions except to state that normally the judgment is expected within two months of the conclusion of the arguments, and on expiry of three months any of the parties can file an application in the High Court with prayer for early judgment. If, for any reason, no judgment is pronounced for six months, any of the parties is entitled to move an application before the then Chief Justice of the High Court with a prayer to re-assign the case before another Bench for fresh arguments."

S.VAIDYANATHAN, J.

4. After reserving judgment in these batch of cases, one of us (Justice S.Vaidyanathan) was deputed to the Madurai Bench of Madras High Court for three months and thereafter, one of our Personal Assistants was affected with Covid-19 and there were sudden deaths of two parents of two Personal Staff, all of which made us postpone our dictation for a short while and continue thereafter. Thereafter, all of a sudden, one of us (Justice S.Vaidyanathan) was hospitalized for few days and soon after recovery, another one of us (V.Parthiban, J.) tested Covid-19 positive and was hospitalized for a considerable period. Owing to such circumstances beyond our control, we have been forced to defer the continuation of our dictation

consecutively, as each one of us has played a role in shaping the judgment, so as to put in all the finesse and felicity at our command in articulation. As Constitutional functionaries, we owe the responsibility of delivery of orders at the earliest, but there may be certain circumstances, which may be beyond the control of humans, like the present situation.

5. We have thought it appropriate and pertinent to write this prefatory note in the light of matters now before different Hon'ble Division Benches which are awaiting this verdict. Suffice to say that pronouncing of this order which should have happened before the dawn of December 2020, is happening now owing to circumstances narrated herein which we could neither foretell nor foreshadow.

ORDER

V.PARTHIBAN, J.

6. The origin that gave rise to the reference before this Full Bench is to be traced to divergent views expressed by two Hon'ble Judges of this Court, in their respective decisions as under.

7. In W.P.Nos.21604 to 21607 of 2000, a learned Judge of this Court, Shri Justice S.Nagamuthu, in the matter of ***Rajesh Das versus Tamil Nadu State Human Rights Commission and others*** reported in 2010 (5) CTC 589 has passed a detailed order dated 27.08.2010 answering the question placed before him for consideration as to-

> **'Whether the Human Rights Commissions constituted under the Protection of Human Rights Act, 1993 (hereinafter referred to 'H.R.Act') have power of adjudication in the sense of passing an order which can be enforced *propri vigore* ?'**

8. After referring to various provisions of the 'Protection of Human Rights Act, 1993' (hereinafter, referred to 'H.R.Act') and comparing the same to the similar provisions of the Commission of Inquiry Act, 1952 (hereinafter referred to 'C.I.Act'), concluded that the recommendations made by the Human Rights Commissions are recommendatory in nature. The learned Judge has come to the conclusion on the premise that from the Statement of Objects and Reasons of H.R.Act, it was noticed that the Commission will be a fact finding body with powers to conduct inquiry into the complaints of violation of human rights. Based on the said premise, the learned Judge has drawn parallel to several provisions of H.R.Act and C.I.Act and found that many of the provisions of both the Acts are *pari*

materia to each other and therefore, the learned Judge founded his conclusion that the provisions of H.R.Act being '*pari materia*' to the provisions of C.I.Act, the recommendations of the Human Rights Commission under Section 18 of H.R.Act cannot be enforced. The learned Judge in his judgment, compared Section 13 of H.R.Act which deals with the powers relating to the inquiries, namely, the Commission shall have all the powers of a Civil Court summoning and enforcing the attendance of witnesses and examining them on oath, discovery and production of any document, receiving evidence on affidavits, and requisitioning any public record or copy thereof from any Court of office, etc. is '*pari materia*' to Section 4 of C.I.Act. wherein similar powers are vested in the Commission under C.I. Act as well. Likewise, the learned Judge has compared Section 14 of H.R. Act which deals with investigation and utilization of services of certain officers, with that of Section 5A of the C.I. Act, which is '*pari materia*'. Further, Section 15 of H.R. Act which states that no statement made by a person during 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. In fact, this provision is a replica of Section 6 of the C.I.Act, though not specifically referred to by the learned Judge. Section 16 of

H.R.Act which states that the 'persons likely to be prejudicially affected to be heard'. It also states that he should be allowed to cross examine the witnesses who speak adverse to him and also produce evidence in his defence. So is section 8-B of the C.I. Act being *pari materia* to Section 16 of H.R.Act, provides such right to the persons likely to be affected. The learned Judge has also compared Section 18 (a)(i) of H.R.Act which states that the Commission shall make a recommendation to the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim or to the members of his family with that of Section 3 of the C.I.Act which also state that the Commission shall submit its report. The learned Judge compared H.R.Commission to the Commission functioning under similar enactments like, National Commission for Minorities Act, 1992, National Commission for Women Act, 1990, National Commission for Backward Classes, 1993, etc., and concluded that the reports/recommendations to the Government are not binding on the Government. The learned Judge, in furtherance of comparative analysis of the provisions of both H.R. Act principally with C.I. Act and other Acts, has summed up in paragraph 41 as under:

> '41. To sum up:-
>
> (i) What is made under Section 18 of the Protection of Human Rights Act by the State Human Rights Commission

is only a recommendation and it is neither an order nor an adjudication.

(ii) Such a recommendation made by the State Human Rights Commission is not binding on the parties to the proceeding, including the Government.

(iii) But, the Government has an obligation to consider the recommendation of the Commission and to act upon the same to take forward the objects of the Human Rights Act, the International Covenants and Conventions in the back drop of fundamental rights guaranteed under the Indian Constitution within a reasonable time.

(iv) In the event of the Government tentatively deciding to accept the recommendation of the State Human Rights Commission holding any public servant guilty of human rights violation, the Government shall furnish a copy of the report of the Commission to the public servant concerned calling upon him to make his explanation, if any, and then pass an appropriate order either accepting or rejecting the recommendation of the Commission.

(v) Until the final order is passed by the Government on the recommendation of the Commission, neither the complainant(s) nor the respondent (s) in the human rights cases can challenge the recommendation of the commission as it would be premature except in exceptional circumstances.

(vi) On the recommendation of the Human Rights Commission, if the Government decides to launch prosecution, the Government have to order for investigation by police which will culminate in a final report under

> Section 173 of the Code of Criminal Procedure.
>
> (vii) On the recommendation of the Human Rights Commission, if the Government decides to pay compensation to the victims of human rights violation, the Government may do so. But, if the Government proposes to recover the said amount from the public servant concerned, it can do so only by initiating appropriate disciplinary proceeding against him under the relevant service rules, if it so empowers the Government.

The above judgment was delivered by the learned single Judge on 27.08.2010.

9. Shortly, after the above judgment of Shri Justice S.Nagamuthu, another learned single Judge of this Court, Shri Jutice K.Chandru, in the matter of ***T.Vijayakumar versus State Human Rights Commission, Tamil Nadu and others*** in W.P.(MD) No.12316 of 2010 vide his order dated 29.09.2010, disagreed with the views expressed by Shri Justice S.Nagamuthu in his order as referred to above. In paragraphs 16 to 18 of the order, dated 29.09.2010, the learned Judge has observed as under:

> '16. This court is not inclined to agree with the said observation since the said judgment did not refer to the previous decisions of the Supreme Court or of this Court on the very same issue. In the present case, there is no necessity to hear the delinquent officer concerned before accepting the

SHRC's report as the Government is bound to give effect to the SHRC's recommendations. In case of any difficulty, the SHRC itself can move this court for enforcement of its order under Section 18(2) for the grant of appropriate direction. Even otherwise, if the SHRC's recommendation is accepted by the State Government, the aggrieved individual will have no locus standi to attack both the Government Order as well as the recommendations of the Commission which was agreed by the appropriate Government. By virtue of Section 28(2), the State Government is bound to place the report of the Commission before the State legislature along with the Memorandum of action taken or proposed to be taken on the recommendation of the Commission. In case of non acceptance of its recommendation, it has to give reasons.'

"17. In the present case, there is no other power with the State Government to repudiate the report of the Commission. On the other hand, the State Government had accepted the recommendation of the SHRC. Therefore, it had become binding. The learned Judge in the Rajesh Das's case (cited supra) in paragraph 41(iv) did not refer to Section 28(2) of the Human Rights Act nor there was any reference to the other decisions under the said Act. Likewise, the findings in paragraph 41(vii), there need not be any disciplinary action to be initiated afresh since the relevant service rule itself provides for the recovery from the pay of the Government servant for the loss sustained by the State. It is not a case of recovery of money due to any penalty imposed on a Government servant, wherein Rule 3(a) of the Tamil Nadu Police Subordinate Service Rules may come

into operation. On the other hand, the State Human Rights Commission had quantified the compensation and mulcted a vicarious liability on the State. The State had accepted its liability and had also ordered to recover the amount as held by the Supreme Court in D.K.Basu case (cited supra).

'18. If Rajesh Das's case (cited supra) is accepted, then it will become a paradise of remedies for the delinquent Government servant not once, but three times. First before the Commission, second before the State Government which had accepted the Commission's report and third before any amount were to be recovered pursuant to acceptance of report of the Commission by the State Government. On the other hand, neither the Protection of Human Rights Act, 1993 nor the relevant service rule contemplated such multiple opportunities that too for a person who had violated law with impugnity. Such undue sympathies or liberal approach on this issue will only further embolden a delinquent Government servant to commit further human right violations with impugnity. The concept of natural justice is not immune from restrictions nor it is an inscrutable concept. It has to be applied to fact situation. It is not clear as to how the petitioner can be said to be aggrieved about the Government order and the consequent recovery when he had the full opportunity of placing his case before the SHRC which is a statutory body mandated to protect the human rights of its citizens.'

10. The learned Judge has in fact, relied on a decision of the Hon'ble Supreme Court of India, in the matter of ***D.K.Basu versus State of West Bengal*** reported in (1997) 1 SCC 416 which decision was extracted in extenso, particularly paragraphs 40, 42, 44, 45 and 54 in his order. In that decision, the Hon'ble Supreme Court has relied upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which stated that any victim of unlawful arrest or detention shall have enforceable right to compensation. The Hon'ble Supreme Court has reasoned that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution and such claim is based on strict liability and in addition to the operation of private law for damages for tortuous acts of the public servants.

11. On the basis of the above findings, the learned Judge has concluded that the concerned Government is bound to give effect to the Human Rights Commission's recommendations. The learned Judge has also made it clear that the conclusion reached in Rajesh Das' case, cannot be followed as according to the learned Judge, the decision in Rajesh Das' case has been rendered without reference to various decisions of the Hon'ble Supreme Court, particularly, in D.K.Basu' case (cited supra) and of this

Court on this issue. The leanred Judge also held that no reference was made to Section 28(2) of H.R.Act in Rajesh Das's case.

12. Curiously, a similar issue came up for consideration before the same learned Judge (Shri Justice S.Nagamuthu) in the matter of ***Abdul Sathar versus The Principal Secretary to Government and others*** in W.P.No.41791 of 2006, wherein, the learned Judge vide his order, dated 09.07.2013, has noticed subsequent decision of Shri Justice K.Chandru in **T.Vijayakumar's** case and concluded that in order to maintain judicial discipline and decorum, referred the matter to a Division Bench to resolve the conflict of views expressed by the learned Judges.

13. Earlier to these two learned single Judges' decisions, there was a decision by a learned Division Bench of this Court dated 13.12.2006, comprising the then Hon'ble Chief Justice, Shri A.P.Shah (as he then was) and Shri Justice K.Chandru in W.P.No.47861 of 2006 in the matter of ***T.Loganathan versus State of Human Rights Commission and others***, wherein, it has been held in paragraphs 15 and 16 as under:

> '15. Thus, the power of the SHRC to award compensation in case of violation of Human Rights by a state agency is beyond doubt. In fact, on the inability of the Commission to execute its

own orders and recommendations, the former Chief Justice has made a passionate plea to the State in this regard in his lecture (cited above) and the relevant passage is extracted below:

> 'Before I conclude, I must say that no purpose is served by the Commission engaging the other agencies of the State in adversarial litigation to secure enforcement of its recommendations. In this context, I would like to impress upon the State executive that by augmenting the human rights protection machinery in the State, the Government is, in fact, acquiring a partner in good governance. The law casts an obligation on each State Government to sustain the human rights apparatus by acting in its aid rather than at cross-purposes. I hope and trust that the State Government would do all it can to reinforce this partnership for the common good of the people of the State and would abide by the provisions of protection of the Human Rights Act in letter and spirit.'

'16. In the light of the above, the grievance projected by the writ petitioner has no substance and the writ petition is liable to be dismissed. However, there will be no order as to costs. As the writ petition is dismissed, there is no impediment for the State Government in implementing the order of the SHRC. As the writ petitioner is under the services of the State, we direct the Government to implement the orders of the SHRC and recover the amount from the writ petitioner and pay the same to the husband of the second respondent within a period of eight weeks from the date of receipt of a copy of this order. The State will also consider making the necessary amendments in the Act so as to provide necessary power to execute the orders of the SHRC. A copy of this order will also be marked to the Secretary, Home Department, Government of Tamil Nadu, for further actions and compliance of our order. Consequently, connected Miscellaneous Petition will also stand dismissed.'

14. In effect, the above said Division Bench has directed the Government to implement the recommendation of the State Human Rights Commission and also suggested to the Government for making necessary amendments in the Act to provide power to the Commission to execute its orders/recommendation. The Division Bench order was, in fact, authored by Shri Justice K.Chandru, and he relied upon this order in his subsequent decision in **T.Vijayakumar's** case, referred to supra.

15. Subsequently, an another Division Bench of this Court, comprising the then Hon'ble Chief Justice Shri Sanjay Kishan Kaul (as he then was) and Smt.Justice Pushpa Sathyanarayana, has approved the views taken of Shri Justice S.Nagamuthu in Rajesh Das' case vide its decision dated 27.01.2016 in W.P.No.25614 of 2010. In fact, the said Bench has extracted para 41 as found in the judgment of Shri Justice S.Nagamuthu in Rajesh Das's case and concluded that it was in complete agreement with the views expressed by the learned single Judge and ultimately, dismissed the Writ Petition filed by a person belonging to Police force involved in human rights violation. Another Division Bench of this Court comprising the Hon'ble Chief Justice Sanjay Kishan Kaul (as he then was) and Shri Justice R.Mahadevan, has taken a similar view in its order dated 17.10.2016 in

W.P.No.36022 of 2016. In that decision also, paragraph 41 of Rajesh Das' case, was extracted in full and the Division Bench has ultimately concluded that it was in agreement with the views expressed by the learned single Judge in Rajesh Das' case.

16. While matters stood thus, subsequently one another Division Bench of this Court comprising Shri Justice M.Venugopal and Shri Justice Audikesavulu in consideration of a similar *lis* before them, referred to the above decisions of the learned single Judges as well as Division Benches and concluded in its order dated 25.07.2017 in W.P.No.41791 of 2006 in the matter of ***Abdul Sathar versus The Principal Secretary to Government, Home Department and others***, that there was an apparent conflict of views and to resolve the divergence of judicial opinions, formulated the issues to be adjudicated by a larger Bench and accordingly, referred the matter to the Hon'ble The Chief Justice for the said purpose. The observations followed by the issues as framed by the Division Bench in paragraphs 7 and 8 are extracted as under:

> '7. Resultantly, we find that there is an apparent conflict of views on the issue by the following three orders of the Division Benches of this Court, viz.,
>
> (i) T. Loganathan vs- State Human Rights Commission, Tamil Nadu [(2007) 7 MLJ 1067 (DB)]

(ii) Sankar vs- Member, State Human Rights Commission, Tamil Nadu (order dated 27.01.2016 in W.P. No. 25614 of 2010)

(iii) M.Kamalakannan vs- Member, State Human Rights Commission, Tamil Nadu (order dated 17.10.2016 in W.P. No. 36022 of 2016).

'8. Hence, it has become necessary to resolve the divergence of judicial opinion set out supra. As pointed out by the decision of the Constitutional Bench of the Hon'ble Supreme Court of India in Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) 2 SCC 673 (paragraph No.12) and reiterated by the Hon'ble Supreme Court of India in P.Suseela & Ors. V. University Grants Commission (2015) 8 SCC 129 (paragraph No.25), the 'Comity of Discipline', 'Probity' and 'Propriety' requires that the appropriate recourse would be to refer the matter to the Hon'ble Chief Justice of this Court for constituting a Full Bench to determine the following questions of Law:-

(i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise ;

(ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances;

(iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act,

1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation;

(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation;

(v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent. '

17. On consideration of the above formulated issues framed by the said Division Bench, the Hon'ble The Chief Justice after constituting this Bench, has referred the same to us to answer the Reference. A short trajectory of development thus far is a fore-runner to the understanding of

the judicial minds reflected in the above decisions and this Bench shall pick up the thread from this point and proceed to examine the reference, in detail.

18. This Bench, after going through all the decisions/judgments which culminated into the present reference, in fact, does not apparently see any conflict of views in respect of the Division Benches' decision as found in paragraph 8 as extracted above, yet there appeared to be conflict of views in respect of two learned single Judges of this Court, viz., Shri Justice S.Nagamuthu in Rajesh Das's case and Shri Justice K.Chandru in **T.Vijaykumar's** case. In any event, there is a need to give a quietus to the divergent judicial perception; after all, uniform judicial disposition is the hallmark of the justice delivery system in dispensing hallowed justice in the realm of Human Rights Laws.

19. In order to resolve the issues as referred to above, to set at rest any uncertainty in implementing the recommendations of the State Human Rights Commission hereinafter referred to as 'SHRC' and adjudicating the rights of the parties who are affected by the recommendations etc., this Bench has been bestowed upon to discharge seminal duty towards finding plausible answers to the lack of clarity as it perceived in understanding the

scheme of the Protection of Human Rights Act, 1993 and the status as to the implementation of the Commission's recommendations.

20. The task which is assigned to this Bench is a momentous one as the issues that are referred to this Bench are of great public importance touching upon the entire scheme of H.R.Act. In search of answers, this Bench has to tread cautiously with circumspection on the judicial terrain, as it finds that after coming into force of H.R.Act, there is no authoritative judicial pronouncement either by the Hon'ble Supreme Court of India or the High Courts which can be taken as a precedent and as a guide for our endeavour to answer the reference from a single comprehensive source. The judicial journey of Courts thus far as in relation to the scheme of H.R. Act, has not yet crystallized into any authoritative ruling on the issues referred to this Bench. This Bench, therefore, in the little charted territory, has to go through the maze of judicial pronouncements that are already rendered, with reference to the human rights or with reference to allied issues which may help the Bench to widen the horizon of understanding the issues and its complexity. The purpose and meaning of the provisions of H.R.Act in the context of fundamental right to life, liberty and dignity guaranteed by the Constitution of India and the position, status of the Commission in taking

forward to the avowed objects of H.R.Act need an exploratory study with an incisive approach in order to discharge the arduous onus conferred upon this Bench.

21. In the spirit of the inquiry and quest for solution, in understanding the scope and the object of the provisions of H.R.Act and the shortcomings or lacunae in implementation of the recommendations of the Human Rights Commissions, this Bench as stated above, has to necessarily traverse through various provisions of H.R.Act and C.I.Act and also through various decisions of the High Courts and the Hon'ble Supreme Court of India, rendered with reference to the provisions of these Acts. Such elaborate exercise is imperative to open new avenues and vistas of understanding for laying down a definite judicial driveway for the stake holders in their journey along side the human rights laws.

22. In discharge of the wholesome and path finding exercise, this Bench has embarked upon hearing the learned counsel, representing various parties who are stakeholders in the outcome of the terms of reference. The learned Addl.Solicitor General, Addl.Advocate General, learned Senior counsel representing the Government of India, National Human Rights Commission (NHRC), State Human Rights Commission (SHRC), the State

Government and its officials, victims, delinquent Government servants, Amicus Curaie appointed to assist to this Bench have pitched in their submissions addressing the issues from their respective perspectives that are referred to this Bench.

23. Mr.R.Srinivas, learned counsel, representing Tamil Nadu State Human Rights Commission (SHRC) assisted by counsel, Mr.Arun Anbumani, has made elaborate submissions on various occasions including the dates on which this Bench conducted virtual hearings due to Covid-19 situation, strenuously, carefully and cogently by drawing our attention to various provisions of H.R. and the C.I. Acts and relevant decisions of the High Courts and the Hon'ble Supreme Court, touching upon variegated issues involved in this reference. The foremost of submissions of Mr.R.Srinivas is in relation to Issue Nos.(i) and (ii), which read as under:

> (i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?
>
> (ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances

24. According to the learned counsel, the recommendation of the Commission under Section 18 of H.R.Act is not recommendatory and the concerned Government cannot ignore it. He would submit that the comparison of the Human Rights Commission with that of the Commissions appointed under the C.I.Act is basically flawed and not sustainable. He would first submit that the scope of the Human Rights Commission in terms of the provisions of H.R.Act is fundamentally different from the Commissions appointed under the C.I.Act. He would first refer to relevant Sub Clauses of Section 2 of H.R.Act as under, as a preamble to demonstrate the statutory dissimilarities between the two Commissions.

> '**2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
>
> (a) … …. ….
>
> (b) 'Chairperson' means the Chairperson of the Commission or of the State Commission, as the case may be;
>
> (c) 'Commission' means the National Human Rights Commission constituted under section 3;
>
> (d) '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;

(e) 'Human Rights Court' means the Human Rights Court specified under section 30;

(f) 'International Covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;]

(g) 'Member' means a Member of the Commission or of the State Commission, as the case may be;

(h) to (m) …. …. ….

(n) 'State Commission' means a State Human Rights Commission constituted under section 21.

25. He would submit that what is provided under Sub Clause (d) of Section 2 of H.R.Act is an extension of what is guaranteed under Articles 14, 19, 20, 21 and 22 etc., of Part III of the Constitution of India, namely, Fundamental Rights. According to him, the Parliament in its wisdom has enacted H.R.Act to address the growing concerns of human rights violations adversely impacting the citizenry at large. The Act was brought into existence in 1993 in order to guarantee the citizens that any violation of the rights will be the subject matter of inquiry and investigation before H.R. Commission. The learned counsel would submit that merely because in Sub Para 3 of Para 4 of the Objects and Reasons to H.R.Act, it is stated that the

Commission appointed under the Act is a fact finding body, the role of the Commission cannot be reduced to a mere fact finding body. The expressions used in the Objects and Reasons ought not to be read in isolation, but it has to be read and understood in the overall scheme of the Act. He would therefore, submit that the conclusion of the learned Judge in Rajesh Das case, that was entirely premised on the expression 'fact finding body' found in the Objects and Reasons of the Act, may not be a correct conclusion.

26. The conclusion of Rajesh Das's case, was principally on the basis of the expression found in para 4(3) of Statement of Objects and Reasons of H.R.Act. According to the learned counsel, the Objects and Reasons of any enactment can only be a tool to understand the history of legislation and cannot be the basis for interpreting the substantial provisions of the Act. In this regard, the learned counsel would rely on two decisions, viz., 1997 Supp (6) SCR 282 (***Devadoss (Dead), by L.Rs., and another versus Veera Makali Amman Koil Athalur)*** and 1963 AIR (SC) 1356 (***S.C.Prashar, Income Tax Officer, Market Ward, Bombany and another versus Vasantsen Dwarkadas and others).***

27. In the first decision, he would particularly draw a reference to

paragraph 8, which is extracted as under:

> '8. Question arises, naturally whether the Court can refer to the Statement of Objects and Reasons mentioned in a Bill when it is placed before the Legislature and even if it is permissible, to what extent the Court can make use of the same. On this aspect, the law is well settled. In Narain Kanamman v. Panduman Kumar Jain, [1985] 1 SCC 1 (B). It was stated that though the Statement of Objects and Reasons accompanying a Legislative Bill could not be used to determine the true meaning and effect of the substantive provisions of a Statute , it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the Statute , and the evil which the Statute sought to remedy. (See also Kumar Jagdish Chandra Sinha v. Elleen K, Patricia D'Rozarie, [1995] 1 SCC 164.'

In the second decision, the learned counsel would refer to the following observation:

> '...It is indeed true that the Statement of Objects and Reasons for introducing a particular piece of legislation cannot be used for interpreting the legislation if the words used therein are clear enough. But the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at.'

28. He would therefore submit that the conclusion reached by the learned Judge in Rajesh Das's case and the declaration that the recommendations of H.R.Commissions are only recommendatory in nature and not binding on the concerned Government, is unsustainable.

29. According to the learned counsel, the comparison between the Human Rights Commission appointed under H.R.Act and the Commission appointed under the C.I.Act is completely misplaced and misconceived for the simple reason that the Commission under the C.I.Act draws its jurisdiction from the terms of reference by the appropriate Government appointing it, unlike the Commission under H.R.Act which is a permanent body, a standing legal forum drawing its jurisdiction from the Statute itself. In this regard, the learned counsel would rely on a decision of the Hon'ble Supreme Court reported in 1984 (1) SCC 684 (***State of Gujarat versus Consumer and Education Research Centre and others),*** wherein, the Hon'ble Supreme Court has held that the Government's power under Section 7(1)(a) of the C.I.Act ordering discontinuance of Inquiry Commission, cannot be interfered with unless it is tainted with legal malice. The learned counsel would emphasize that the Government which orders formation of

Commission under the C.I.Act, can always recall its order and bring an end to the continuance of the Commission under the C.I.Act. Such is not the case with the Commission constituted under H.R.Act. Therefore, comparison between the Commission constituted under the C.I.Act and H.R.Act is wholly invalid and amounted to misreading the scope and functioning of the two Commissions.

30. The learned counsel would refer to a decision reported in **(1997) 1 SCC 416** ***(D.K.Basu versus State of West Bengal)***, which in fact, relied on by the learned Justice Shri K.Chandru in **T.Vijayakumar's** case, wherein, he would draw attention of this Court to paragraphs 51 to 54, which are extracted as under:

> '51. In Simpson versus Attorney General [Baigent's case] (1994 NZLR, 667) the Court of Appeal in New Zealand dealt with the issue in a very elaborate manner by reference to a catena of authorities from different jurisdictions. It considered the applicability of the doctrine of vicarious liability for torts, like unlawful search, committed by the police officials which violate the New Zealand Bill of Rights Act, 1990. While dealing with the enforcement of rights and freedoms as guaranteed by the Bill of Rights for which no specific remedy was provided. Hardie Boys, J. observed :
>
> 'The New Zealand Bill of Rights Act, unless it is to

be no more that an empty statement, is a commitment by the Crown that those who in the three branches of the government exercise its functions, powers and duties will observe the rights hat the Bill affirms. it is I consider implicit in that commitment, indeed essential to its worth, that the Courts are not only to observe the Bill in the discharge of their own duties but are able to grant appropriate ad effective remedies where rights have been infringed. I see no reason to think that this should depend on the terms of a written constitution. Enjoyment of the basic human rights are the entitlement of every citizen, and their protection the obligation of every civilised state. They are inherent in and essential to the structure of society. They do not depend on the legal or constitutional form in which they are declared. the reasoning that has led the Privy Council and the Courts of Ireland and India to the conclusions reached in the cases to which I have referred (and they are but a sample) is in my opinion equally valid to the New Zealand Bill of Rights Act if it is to have life and meaning.' (Emphasis supplied)

'52. The Court of appeal relied upon the judgment of the Irish Courts, the Privy Council and referred to the law laid down in Nilabati Behera Vs. State (supra) thus:

'Another valuable authority comes from India, Where the constitution empowers the Supreme Court to enforce rights guaranteed under it. In Nilabati Bahera V. State of Orissa (1993) Cri. LJ 2899, the Supreme Court awarded damages against the Stare to the mother of a young man beaten to death in police custody. The Court held that its power of enforcement imposed a duty to 'forge new tools', of which compensation was an appropriate on where that was the only mode of redress available. This Was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity does not apply. These observations of Anand, J. at P 2912 may be noted.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the

> citizens because the courts and the law are for the people and expected to respond to their aspirations. The purpose of public law is not only to civilize public that they live under a legal system which aims to protect their interest and preserve their rights.'

'53. Each the five members of the Court of Appeal in Simpson's case (supra) delivered a separate judgment but there was unanimity of opinion regarding the grant of pecuniary compensation to the victim, for the contravention of his rights guaranteed under the Bill of Rights Act, notwithstanding the absence of an express provision in that behalf in the Bill of Rights Act.

'54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is nor available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which

> the offender is prosecuted, which the State, in law, is duty bound to do, That award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will. of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under he public law jurisdiction is, in addition to the traditional remedies and not it derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress The wrong done, may in a given case , be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.'

31. The above decision of the Hon'ble Supreme Court, according to the learned counsel, emphasized the position as to how in the realm of public law, compensation could be awarded. When a Commission functions within the realm of public law, having power to order compensation as public law remedy, it cannot be compared to the Commission constituted under C.I.Act under any circumstances.

32. In this regard, the learned counsel would draw the attention of this Court to various provisions as contained in H.R.Act. According to him, Section 12 and its Sub Clauses (c) to (f) deal with recommendations in relation towards human rights violations in a general sense, promoting human rights awareness, effective implementation of any recommendation against human rights violation, enhanced protection of human rights, etc. He would draw the attention of this Court to this provision, viz., Section 12 and Sub Clauses thereto, which read as under:

> '12. **Functions of the Commission.**—The Commission shall perform all or any of the following functions, namely:— (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], 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 promotion of human rights.'

33. The learned counsel would submit that the above provisions, particularly, Sub Clauses (c) to (f) are patently advisory in nature, as the recommendations to be made under the Sub Clauses, would obviously be generic in substance not related to any particular complaint against human rights violation. In that view, such recommendations are only to be construed as advisory and recommendatory. The learned counsel would also

draw reference to Section 20 Sub Clause (2) and Section 28 Sub Clause (2). The expression 'recommendations' that is found in these Sections would only mean the 'recommendations' in relation to Section 12 and its Sub Clauses (c) to (f). He would draw reference to these Sections and the extract of the same is given as under:

> **'20. Annual and special reports of the Commission.-**
>
> (1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
>
> (2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.
>
> **'28. Annual and special reports of State Commission.-**
>
> (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.
>
> (2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House

> of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.'

34. The learned counsel would submit that these Sections speak about placing of annual/special reports along with recommendations before the House of Parliament or State Legislature. Reading of the provisions can lead to only one conclusion, namely, that placing of Annual reports/Special reports along with recommendations before the Parliament or Legislature as the case may be, may not be in relation to a particular case of violation of human rights. On the other hand, in case of specific complaints against human rights violations, Section 18 of H.R.Act comes into play and is pressed into service. Therefore, there are two types of recommendations by the Human Rights Commission under the Act, one is advisory/academic in nature given under Section 12 (c) to (f) and another is mandatory in nature given under Section 18 of H.R.Act. The scope of Section 18 and its ambit are evidently distinguishable from the relevant Sub Clauses of Section 12 referred to above draw for such conclusion.

35. According to the learned counsel, Mr.R.Srinivas, in Rajesh Das's case, the learned Judge did not deal with either Section 12 or Section 18 of H.R.Act in proper and critical perspective. According to the learned counsel, the learned Judge has not delved deeper into the scope of various provisions of H.R.Act, particularly, Sections 12 and 18 which deal with the different aspects of the recommendation and also the Commission's hold over its recommendation/report even after it is submitted to the Government.

36. According to the learned counsel, so far there has been no authoritative pronouncement regarding the critical difference between the recommendations made under Section 12 and under Section 18 of H.R.Act. The learned counsel would reiterate that the recommendations as contemplated under Section 12 are only in relation to Sub Clauses (c) to (f) as Sub Clauses (a) & (b) are different and in fact, have nexus with Section 18 of H.R. Act. The learned counsel would further submit that as far as the Commission constituted under C.I. Act, its power to make recommendation is very limited, it cannot even recommend any punishment on the basis of its findings. In this regard, he would refer to a decision rendered by a Constitutional Bench of the Hon'ble Supreme Court of India reported in MANU/SC/0024/1958 (***Rama Krishna Dalmia versus Justice***

S.R.Tendolkar and Others). He would refer to the ruling of the Constitutional Bench in regard to the power of the Commission under C.I.Act and to bring out the material difference between Commissions constituted under C.I.Act 1958 and under H.R.Act, 1993 respectively in paragraph No.11, which is extracted herein:

> '11. Learned Counsel appearing for the petitioners, who are appellants in Civil Appeals Nos. 456 and 457 of 1957, goes as far as to say that while the Commission may find facts on which the Government may take action, legislative or executive, although he does not concede the latter kind of action to be contemplated, the Commission cannot be asked to suggest any measure, legislative or executive, to be taken by the appropriate Government. We are unable to accept the proposition so widely enunciated. An inquiry necessarily involves investigation into facts and necessitates the collection of material facts from the evidence adduced before or brought to the notice of the person or body conducting the inquiry and the recording of its findings on those facts in its report cannot but be regarded as ancillary to the inquiry itself, for the inquiry becomes useless unless the findings of the inquiring body are made available to the Government which set up the inquiry. It is, in our judgment, equally ancillary that the person or body conducting the inquiry should express its own view on the facts found by it for the consideration of the appropriate

Government in order to enable it to take such measure as it may think fit to do. The whole purpose of setting up of a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can -be no objection even to the Commission of Inquiry recommending the imposition of some. form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective proprio vigore and the statement made by any person before the Commission of Inquiry is, under S.6 of the Act, wholly inadmissible in evidence in any future proceedings, civil or criminal, there can be no point in the Commission of Inquiry making recommendations for taking any action ' as and by way of securing redress or punishment' which, in agreement with the High Court, we think, refers, in the context, to wrongs already done or committed, for redress or punishment for such wrongs, if any, has to be imposed by a

> court of law, properly constituted exercising its own discretion on the facts and circumstances of the case and without being in any way influenced by the view of any person or body, howsoever august or high powered it may be. Having regard to all these considerations it appears to us that only that portion of the last part of cl. (10) which calls upon the Commission of Inquiry to make recommendations about the action to be taken ' as and by way of securing redress or punishment', cannot be said to be at all necessary for or ancillary to the purposes of the Commission. In our view the words in the latter part of the section, namely, ' as and by way of securing redress or punishment ', clearly go outside the scope of the Act and such provision is not covered by the two legislative entries and should, therefore, be deleted. So deleted the latter portion of cl. (10) would read and the action which in the opinion of the Commission should be taken to act as a preventive in future cases'.'

37. However, as far as the Commission under H.R. Act is concerned, it is well within its purview and power to recommend punishment. Therefore, there cannot be any comparison between the two Commissions at all.

38. The learned counsel would thereafter draw the attention of this Court to Section 18. He would submit that Section 18 is the most pivotal and fulcrum of all Sections contained in the Act which actually

distinguishes the independent status of Human Rights Commission from that of the Commissions appointed by Governments under C.I.Act or under other similar enactments. The distinguishing features that are found in Section 18 have been expounded by the learned counsel, by first referring to Section 18 which is extracted below:

> '**18. Steps during and after inquiry**.—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 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 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.'

39. The learned counsel would submit that Section 18 as it appears above is self contained. Sub Clause (e) of Section 18 does not speak anything about non-acceptance of the report. But it merely speak about action taken or proposed to be taken on the inquiry report. He would emphasize that as per Sub Clause (e) of Section 18 the concerned Government or authority cannot reject or ignore the report of the recommendation, as the Sub Clause only provides for action taken or proposed to be taken leaving no other option to the concerned Government or authority. This conscious omission is particularly visible and patent since

Sub Clauses (2) of Sections 20 and 28 speak about non-acceptance as well. According to the learned counsel, Sections 20(2) and 28(2) deal with advisory jurisdiction and Section 18 recommendation deals with adjudicatory jurisdiction.

40. The learned counsel would further elaborate that Section 18 deals with inquiry report whereas Sections 20 and 28 deal with annual/special reports. Inquiry report as found in Section 18 is case specific and annual reports/special reports mentioned in Sections 20 and 28 by their very description cannot relate to a specific case, but can only be in the realm of generality. Section 18(b) provides for an opportunity for the Commission to approach the Supreme Court or the High Court concerned and such right to approach the High Court by SHRC can be resorted to, if the Government sit over the inquiry report beyond the period provided in the Statute or fixed by the Commission. The salient features of various Sections of H.R.Act, particularly, Sections 12 to 18, 20 and 28 have not been dealt with elaborately as it deserved in order to have a complete view of the scheme of H.R.Act, in Rajesh Das's case. According to the learned counsel, complete import and amplitude of Section 18 of H.R.Act have not been appreciated by the learned Judge in proper perspective. He would therefore submit that the

view expressed in Rajesh Das's case is not tenable and is incorrect.

41. The learned counsel would submit that unlike the Commission constituted under the CI Act, under Section 18(b) of H.R.Act, the Commission can approach the Hon'ble Supreme Court or the High Court concerned for seeking directions/orders/writs. The learned counsel submitted that Section 18(b) clearly makes the Commission under H.R.Act a different from the Commission constituted under the C.I.Act. Moreover, under Section 18(e), time is stipulated for the Government to forward its comments on the action taken or proposed to be taken thereon to the Commission. The said Section also states that the Commission, in its discretion, can fix further time as it deems fit. Therefore, the Commission constituted under H.R.Act does not become *functus officio*, as it is imperative on the part of the Government to forward the action taken report or proposed to be taken report to the Commission within the stipulated time. On the other hand, Section 20 or 28 as the case may be, provided that the concerned Government to assign reasons for non-acceptance of the recommendations, which requirement of the provision is clearly distinguishable and relate only to the recommendations referred under Section 12 and not under Section 18 of the Act. Section 18 does not provide

for such leeway for the Government to refuse to accept the recommendations.

42. The learned counsel would also submit that surprisingly the decisions of the Madras High Court rendered on the subject matter both by the learned Single Judges as well as the Division Benches, which have been referred to supra and which actually gave rise to the present reference before this Bench, did not take note of the earliest judgment of a Division Bench of this Court rendered on 23.06.1997 itself in Crl.R.C.No.,868 of 1996, reported in CDJ 1997 MHC 793 (***Tamil Nadu Pazhankudi Makkal Sangam, rep. by V.P.Gunasekaran, General Secretary versus Government of T.N., rep. by the Home Secretary and others).*** In fact, the said Division Bench had framed several points for consideration. But as far as the reference on hand is concerned, two points, viz., Point Nos.14 and 15 framed by the Division Bench need to be extracted as under:

> '(14) Is it not incorrect to state that the Scheme of P.H.R.A. in constituting N.H.R.C, S.H.R.C and H.R.C. indicates, in no uncertain terms, that N.H.R.C. and S.H.R.C are akin to Commissions of Inquiry set up under CIA and have no powers to give a definitive judgment in respect of offences, arising out of violation of Human Rights and are constituted with the object of creating awareness of Human

> Rights at the Governmental level and public at large, except the fact that they are permanent Standing Commissions, while, in sharp contrast, the only institution, which could inquire into, adjudicate upon and punish for violation of Human Rights is the H.R.C. first of its type anywhere in the world
>
> '(15) Whether Human Rights Commissions-N.H.R.C and S.H.R.C. have powers to pass interim orders, pending inquiry by them '

43. The Division Bench, after consideration of various points in detail in paragraphs 97 to 114, and answered the above said Point Nos.14 & 15 in paragraph 114. Paragraphs 97 to 114 are extracted hereunder:

> '97.Point Nos. 14 and 15: H.R. contemplates setting up of three institutions for tackling the issue of Human Rights violations in this country. One is N.H.R.C, the second is S.H.R.C. and the third is H.R.C.
>
> (a) Elaborate provisions have been made so far as N.H.R.C. and S.H.R.C. are concerned. The provisions dealing with constitution, composition and the powers of the Commission at the National level are set out in Chapter II and at the State level in Chapter V. The State level Commission is the exact replication of the National Commission at the state level, except with a minimal difference, getting reflected by Sec.29 dealing with application of certain provisions relatable to N.H.R.C. to S.H.R.C. The said section reads

as under:

29. Application of certain provisions relating to national human rights commission to state commissions: The provisions of Secs.9,10,12, 13, 14, 15, 16, 17 and 18 shall apply to State Commission and shall have effect, subject to the following modifications, namely,

(a) references to Commissions shall be construed as reference to State Commission ;

(b) in Sec.10, in Sub-sec.(3), for the word Secretary-General, the word Secretary shall be substituted;

(c) in Sec.12, clause (f) shall be omitted;

(d) in Sec.17, in clause (i), the word Central Government or any shall be omitted.

'98. From a cursory perusal of the said section, as extracted above, it is rather crystal clear that provisions of Secs.9, 10, and 12 to 18 pertaining to N.H.R.C are made applicable to State Commissions, with certain modifications of inconsequential nature, as indicated in clauses (a) and (b), wherein it is specifically mentioned that references to Commission shall be construed as references to State Commission and under Sec.10 in sub-Sec.(3) for the word, Secretary General , the word, Secretary shall be substituted, besides making certain other modifications, as found mentioned in Clauses (c) and (d) of some consequence to flow, in the sense of pointing out that the power of N.H.R.C, and S.H.R.C. not one and the same in respect of certain matters.

(a) Sec.12 deals with the functions of the Commission. The Commission shall perform all or any of the functions indicated in Clauses (a) to (j) therein. One of the functions of the commission in Clause (f)

pertains to study treaties and other international instruments on human rights and make recommendations for their effective implementation. This sort of a function is taken away from the purview of the State Commission. This is made abundantly clear by Clause (c) of Sec.29, which prescribes that 'In Sec. 12, Clause (f) shall be omitted.'

(b) Sec.17 deals with 'Inquiry into complaints'. Under Clause (1) of the said section, 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 organisation subordinate thereto within such time as may be prescribed by it. This sort of a power inhering in the Commission is not wholly available to the State Commission and this is made clear in an explicit fashion in Clause (d) of Sec.29, which provides that 'in Sec. 17, in clause (i) the words 'Central Government or any' shall be omitted, meaning thereby that the State Commission has no power at all to call for a report in relation to violation of the Human Rights in the process of inquiry into such complaints from the Central Government or from any other State Government, other than the State Government in relation to which the State Commission has been constituted.

99. A cursory glance or glimpse at the provisions, dealing with Commission s powers would enable us that it has the power of inquiry set up under the C.I.A. Its purpose seems to be to inform the Government of the status of the Human Rights of the country or the

State, as the case may be. It has no power to give a definitive judgment and is constituted with the object of creating awareness of Human Rights at the Governmental level and the public at large. In fact, N.H.R.C. and S.H.R.C. are conceived as Standing Commissions of Inquiry into Human Rights violation principally.

100. In sharp contrast, the only institution, which can inquire into, adjudicate, upon and punish for Human Rights Violations is the H.R.C. set out in Chapter V of P.H.R.A, about which, we have made elaborate discussion, while considering Point Nos. 1 to 4 and recorded definite findings thereon. We therefore confine our attention in examining the issue as to whether the Commission has the power to give a definitive judgment, in respect of the complaints of Human Rights violations, after due inquiry by it, in the light of the provisions adumbrated in P.H.R.A.

101. The examination of such an issue or question and finding an answer therefor is feasible, by looking into the provisions contained in Chapters III and IV of P.H.R.A.

(a) Chapter III dealing with functions and powers of the Commission consists of five sections, namely, Secs.12 to 16, while Chapter IV dealing with the procedure consists of four sections, namely, Secs.17 to 20.

(b) Sec.12 (a), relevant for our present purpose, is couched in the following terms:

'12. Functions of the Commission: The commission shall perform all or any of the

following functions, namely,

(a) 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 abatement thereof, or

(ii) negligence in the presentation of such violation, by a public servant.'

(c) From Clause (a) of Sec. 12, as extracted above, it is discernible that the Commission has the power to inquire into the complaints of violation of

(1) Human Rights; or

(2) abatement thereof; or

(3) negligence in the prevention of such violation, by a public servant. Such a power may be exercised either

(1) suo motu; or

(2) on a petition presented to it by a victim; or

(3) any person, on behalf of the victim. On peculiar feature is that all complaints without any exception whatever in respect of Human Rights violations, amounting to offences, can be lodged before the Commission, either by the victim or by any person on behalf of the victim and the Commission is competent to inquire into the same. There are no fetters or restrictions in lodging such complaints, that is to say, the complaints in respect of Human Rights violations, amounting to offences being cognizable or non-cognizable can be lodged

before the Commission.

(d) The Commission is, however, given the powers to regulate its own procedure in respect of such complaints under Sec. 10(2) of P.H.R.A. As a matter of fact, the Commission, in exercise of the powers conferred by the said sub-section has made the National Human Rights Commission (Procedure) Regulations, 1994 (for short 'Regulations) [Extract of Regulation 8 omitted-Ed.]

(e) (i) Sec.13 of P.H.R.A. deals with powers relating to inquiries. The Commission shall, for all practical purposes, be deemed to be a civil court and have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 in particular in respect of the following matters:

(a) summoning and enforcing the attendance of witnesses and examining 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; and

(f) any other matter, which may be prescribed.

(ii) 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 Sec.176 and Sec.177 of the Indian Penal Code.

(iii) The commission or any other officer, not below the rank of a Gazetted Officer, specially authorised 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 therefrom, subject to the provisions of Sec.100 of the Code in so far as it may be applicable.

(iv) The Commission shall be deemed to be a civil court and when any offence as is described in Sec.175, Sec.178, Sec.179, Sec.180 or Sec.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, 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 Sec.346 of the Code.

(v) Every proceedings before the Commission shall be deemed to be a judicial proceeding with the meaning of

Secs.193 and 228 and for the purposes of Sec.196, I.P.C. and the Commission shall be deemed to be a civil court for all purposes of Sec.195 and Chapter XXVI of the Code.

(f) Sec.14 is relatable to investigation to be undertaken by the Commission.

(i) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise 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.

(ii) For the purpose of investigating not any matter, pertaining to the inquiry, any officer or agency whose services are utilised under Sub-sec.(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.

(iii) The provisions of Sec.15 shall apply in relation to any statement made by a reason before any officer or agency, whose services are utilised under Sub-sec.(1), as they apply in relation to any statement made by a person, in the course of giving evidence before the Commission.

(iv) The officer or agency, whose services are utilised under Sub-sec.(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.

(v) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under Sub-sec.(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.

(g) Sec. 15 pertains to 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. The said statement is subject to two conditions as below: The statement-(a) is made in reply to the question which is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

(h) Sec.16 deals with the right of persons likely to be prejudicially affected to be heard. If, at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person, or 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. It, however, provides that nothing in the said section applies where the credit of the witness is impeached.

(i) Sec.17 relates to inquiry into complaints.

(i) The Commission, while inquiring into the complaints of violations of human rights may, under Clause (i) thereof, call for information or report from the Central Government or any State Government or any authority or organisation subordinate thereto within such time, as may be specified by it. If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaints on its own. 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 complaint accordingly.

(ii) Clause (ii) thereof specifically provides that without prejudice to anything contained in Clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

(j) Sec.18 contains provisions relatable to steps, after inquiry. The Commission may take any of the following steps upon the completion of an inquiry held under P.H.R.A. as indicated in Clause (1) to (6) thereof. There are:

(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; and

(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.

(k) Sec.19 is relatable to procedure with respect to armed forces.

(i) under Sub-sec.(1), notwithstanding anything contained in P.H.R.A. 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.

(ii) Sub-sec.(2) provides that 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.

(iii) Sub-sec.(3) specifies that the Commission shall publish its report, together with its recommendations made to the Central Government and the action taken by the Government on such recommendations.

(iv) Sub-sec.(4) prescribes that the Commission shall provide a copy of the report published under Sub-sec.(3) to the petitioner or his representative

102. From the conspectus of the various provisions, referred to above, the Commission simpliciter is having powers to recommend to the concerned Government or

any authority to initiate proceedings for prosecution or such other action, as the Commission may deem fit, against the concerned person or persons, in case of inquiry into the complaints of violation of Human Rights, at the instance of the instrumentalities of the State, that is to say, public servants. It can also, in such cases, recommend to the concerned Government or authority for grant of such immediate interim relief to the victim or the members of his family, as the Commission may consider necessary.

103. As respects the complaints of violation of Human Rights by members of the armed forces, the Commission shall after receipt of the report from the Central Government, may, either not proceed with the complaint or as the case may be, make its recommendations to that Government for the grant of such interim relief to the victim or members of his family, as the Commission may consider necessary, as in the case of inquiry into the complaint of violation of Human Rights of individual citizens of this country. The classification so made is beyond one s comprehension.

104. It is thus crystal clear that N.H.R.C. and S.H.R.C. are not having powers to give a definitive judgment as in the case of H.R.C. and therefore, to say that they are conceived as Standing Commissions of Inquiry, constituted with the object of creating awareness of Human Rights at the Government level and public at large is not shorn of the realities of the situation.

105. The reason why N.H.R.C. and S.H.R.C. are not given the powers to give definite judgment is rather quite obvious. In the very nature of things, the materials gathered or collected during the course of inquiry into the complaints of violation of Human Rights, amounting to offences by the Commission as

against public servants and members of armed forces cannot at all from or furnish the basis for a definitive and final judgment, in the sense of finding them guilty, resulting in conviction and consequent appropriate sentence or the passing of the award of compensation - final or interim - at the hands of the Commission, inasmuch as such a procedure, if adopted, is to result in violation of *audi alteram partem* rule, in the sense of the delinquent/accused-public servants and members of armed forces, not having been given adequacy of opportunity to defend them by adoption of procedure - fair and reasonable-giving copies of statements, documents etc., recovered or seized, as the case may be, during inquiry, to inform them, as to the case put forward against them, which they have to meet - engaging a counsel of their choice, in their defence to put questions in cross-examination of the witnesses to bring to surface the truth of the matter - offering explanation to the incriminating circumstances, if any, against them during the questioning, after the examination of the witnesses for the prosecution right to adduce evidence of rebuttal by the examination of the defence witnesses, procuring or obtaining sanction from the concerned Government, in accordance with the procedure established by law etc., the violation of which, the Apex Court elevated as infringement of fundamental rights - an undisputed proposition of law, indeed.

106. The Constitution of N.H.R.C. and S.H.R.C. as Standing Commissions cannot, however, be under -estimated or belittled, if we take into account the violations of Human Rights, at the instance of the instrumentalities of the State taking place day-in and day-out, which do not attract the attention of the public at large, but for the publication of such news by the Fourth Estate-PRESS. The existence of N.H.R.C. and S.H.R.C. as Standing Commissions of Inquiry into

Human Rights violations - we rather feel - in the long run - is going to be a balm and not a bane to the society and this conclusion of ours can very well be reinforced by a look at certain provisions of P.H.R.A.

107. The instrumentalities of the State hereafter will have to necessarily think twice before every they are to indulge in violation of Human Rights, amounting to offences, inasmuch as Democle's sword of the watchful eyes of the Commission will be hanging over their heads. As already indicated, the Commission may cause an inquiry into the complaints and the steps taken after the inquiry may result in recommendation to the concerned Government or authority, the initiation of proceedings for prosecution or such other action, as it may deem fit against the concerned person(s), besides the grant of interim relief to victims of violations of such rights. No doubt rue it is that such a recommendation is not binding upon the concerned Government. The concerned Government may or may not accept such recommendation. There is no binding force for accepting the recommendation so made. Despite such a legal position, the concerned Government is normally expected to accede to such recommendation, in the absence of compelling reasons of security involving the country, taking into account the fact that the recommendation emanates from the Commission, which consists of elite and eminent class of dignitaries, who occupied high positions in life against whom, nothing could be said except while doing so, they are motivated to activate to usher in for a society to live in peace and harmony, enjoying the full freedom from fear, without in the least, being affected~by violation of their inalienable, immordial and basic Human Rights at the hands of the instrumentalities of the State and to protect, preserve and maintain the rule of law an invaluable asset to the citizen of a democratic set up of a country, like India.

This apart, the concerned being Government may not tend to refuse to accept such recommendations in view of the fact that the annual reports and special reports, if any, filed for reasons of urgency and importance by N.H.R.C. and S.H.R.C., are required to be laid by the Central and the State Government before each House of Parliament and State Legislatures, as the case may be, along with the recommendations of the action taken or proposed to be taken on the recommendations of the Commission and the reasons for the non-acceptance of the recommendations, if any, under the salient provisions adumbrated under Secs.20 and 28 of RH.R.A, the former relatable to N.H.R.C. and the latter relatable to S.H.R.C. The concerned Government cannot remain a silent spectator in not accepting the recommendations without giving valid and tenable reasons and the likelihood of absence of such reasons, in almost all cases, cannot be ruled out of consideration. Such being the case, the concerned Government has to face ostracism or criticism from all quarters - not only from the citizens of this country but also from the citizens at global level and such fear psychosis - never fading and ever pervading in the mind of the concerned Government will prove to be a factor of such deterrence as t make it (Government) not to desist from accepting such recommendations.

108. The signal significance and paramount importance of the Constitution of the Commission can be highlighted from the other functions of the Commission, as catalogued in Clause (a) to (j) of Sec.12 of H.R.A. They read as under:

> '12. Functions of the Commission: The commission shall perform all or any of the following functions, namely:
>
> (a) 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 abatement thereof or

(ii) negligence in the presentation 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 filed 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 promotion of human rights

109. The functions of the Commission, as catalogued in Clauses (a) to (j) of Sec.12 are self-explanatory and no further elucidation is necessary.

110. The expression or terminology, human rights, figures in Clauses (a) and (b) and (d) to (j) of Sec.12. The meaning to be ascribed to the said expression or terminology in Clauses (a) and (b) cannot be the same to such an expression in Clauses (d) to (j) thereof. Clauses (a) and (b) are relatable to Human Rights, the violation of which resulted in either inquiry before the Commission or terminated by way of proceedings, pending before court, in which the Commission seeks to intervene with the approval of such court. Clauses (d) to (j) thereof speak of Human Rights in general terms. Human Rights referred to in Clauses (a) and (b) may take the contour, complexion, shape and shade of meaning in tune with the apparent tenor and terms of Sec.2(l) (d) read with Sec.30 of H.R.A., while the meaning to be ascribed to the very same expression Human Rights , occurring in Clauses (d) to (j) may not be the same. On such aspect of the matter, we may now enter into arena of discussion.

111. Useful reference may now be made, in order to highlight this aspect of the matter, to the case of Gramophone Company of India Ltd., (1984)2 S. C. C.

524:1984 S.C.C. (Crl.) 313: (1984)1 Comp.L.J. 362: A.I.R. 1984 S.C. 667, wherein Their Lordships of the Supreme Court said in the relevant portion of paragraph 22 (at page 678) as under:

' ...The same word may mean different things in different enactments and in different contexts. It may even mean different things at different places in the same Statute . It all depends on the sense of the provisions where it occurs. Reference to dictionaries is hardly of any avail, particularly in the case of words of ordinary parlance, with a variety of well known meanings. Such words take colour from the context. Appeal to the Latin root won t help. The appeal must be to the sense of the Statute .

112. The delineation of the functions of the Commission, as relatable to Human Rights in Clauses (d) to (j), if understood in the proper perspective, there can be no difficulty whatever that the expression Human Rights referred to therein means very differently from the usage of the very expression in Clauses (a) and (b). The expression Human Rights is a dynamic ever expanding concept growing intune with the march of civilisation and refinement of the culture of the people at the global level. This sort of a dynamic concept of Human Rights as contemplated in Clauses (d) to (j) require the Commission to suggest measures for the promotion of Human Rights and recommend measures for their effective implementation by undertaking necessary and requisite exercise as devised in those clauses.

113. Thus, we are of the view that the Constitution of N.H.R.C. and S.H.R.C. as Standing Commissions, is obviously, for achieving the purpose, we have indicated as above - promotion of the society to live in peace and harmony, eliminating the fear psychosis

created by the instrumentalities of the State day-in and day-out in the discharge of their functions, for reasons best known to them

114. For reasons, as above, we record our findings respectively on point Nos. 14 and 15 as below:

(a) Point No. 14: It is correct to state that the Scheme of RH.R.A. in constituting N.H.R.C, S.H.R.C. and H.R.C. indicates, in no uncertain terms, that N.H.R.C. and S.H.R.C. are akin to the Commission of Inquiry set up under C.I.A. and have no powers to give a definitive judgment in respect of offences arising out of violation of Human Rights and are constituted with the object of creating awareness of Human Rights at the Governmental level and the public at large excepting the fact that they are permanent Standing Commissions, while in sharp contrast, the only institution which can inquire into, adjudicate upon and punish for violation of Human Rights is H.R.C. first of its kind, anywhere in the world.

(b) Point No.15: The Human Rights Commission - N.H.R.C. and S.H.R.C. have only powers to recommend to the concerned Government for interim relief to the victims of human Rights violation and definitely have no powers to pass orders-interim or final, pending inquiry.'

44. In effect, the earliest Division Bench of this Court had ruled that the recommendations of the Commission are only recommendatory and in substance the conclusion in Rajesh Das' case of Shri Justice Nagamuthu was

also conclusion of the Division Bench though this Division Bench's judgment was not brought to the knowledge of the learned Single Judge while he was rendering his decision in Rajesh Das' case nor was it brought to the notice of the Judges of this Court who rendered the subsequent judgments of either as single Judges or as Division Benches.

45. The learned counsel however would draw the attention of this Court an expert's opinion on the aspect of human rights which was incorporated in the above Division Bench's order of this Court in paragraphs 159 and 160 which are extracted as under:

> '159. Mr.M.Vaithiyalingam, IAS, (Retired) learned author of the book captioned as "HANDI.ING MEN AND MATTERS --"AN ART" had distilled his varied experiences and crystallized into thoughts with a chisel of beautiful English in an enchanting style and the said author expresses his deep agony and anguish as to the exploitation of "Human Rights" in the introductory Chapter-GLIMPSES—as below:
>
> > "....human rights, is still a fragile plant vulnerable to be uprooted by the winds of social prejudice, injustice, ineffective governance or even by justified anger or irrational hatred.
> > Nobody has taken human rights seriously and exploitation continues unabated. The trend, as it appears, is that men in power are sitting on the volcano of human rights violations. How incomplete the protection is as yet, how deep-seated are the causes of the violation and how limited the strategy

> or organization which seeks in protect them are the questions agitating the human laws.

'160. A soothing balm has been provided to the agony and anguish so expressed by a bureaucrat, by another bureaucrat Dr.S.Subramanian by his expression of certain views, as is getting reflected at pages 747 to 749 under the caption, "POSITIVE ACTION FOR THE HUMANE SOCIETY" in Volume II of his book tilted as ,"HUMAN RIGHTS-- INTERNATIONAL CHALLENGES", which reads as under:

> "Human Rights recognize the inherent dignity and fundamental freedoms of all members of human family and are the foundations for all basic freedoms, justice and peace in the world. Peace and progress in a society will be possible only when the State—The Government-- and the people are conscious of the need to ensure that everyone enjoys Human Rights. Mere assertion of the principles of Human Rights in the Constitution and various laws will not ensure this. Positive steps need be taken to make the rhetoric of Human Rights into attainable realities. This calls for a massive campaign of Human Rights awareness.
>
> Human Rights movement in India has suffered so far, due to the activists adopting a negative attitude to highlight the violations only and demanding punitive action. So much so, the term Human Rights has become synonymous with punitive action. This has resulted in taking evasive action by the concerned to prevent violations coming to light than making efforts to implement human rights. This has to change and a positive content should be injected into the movement.
>
> In India, keeping in tune with the social philosophy of the Constitution, the fundamental rights and the directive principles, hundreds of pieces of social legislation have been enacted, which cover the entire gamut of Human Rights. Unless the bureaucracy in the field, who are to implement these social legislations,

are aware of their import, their enforcement would lack fervour and substance. Therefore, it is imperative that "Human Rights" teaching should be made part of the pre-induction and post -induction training programmers at all levels of bureaucracy. Field workers, particularly those involved in developmental activities are to be sensitized and made award of the significance of their role in ensuring human dignity.

Functionaries of Criminal Justice System, namely, the Police, Judiciary and the correctional Administration undertake many coercive functions for the State. Unless they are aware of the basic tenets of Human Rights, violations of the same will take place and people will be deprived of their basic freedoms and rights. The need of the hour therefore is to educate them about the proper ways of carrying out their functions keeping in view the requirements of Human Rights. Sensitization of these three groups to the need to take care of the dignity and freedoms of the citizens would call for a well organised programme to teach Human Rights at all the pre-induction and post-induction training. It is necessary to show to these functionaries that they can efficiently perform their tasks without violating Human Rights. Modification of procedures, practices and operational skills which are repugnant in human rights would become necessary.

Human Rights, as a subject of study, should be included in the curricula and syllabi of schools, colleges and universities. More reiteration of Human Rights standards will not make them understand their importance. They should be taught how, in their day-to-day life, observance of Human Rights would enhance the quality of life in the society.

Peoples' representatives—the Members of Legislatures and Parliament—are the policy-makers in the country. Special programmes to acquaint them with the basic tenets of human rights are to be conceived and implemented.

The Fourth Estate—the media—has an important role to play in moulding the public opinion. They can give a positive orientation and direction to the Human Rights

> movement. Representatives of the media are to be made award of the basic need to observe Human Rights and requested to propagate the same. Similarly, film makers and T.V. Producers are to be sensitized and requested not to highlight the violations of Human Rights in their works. Authors, playwrights and literatures are also to be requested include the theme of observance of Human Rights in their works.
>
> In a developing country, voluntary workers, the non-governmental organizations have a crucial role to play. There are many dedicated and sincere workers. One can imagine their anger and frustration, when they come across blatant violations of Human Rights in the field. All of them should eschew agitational approach for the implementation of Human Rights and instead concentrate on co-operation and collaboration. Since they are close the grass roots, their moral influence will being about a sea-change in the attitude of the bureaucracy. Confrontation and antagonism will only perpetuate the violations and only a change of heart can herald observance.
>
> Therefore, it is necessary that the NGO's should approach this issue from a positive angle.
>
> Human Rights are the ideals in which liberal democracies flourish. A positive approach to make everyone aware of these lofty ideals will ensure enhancement of the quality of life in the society. Unless and until people are convinced about the need to observe them in all their activities, these will remain utopian dreams."

We cannot, but, endorse the views, as above, of Dr.S.Subramanian, without even a little hesitation whatever.

46. The above exposition dwelling upon human rights in extenso by the professionals, who have in depth knowledge of the subject is a great eye opener and can be a guidance for the Courts to take forward human rights

violations with appropriate remedial measures as provided under H.R.Act. In fact, the learned Division Bench in the above last paragraph, endorsed the views expressed by the experts without reservation.

47. According to the learned counsel, the earliest judgment under H.R.Act by the Hon'ble Supreme Court of India, was reported in '(1996) 1 SCC page 742. The learned counsel would refer to several paragraphs of the judgment wherein, the Hon'ble Supreme Court of India was considering the recommendations of National Human Right Commission (NHRC) at the instance of the Commission itself and it delved into the Scheme of the Act and the scope of the Commission's power and purview with reference to the facts of that case. The learned counsel, by citing this judgment, emphasized the fact that the report of the National Commission was taken seriously by the Hon'ble Supreme Court and acted upon and such was the importance accorded to the Commission established under H.R.Act. The learned counsel has referred to various paragraphs in the judgment are all in relation to the factual matrix of that case.

48. The learned counsel would submit that the importance which the Hon'ble Supreme Court had attached to the recommendations of the

Commission, was not noticed by the Division Bench of this Court in its elaborate judgment dated 23.06.1997. In fact, there was no reference at all to the decision of the Hon'ble Supreme Court by the Division Bench.

49. The learned counsel would submit on the aspect of law of interpretation that the word 'Commission' must be understood in the larger context of the scheme of the Act and the meaning to it is also to be understood in that fashion. In this regard, the learned counsel would refer to a decision of the Hon'ble Supreme Court reported in AIR 1957 SC 23 (***Shamrao Vishnu Perulekar versus District Shamrao Parulekar),*** wherein, he referred to the following passage:

> '5. Reliance was placed on the following passage in Maxwell's Interpretation of Statutes, 10th Edition, page 522:
>
> > 'It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act'.
>
> The rule of construction contended for by the petitioners is well-settled, but that is only one element in deciding what the true import of the enactment. is) to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the Statute . 'The presumption', says Craies, 'that the same words are used in the same meaning is however very slight, and it is proper 'if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in

another part of an Act". (Statute Law, 5th Edition, page 159). And Maxwell, on whose statement of the law the petitioners rely, observes further on:

> 'But the presumption is not of much weight. The same word. may be used in different senses in the same Statute , and even in the same section'. (Interpretation of Statutes, page 322).'

Examining the two provisions in their context, it will be seen that section 3(1) confers on the Central Government and the State Government the power to pass an order of detention, when the grounds mentioned in that sub-clause exist. When an order is made under this provision, the right of the detenu under section 7 is to be informed of the grounds of detention, as soon as may be, and that is to enable him to make a representation against that order, which is a fundamental right guaranteed under article 22(5). Coming next to section 3(2), it provides for the power which is conferred on the State Government under section 3(1) being exercised by certain authorities with reference to the matters specified therein. This being a delegation of the power conferred on the State Government under section 3(1), with a view to ensure that the delegate acts within his authority and fairly and properly and that the State exercises due and effective control and supervision over him, section 3(3) enacts a special procedure to be observed when action is taken under section 3(2). The authority making the order under section 3(2) is accordingly required to report the fact of the order forthwith to the State along with the grounds therefore, and if the State does not approve of the order within twelve days, it is automatically to lapse. These provisions are intended to

> regulate the course of business between the State Government and, the authorities subordinate to it exercising its power under statutory delegation and their scope is altogether different from that of section 7 which deals with the right of the detenue as against the State Government and' its subordinate authorities. Section 3(3) requires the authority to communicate the, grounds of its order to the State Government, so that the latter might satisfy itself whether detention should be approved. Section 7 requires the statement of grounds to be sent to the detenu, so that he might, make a representation against the order. The purpose of 'the two sections is so different that it cannot, be presumed that the expression 'the grounds on which the order has been made' is used in section' 3(3) in the same sense 'Which it bears in section 7.'

50. The learned counsel would also refer to another decision of the Hon'ble Supreme Court reported in (1984) 2 SCC 534 (***Gramophone Company of India Ltd. versus Birendra Bahadur Pandey and others),*** wherein, he would draw the attention of this Court to paragraphs 27 to 29 which read as under:

> '27. The question is what does the word import' mean in Sec. 53 of the Copyright Act? The word is not defined in the Copyright Act though it is defined in the Customs Act. But the same word may mean different things in different enactments

and in different contexts. It may even mean different things at different places in the same Statute . It all depends on the sense of the provision where it occurs. Reference to dictionaries is hardly of any avail, particularly in the case of words of ordinary parlance with a variety of well known meanings. Such words take colour from the context. Appeal to the Latin root won't help. The appeal must be to the sense of the Statute . Hidayatullah J in Burmah Shall etc v. Commercial Tax Officer, [1961] 1 SCR 902 has illustrated how the contextual meanings of the very words import' and export' may vary.

28. We may look at Sec. 53, rather than elsewhere to discover the meaning of the word 'import'. We find that the meaning is stated in that provision itself. If we ask what is not to be imported, we find the answer is copies made out of India which if made in India would infringe copyright. So it follows that 'import' in the provision means bringing into India from out of India. That, we see in precisely how import is defined under the Customs Act. Sec. 2(23) of the Customs Act, 1962 defines the word in this manner:

> 'Import, with its grammatical variation and cognate expression means bringing into India from a place outside India. But we do not propose to have recourse to Customs Act to interpret expressions in the Copyright Act even if it is permissible to do so because Sec. 53 of the Copyright Act is made to run with Sec. 11 of the Customs Act.

29. It was admitted by the learned counsel for the respondents that where goods are brought into the country not for commerce, but for onward submission to another country, there can, in law, be no important. It was said that the object of the

Copyright Act was to precious authorised reproduction of the work or the unauthorised explosion of the reproduction of a work in India and this object would not be frustrated if infringing copies of a work were allowed transit across the country. If goods are brought in only to go out, there is no import, it was said. It is difficult to agree with this submission thought it did find favour with the Division Bench of the Calcutta High Court, in the judgment under appeal. In the first place, the language of Sec. 53 does not justify reading the words 'imported for commerce for the words imported'. Nor is there any reason to assume that such was the object of the legislature. We have already mentioned the imported attached by International opinion, as manifested by the various International Conventions and Treaties, to the protection of Copyright and the gravity with which traffic in industrial, literary or artistic property is viewed, treating such traffic on par with traffic in narcotics, dangerous drugs and arms. In interpreting the word import' in the Copyright Act, we must take note that while positive requirement of the Copyright Conventions is to protect copyright, negatively also, the Transit Trade Convention and the bilateral Treaty make exceptions enabling the Transit State to take measure to protect Copyright. If this much is borne in mind, it becomes bear that the word import' in Sec. 53 of the Copyright Act cannot bear the narrow interpretation sought to be placed upon it to limit it to import for commerce. It must be interpreted in a sense which will fit the Copyright Act into the setting of the International Conventions.'

51. The learned counsel would submit that the Hon'ble Supreme Court in the above two decisions, has laid down the principle of construction and interpretation of the words and expressions in different sections in the contextual settings. Taking cue from the above, the 'Commission' as mentioned in the Human Rights Act, cannot be compared with the 'Commission' defined in the C.I.Act. Therefore, the comparison by the learned Division Bench of this Court in its decision reported in CDJ 1997 MHC 793 (cited supra) is flawed and invalid.

52. The learned counsel would also submit that the said Division Bench's ruling that the finding of the Commission is not final *'because natural justice is not complied with*' is also incorrect and such ruling of the Division Bench is contrary to Section 16 of H.R.Act. He would refer to Section 16 of H.R.Act, which reads as under:

> '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.'

53. The above provisions clearly envisage providing of opportunity of being heard to the individual concerned in the enquiry by the Commission. Therefore, the conclusion reached by the Division Bench without reference to Section 16 of H.R.Act is incorrect and unsustainable. According to the learned counsel, the Division Bench neither dealt with Section 16 nor Section 18 of H.R.Act to premise its ultimate finding rendered in the judgment.

54. The learned counsel would proceed to draw the attention of this Court to International Covenant on Economic, Social and Cultural Rights, 1966. The said covenant was adopted by General Assembly of the United Nations on 16.12.1966 and put into force from 03.01.1976. Along with that, International Covenant on Civil and Political Rights 1966 was adopted by the United Nations and according to the learned counsel, India is a signatory to the covenant. The learned counsel would refer to Sub Clauses (2) and (3) of Article 2, which are extracted as under:

> '2. (1) ....
> (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in

accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.'

55. Besides the learned counsel would also refer to Clause No.5 of Article 9, which is extracted as under:

'5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

56. Being party to the covenant, India has committed to provide an

enforceable right to compensation for violation of human rights through a judicial body. Such enforceable right contemplated as above meant nothing but mandatorily implementing the recommendation of the Human Rights Commission constituted under H.R.Act.

57. The learned counsel would further reiterate that in terms of International Covenant on Civil and Political Rights, 1966 particularly, with reference to Sub Clause 5 of Article 9, extracted above a citizen has an enforceable right to compensation. Such enforceable right can be realized only through a complaint filed before the Commission under H.R.Act. The learned counsel would also refer to Article 17 of the same Covenant, which reads as under:

> Article 17- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks.'

58. Further, the learned counsel would submit that the Objects and Reasons which form part of H.R.Act clearly disclose the circumstances under which the Act was passed by the Parliament, particularly, he would

refer to the following Statement of Objects and Reasons, which are extracted as under:

> '**Statement of Objects and Reasons**:- India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th December 1966. The human rights embodied in the aforesaid Covenants stand substantially protected by the Constitution.
>
> 2. However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and system of administration of justice; with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation.'

According to the learned counsel that the evil of human rights violation is sought to be prevented by enacting H.R.Act and creating a Commission to carry out the Statement of Objects and Reasons.

59. The learned counsel would also refer to Article 51 of the Constitution of India where the State is under an obligation to honour

International treaty obligations for promoting international peace, security, etc. The relevant Sub Clauses (a) to (c) of Article 51 are extracted as under:

> '51. Promotion of international peace and security. The State shall endeavour to
> (a) promote international peace and security; (b) maintain just and honourable relations between nations;
> (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration.'

60. In line with the his submissions, the learned counsel would also refer to Article 73 (b) of the Constitution which reads as under:

> '73. Extent of executive power of the Union
> (1) ....
> (a) ....
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws.'

61. From the above, according to the learned counsel, what could be

deduced is that the Government of India has to honour its commitment to the international treaties and covenants, being a signatory and it has the power and obligation as well to enact laws for enforcing the rights of its citizens in terms of the international treaties, covenants, etc. Therefore, enacting H.R.Act is an essential part of the constitutional duty to protect and enforce the right of citizens in regard to the human rights.

62. In addition, the learned counsel would also refer to Article 253 of the Constitution which reads as under:

> '253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.'

63. The learned counsel would also refer to Entries 13 and 14 appended to Schedule VII of the Constitution, which are extracted as under:

> '13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
>
> '14. Entering into treaties and agreements with foreign

countries and implementing of treaties, agreements and conventions with foreign countries.'

64. All these provisions read together would indisputably point to the fact that the Commission established under H.R.Act is not a toothless body, but a judicial institution formed to enforce the rights of the citizens affected by human rights violations. The learned counsel would refer to a decision reported in (2004) 2 SCC 579 (***N.C.Dhoundial versus Union of India and others)*** and draw the attention of this Court to paragraph 14, which reads as under:

'14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of Statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in

> it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the inquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.'

65. In the above matter, though the Hon'ble Supreme Court has observed that the Commission suffered from certain statutory fetters, yet it held that the Commission has been vested with important function of protecting human rights and in that view, the learned counsel would submit that the recommendation of the Commission cannot be slighted by the Government or the Authority.

66. He would also refer to a decision of the High Court of Allahabad in MANU/UP/3212/2014 (Civil Miss.W.P.No.7878 of 2014, dated 09.12.2014 (***State of U.P. And others versus National Human Rights Commission, New Delhi and Others),*** and rely on certain observations of the High Court as found in paragraphs 9 and 10 which are extracted as

under:

> '9. From the aforesaid what follows is that after recommendation has been made by the Human Rights Commission. The State Government may deem fit and proper not to act upon the recommendations so made. The only recourse available for enforcing the recommendation of the Commission in that circumstance is by approaching the Supreme Court or the High Court for such directions, orders or writs as it may deem necessary.
>
> 10. We are also of the opinion that if a power has been conferred upon the State Government under Section 18(e) of Protection of Human Rights Act, 1993 to submit its comments on the recommendations in the shape of a report to the Commission including the action taken or proposed to be taken thereon. Such power must also be read to be available to the State Government in the matters of recommendation made by the Commission to the State Governments for grant of immediate interim relief, and for enforcing the recommendations pertaining to immediate interim relief. The same procedure has to be followed in respect of immediate reliefs as would be applicable in the matter of final reports to be submitted by the Commission meaning thereby that such order could be got enforced only by approaching the Supreme Court or the High Court. In the facts and circumstance of the

> case we, therefore, dispose of the present writ petition by providing that the State Government may file its report before the Human Rights Commission in response to the recommendation impugned in the present writ petition within two (2) weeks and it shall be open to the Human Rights Commission to proceed with the matter in accordance with Section 18 of Protection of Human Rights Act, 1993 and to do the needful accordingly.'

67. The above observation of the High Court of Allahabad would re-affirm that the recommendation of the Commission is enforceable through the Hon'ble Supreme Court or the High Court as the case may be. More importantly, the learned counsel would refer to a decision of yet another decision of the Allahabad High Court in the matter of ***State of U.P. versus National Human Rights Commission*** in W.P.(C).No.7890 of 2014 dated 01.02.2019, wherein, the Allahabad High Court, after referring to Sections 12 and 18 of H.R.Act, has held in clear terms that the word 'recommend' cannot be treated as opinion or suggestion by the Commission and such a construction would dilute the efficacy of the Commission and defeat the very statutory object of H.R.Act. The Court has clearly ruled that the Government cannot disregard the recommendation at its own discretion.

The crucial observations of the High Court in paragraphs 15 and 16 are extracted infra in the discussion part of the judgment. Therefore, the learned counsel would submit that this decision is squarely to be applied when this Full Bench discharges its obligation in answering the Reference whether the recommendation of the Commission is recommendatory or adjudicatory in nature.

68. The learned counsel relied upon another decision in regard to the above said position, rendered by the Gauhati High Court in the matter of ***Manipur Human Rights Commission versus State of Manipur and others*** reported in **2007 (2) GLT 199'**, decided on 23.01.2007, wherein, the following question was framed in paragraph 2:

> '2. The core question involved in the present writ petition is; whether the Human Rights Commission can file the present Writ Petition for issuing a writ of mandamus directing the State respondents to discharge their duties contemplated in Section 18 of the Protection of Human Rights Act, 1993.'

In answering the above question, the Gauhati High Court has held in paragraphs 14 to 19 as under:

> '14. The meaning of 'human right' and 'life' under the Universal Declaration of Human Rights, 1948 and also under Article 21 of the Indian Constitution had been discussed by the Apex Court in Chairman, Railway Board and Ors. v.

Chandrima Das (Mrs.) and Ors. (supra). It is admitted fact that India is also one of the signatories in the Universal Declaration of Human Rights, 1948. Para 28, 32 and 34 of the SCC in Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors. (supra) read as follows:

> '28. The fundamental rights are available to all the 'citizens' of the country but a few of them are also available to 'persons'. While Article 14 which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to 'person' which would also include the 'citizen' of the country and 'non-citizen', both, Article 15 speaks only of 'citizen' and it is specifically provided therein that there shall be no discrimination against any 'citizen' on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort on the aforesaid grounds. Fundamental right guaranteed under Article 15 is, therefore, restricted to 'citizens'. So also, Article 16 which guarantees equality of opportunity in matters of public employment is applicable only to 'citizens'. The fundamental rights contained in Article 19, which contains the right to 'basic freedoms', namely, freedom of speech and expression, freedom to assemble peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of territory of India and freedom to practice any profession, or to carry on any occupation trade or business are available only to 'citizens' of the country.
>
> …… …… …….
>
> '32. The word 'LIFE' has also been used prominently in the Universal Declaration of Human Rights, 1948. (See Article 3 quoted above.) The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the

> Declaration and the covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as set out by this Court in Kubic Darusz v. Union of India. That being so, since 'LIFE' is also recognized as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation a has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word 'life' cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a 'person' who may not be a citizen of the country.
>
> ….. …. …..
>
> '34. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to 'life' in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.

15. From the above discussion, this Court is of the considered view that relegating the claim for damages to file civil suit in a Civil Court is no more a good law in view of the ratio laid down by the Apex Court in Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors. (supra) and D.K. Basu v. State of W.B. . The writ petition which is undoubtedly a public law remedy has also been extended to the realm of torts. The words coined as 'constitutional tort' had been developing right from Bhim Singh v. State of J & K (1985) 4 SCC 577 and developed clearly in D.K. Basu v. State of W.B. and Chairman, Railway Board and Ors. v. Chandrima Das (Mrs) and Ors. (supra).

16. From bare perusal of Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993, it is clear that

a duty is cast on the concerned State Government, on the report or recommendation by the State Human Rights Commission to consider and forward its comments on the report including action taken or proposed to be taken thereon to the Commission. Mr. A. Nilamani Singh, learned senior counsel by pressing Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993 into service had submitted that the State Government has failed to discharge their duties contemplated in Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993. According to him, a writ of mandamus can be issued directing the state respondents to discharge their duties. In order to substantiate his submission, learned senior counsel appearing for the petitioner had referred to the decision of the Apex Court in 'Binny Ltd. and Anr. v. V. Sdasivan and Ors. wherein the Apex Court held that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and it is available against a body or person performing a public law function and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. By referring the ratio laid down by the Apex Court in Binny Ltd. and Anr. v. V. Sdasivan and Ors. (Supra) learned senior counsel for the petitioner strenuously submits that since the writ of mandamus under Article 226 is pre-eminently a public law remedy it would be available to the present writ petitioner for compelling the State Government to discharge their duties within the ambit of Section 18 of the Protection of Human Rights Act, 1993. Para 29 of the SCC in Binny Ltd. and Anr. v. V. Sdasivan and Ors. (supra) reads as follows:

> '29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued

> against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed and the denial of any right is in connection with the public duty imposed on such body, the public law remedy or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn. Vol. 30, P. 682.
>
> 17. From the above discussion, this Court is of the considered view that the present writ petition filed by the writ petitioner for a writ of mandamus for a direction mentioned above is maintainable.
>
> 18. Having regard to the above discussion and peculiar facts and circumstances of the case and also keeping in view of the ratio laid down by the Apex Court in the above cases, the core question formulated above is answered in the positive.
>
> 19. The Writ Petition is accordingly allowed. The respondents are directed to discharge their statutory duties mentioned in Sub-section (5) of Section 18 of the Protection of Human Rights Act, 1993 on the said report/recommendation dated 21.03.2001 made by the Manipur Human Rights Commission in Complaint Case No. 57 of 1999. Parties are to bear their own costs.'

69. The learned counsel would submit that the above decision has categorically held that the Commission's recommendation cannot be slighted or ignored at the instance of the Government or authority and the only option for the concerned Government or the authority in case it

disagrees with the recommendation of the Commission, is to approach the Hon'ble Supreme Court or the High Court, as the case may be.

70. The learned counsel would also rely upon yet another decision of the Hon'ble Supreme Court of India rendered in W.P.(Crl.) No.129 of 2012, dated 14.07.2017, in the matter of ***Extra Judl.Exec.Victim Families Assn.and another versus Union of India and others,*** wherein, the learned counsel would take the Court through paragraph Nos.44, 45 and 46, which are extracted as under:

> '44. Considering that such a high powered body has brought out its difficulties through affidavits and written submissions filed in this Court, we have no doubt that it has been most unfortunately reduced to a toothless tiger. We are of the clear opinion that any request made by the NHRC in this regard must be expeditiously and favourably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country. We direct the Union of India to take note of the concerns of the NHRC and remedy them at the earliest and with a positive outlook.
>
> '45. In the context of non-compliance of the orders of the NHRC, it has also been brought by the NHRC that the directions issued by it for payment of compensation to

> victims of violation of human rights are sometimes not adhered to. We have seen in Table – III above that there are some instances where the directions given by the NHRC for payment of compensation have not been implemented by the State of Manipur. This is very unfortunate but we accept the assurance of learned senior counsel appearing for the State of Manipur that the compensation awarded by the NHRC will soon be paid to the next of kin of the deceased.
>
> '46. We expect all State Governments to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time. If the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.

71. In the above decision of the Hon'ble Supreme Court, particularly in paragraph 46 as extracted above, has indeed observed that the State Government to abide by the directions issued by the Commission. It implies very clearly that the recommendations of the Commission are enforceable, binding and ought to be implemented. The learned counsel would therefore, submit that once the recommendations of the Commission are mandatorily to be implemented, the character of the inquiry by the Commission becomes adjudicatory and not mere a fact finding body.

72. The learned counsel would then refer to a decision reported in (2015) 8 SCC 744 (***D.K.Basu versus State of West Bengal and others)'.*** In this case, the Hon'ble Supreme Court dealt with the issue 'whether the constitution of State Human Rights Commission under Section 21(1) was mandatory or it was left to the discretion of the concerned Government, as the word used in the said section was "may". After interpreting the various provisions of the Act, the Hon'ble Supreme Court of India has held that the State Governments have no discretion, but are duty bound to constitute the State Human Rights Commission in their respective States. While holding as such, number of important observations have been made by the Hon'ble Supreme Court. The observations as found in paragraphs 20, 21 and 22 are extracted here under:

> '20. The upshot of the above discussion that the power of the State Governments under Section 21 to set up the State Human Rights Commissions in their respective areas/territories is not a power simplicitor but a power coupled with the duty to exercise such power especially when it is not the case of anyone of the defaulting States that there is no violation of human rights in their territorial limits. The fact that Delhi has itself reported the second largest number of cases involving human rights cases would belie any such claim even if it were made. So also, it is not the case of the North-Eastern States where such Commissions have not been set up that there are no violations of human rights in those

States. The fact that most if not all the States are affected by ethnic and other violence and extremist activities calling for curbs affecting the people living in those areas resulting, at times, in the violation of their rights cannot be disputed. Such occurrence of violence and the state of affairs prevailing in most of the States cannot support the contention that no such Commissions are required in those States as there are no human rights violations of any kind whatsoever.

'21. There is another angle from which the matter may be viewed. It touches the right of the affected citizens to 'access justice' and the denial of such access by reason of non-setting up of the Commissions. In **Imtiyaz Ahmad v. State of U.P** 2012 2 SCC 688 this Court has declared that access to justice is a fundamental right guaranteed under **Article 21 of the Constitution.** This Court observed: (**SCC p. 699**, paras 25-26)

> '25. … A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.
>
> 26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable [see United Nations Development Programme, Access to Justice —

Practice Note (2004)].'

'22. Human rights violations in the States that are far removed from NHRC Headquarters in Delhi itself make access to justice for victims from those States is an illusion. While theoretically it is possible that those affected by violation of human rights can approach NHRC by addressing a complaint to NHRC for redressal, it does not necessarily mean that such access to justice for redressal of human rights violation is convenient for the victims from the States unless the States have set up their own Commissions that would look into such complaints and grant relief. We need to remember that access to justice so much depends upon the ability of the victim to pursue his or her grievance before the forum competent to grant relief. The North-Eastern parts of the country are mostly inhabited by the tribals. Such regions cannot be deprived of the beneficial provisions of the Act simply because the States are small and the setting up of Commissions in those States would mean financial burden for the exchequer. Even otherwise there is no real basis for the contention that financial constraints prevent these States from setting up their own Commissions. At any rate, the provisions of Section 21(6) clearly provide for two or more State Governments setting up Commissions with a common Chairperson or Member. Such appointments may be possible with the consent of Chairperson or Member concerned but it is nobody's case that any attempt had in that direction been made but the same had failed on account of the persons concerned not agreeing to take up the responsibility vis-à-vis the other State. Even NHRC had in its Annual Report (1996-

> 1997) suggested that if financial constraint was really one of the reasons for not setting up of the Commission in the North-Eastern regions, the State Governments could consider setting up such Commissions by resorting to Section 21(6), which permits two States having the same Chairperson or Members thereby considerably reducing the expenses on the establishment of such Commissions.'

73. The above observations of the Hon'ble Supreme Court, according to the learned counsel, have greatly emphasized the importance and concept of access to justice and such access to justice in relation to human rights violation, a citizen can only have a re-course to invoke the jurisdiction of the Commission constituted under H.R.Act and in that view of the matter, the Commission's role in rendering justice does not amount to merely making recommendation after finding violation of human rights and be a mute witness as to what further action being taken or being refused by the concerned Government or the authority. Providing access to justice ought to mean real and effective and not illusionary. The observations of the Hon'ble Supreme Court have been extracted infra in appropriate place in the latter part of the judgment.

74. The learned counsel proceeded to refer to a decision of the

Division Bench of Kerala High Court in the matter of ***State of Kerala Versus Human Rights Commission*** reported in MANU/KE/2288/2014 in W.A.No.527 of 2014, dated 14.10.2014, wherein, the High Court of Kerala has made a succinct observation in paragraph 14 in regard to Section 18(a)(i) of H.R.Act which is extracted as under:

> '14. When the Commission has specific power under Sec.18(a)(i) that it may recommend to the concerned Government or authority to make payment of compensation or damages, we cannot accept the submission of the learned Government Pleader that the Commission under Sect.18(a)(i) cannot direct payment of compensation. When the Commission recommends to the concerned Government or Authority to make payment of compensation or damages, it is with the intend to make payment by the said authority. The use of the word 'recommend' in Sec.18(a)(i) does not take away the effectiveness or competency of the order for issuing direction for payment of compensation. We thus do not accept the submission that there is lack of jurisdiction for the Commission in directing payment of compensation.'

75. The learned counsel would submit that the observation fortifies his contention that the recommendation of the Commission cannot be taken lightly, as it is very much enforceable.

76. The learned counsel besides contending as above, has referred to a decision of the Hon'ble Supreme Court reported in (2003) 7 SCC 629 (***Balram Kumawat versus Union of India and others),*** in regard to contextual reading of interpretation of Statute . He would rely on paragraphs 20 to 27, which are crucial to be extracted at the latter part of the judgment.

> '20. Contextual reading is a well-known proposition of interpretation of Statute . The clauses of a Statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole Statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature.
>
> '21. In State of West Bengal vs. Union of India (AIR 1963 SC 1241 at p.1265), the learned Chief Justice stated the law thus:
>
> > 'The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute ; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs'.
>
> '22. The said principle has been reiterated in R.S. Raghunath vs. State of Karnataka and another (AIR 1992 SC 81 at p.89.
>
> '23. Furthermore, even in relation to a penal Statute any narrow and pedantic, literal and lexical construction may not

always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal Jurisprudence does not say so.

'24. G.P. Singh in his celebrated treatise 'Principles of Statutory Interpretation' distinguished between strict construction of penal Statutes which deals with crimes of aggravated nature vis-a-vis the nature of the activities of the accused which can be checked under the ordinary criminal law stating:

> 'In Joint Commercial Tax Officer, Madras v. YMA, Madras, Shah, J., observed : 'In a criminal trial of a quasi-criminal proceeding, the court is entitled to consider the substance of the transaction and determine the liability of the offender. But in a taxing Statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability'. With great respect the distinction drawn by Shah, J., does not exist in law. Even in construing and apply criminal Statutes any reasoning based on the substance of the transaction is discarded.
>
> But the application of the rule does not permit the court in restraining comprehensive language used by the legislature, the wide meaning of which is in accord with the object of the Statute. The principles was neatly formulated by Lord Justice, James who speaking for the Privy Council stated: 'No doubt all penal Statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notice that there has been a slip; that there has been a casus omissus; that the thing is so clearly within the mischief that it must have been included if though of.

On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal Statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment'. The above formulation has been cited with approval by the House of Lords and the Supreme Court. In the last-mentioned case, SUBBARO, J., referring to the Prevention of Corruption Act, 1947, observed : 'The Act has brought in to purify public administration. When the Legislature used comprehensive terminology - to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the Statute is in accord with the words used there'. Similarly, the Supreme Court has deprecated a narrow and pedantic construction of the Prevention of Food Adulteration Act, 1954 likely to leave loopholes for the adulteration to escape. And on the same principle the court has disapproved of a narrow construction of section 135 of the Customs Act, 1962, Section 489A of the Penal Code, Section 12(2) of the Foreign Exchange Regulation Act,1947, section 630(1)(b) of the Companies Act, 1956, section 52A of the Copy Right Act, 1957, and section 138 of the Negotiable Instruments Act, 1881. So, language permitting a penal Statute may also be construed to avoid a lacuna and to suppress the mischief and advance the remedy in the light of the rule in Heydon's case. Further, a common sense approach for solving a question of applicability of a penal enactment is not ruled out by the rule of strict construction. In State of Andhra Pradesh vs. Bathu Prakasa Rao, rice and broken rice were distinguished by applying the common sense test that at least 50% must be broken in order to constitute what could pass off as marketable 'broken rice' and any grain less than 3/4th of the whole length

is to be taken as broken.

The rule of strict construction does not also prevent the court in interpreting a Statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the Statute. Thus psychiatric injury caused by silent telephone calls was held to amount to 'assault' and 'bodily harm' under sections 20 and 47 of the Offence Against the Person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury'.

(See also Lalita Jalan and Anr. vs. Bombay Gas Co. Ltd. and others reported in 2003(4) SCALE 52).

'25. A Statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. vs. State of Assam (AIR 1990 SC 123), this Court stated the law thus: (SCC p.754, paras 118-120)

'118. The courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'. It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. The Manchester Ship Canal Co. vs. Manchester Racecourse Co. (1900) 2 Ch 352, Farwell J., said (pp. 360-61)

'Unless the words were so absolutely

> senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty.'

119. In Fawcett Properties Ltd. vs. Buckingham Country Council (1960) 3 All ER 503) Lord Denning approving the dictum of Farwell, J. said:

> 'But when a Statute has some meaning, even though it is obscure, or several meanings, even thought it is little to choose between them, the courts have to say what meaning the Statute to bear rather than reject it as a nullity'.

120. It is, therefore, the court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a Statute unworkable. In Whitney vs. Inland Revenue Commissioners (1926 AC 37) Lord Dunedin said:

'A Statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.'

26. The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. (See Salmon vs. Duncombe (1886) 11 AC 627 at 634). Reducing the legislation futility shall be avoided and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder construction for the purpose of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very

reluctant to hold that the Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. (See BBC Enterprises vs. Hi-Tech Xtravision Ltd. (1990) 2 All ER 118 at 122-3)

27. In Mohan Kumar Singhania and others vs. Union of India and others (AIR 1992 SC 1), the law is stated thus:

'We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice to say that while interpreting a Statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole Statute or series of Statutes/rules/regulations relating to the subject matter. Added to this, in construing a Statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said Statute and that every Statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.'

77. The learned counsel would emphasize that H.R.Act must receive its fullest meaning and it should be made workable by interpreting the provisions of the Act for advancing the contextual purpose. On the same lines of his submissions, the learned counsel would refer another decision of

the Hon'ble Supreme Court reported in (2004) 6 SCC 531 (***ANZ Grindlays Bank Ltd. and others versus Directorate of Enforcement and others),*** wherein, he would refer paragraph 4 which reads as under:

> '4. In order to make the Statute workable, the Court should thus take recourse to such principles of interpretation of Statute as may be necessary , keeping in view the doctrine of *ut res magis valeat quam pereat.'*

78. The learned counsel would also refer to a decision of the Hon'ble Supreme Court reported in (2005) 3 SCC 551 (***Pratap Singh versus State of Jharkhand and another),*** wherein, he would particularly draw the attention of this Court to paragraph 64 extracted infra, that the local laws to be drafted for advancing international obligations.

> '64. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The international treatises, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treatises. A right to a speedy trial is not a new right. It is embedded in our Constitution in terms of Articles 14 and 21 thereof. The international treaties recognize the same. It is now trite that any violation of human rights would be looked down upon. Some provisions of the international law although may not be a part of our municipal law but the courts are not hesitant in referring thereto so as to find new rights in the context of the Constitution. Constitution of India and other ongoing Statutes have been read consistently with the rules of international law. Constitution is a source of, and not an exercise of, legislative power. The principles of International Law whenever applicable operate as a statutory implication but the Legislature in the

> instant case held itself bound thereby and, thus, did not legislate in disregard of the constitutional provisions or the international law as also in the context of Articles 20 and 21 of the Constitution of India. The law has to be understood, therefore, in accordance with the international law. Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. A contextual meaning to the Statute is required to be assigned having regard to the Constitutional as well as International Law operating in the field. [See Liverpool & London S.P. & I Association Ltd. vs M.V. Sea Success I & Another (2004) 9 SCC 512].'

79. The observation of the Hon'ble Supreme Court would clearly establish that the Constitution and the statutory laws should be enforced advancing the international law operating in the field. H.R.Act, in fact, deals with the International Covenants. The Act defines 'human rights' which included International Covenants enforceable by the Courts in India apart from life, liberty, equality and dignity to the individual guaranteed by the Constitution. Therefore, the learned counsel would submit that there cannot be two opinions that the power of the Commission to enforce its recommendations against the concerned Government or authority is to be understood in the context of the scheme of H.R.Act. The learned counsel would rely upon paragraphs 56 and 57 of the above judgment, in support of his contention that the Statute should be interpreted in line with the International Covenants and it should be made workable.

80. The learned counsel finally submitted that in 'D.K.Basu' case (1997) 1 SCC 416 (cited supra), it was held that the compensation amount payable by the State Government can be recovered from the delinquent. Therefore, any aggrieved delinquent need not wait till the acceptance of the recommendation. The Commission's recommendations are binding on the concerned Government or authority and in which case, a delinquent Officer aggrieved by the recommendations of the Commission, need not wait for its acceptance and it is always open to him/her to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The Government can recover any compensation payable on the recommendation of the Commission and no separate enquiry is necessary under the relevant service Rules.

81. After elaborate narration of his submissions, the learned SHRC counsel, Mr.R.Srinivas, summed up forcefully that the recommendation of the Commission is binding on the concerned Government or authority under the scheme of the Act. The recommendation by H.R.Commission preceded by a detailed inquiry and investigation, ought to be construed as an adjucatory order capable of being enforced. The other references which are

ancillary before this Bench may be answered on such conclusion in respect of the first two Issues.

82. Mr.Nagoor Meeran, learned counsel appearing for one of the Writ Petitioners, would submit that he fully supports the arguments advanced by the learned counsel, Mr.R.Srinivas, for SHRC. However, he would add to the arguments advanced by the learned counsel for SHRC by referring to Article 253 of the Constitution which is extracted below:

> '253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.'

83. According to the learned counsel, the above constitutional provision would make it clear that any Statute is enacted in advancing the cause of international treaty, agreement, convention etc., has to necessarily give effect to the implementation of the international agreement. He would also refer to Section 16 already referred to by the SHRC counsel, which provides that an opportunity to be heard to any person likely to be affected

by its recommendation and in which case, no further opportunity need be given to the delinquent. According to the learned counsel, the concerned Government or authority cannot avoid implementation of the recommendations except approaching the Hon'ble Supreme Court or the High Court as the case may be. According to him, in terms of Section 21(5) of H.R.Act, wide power is vested in the Commission in matters relatable to entries enumerated in List II and List III in VII Schedule to the Constitution. The Commission can in respect of those matters can always order interim relief or compensation which is enforceable which discretion of ordering compensation is not available under Criminal Procedure Code specifically. Therefore, he would sum up by submitting that the Commission has wide powers and enforcement of its recommendations is without any doubt in the scheme of the Act.

84. Mr.Manoj Srivatsan, who is one of the counsel, concerned with the pending Reference before this Bench, at the outset, would submit that he would fully subscribe to the submissions made by Mr.R.Sreenivas, learned counsel for SHRC. However, he would wish to supplement few other points in order to elucidate the scope and ambit of Section 18 of H.R. Act. He would point out that Sub Clause (e) of Section 18 actually contains two

parts, viz., i) Inquiry report and ii) Recommendation and according to him Sub-Clause (d) of Section 18 provides only for furnishing of inquiry report to the delinquent or his representative and not the recommendation as such, as found in Sub Clause (e).

85. According to the learned counsel, the petitioner in Sub Section (d) includes complainant, victim or even delinquent. He would submit that the conclusion of the learned single Judge of this Court in Rajesh Das's case (Shri Justice Nagamuthu) in paragraph no.36, is without proper appreciation of the import of Sub Section (d) of Section 18. In fact, according to the learned counsel, the learned Judge has not properly appreciated the ruling of ***State of Bihar Vs. Lal Krishna Advani*** reported in AIR 2003 SC 3357, wherein, Hon'ble Supreme Court of India has observed in paragraph 10 as under:

> '10. We have already observed that had it been only a question of any adverse action being taken against the person against whom some adverse finding has been recorded, the contention of the learned counsel for the appellant may perhaps would have been entertainable. The government actually takes action or it does not or the fact that the report is yet to be considered from that angle, cannot be a reason to submit that it won't be appropriate stage to approach the Court. There may be occasions where after consideration of

> report the government may not decide to take any action against the person concerned yet the observation and remarks may be such which may play upon the reputation of the person concerned and this aspect of the matter has been fully taken care of under clause (b) of Section 8B of the Act. It is not, therefore, necessary that one must wait till a decision is taken by the government to take action against the person after consideration of the report. We have already dealt with the point about the right to have and protect one's reputation. We, therefore, find no force in the submission that the respondent no.1 had approached the Court at pre-mature stage.'

86. The above observations of Hon'ble Supreme Court has dealt with the reputation of the delinquent as well and if any report affects the dignity of the officer or Government or the petitioner/complainant, it is open to such of those persons to approach the Court for appropriate remedy without waiting for acceptance of the report by the concerned Government authority.

87. According to the learned counsel that the learned Judge has erred in holding that the observations of the Hon'ble Supreme Court were made in exceptional circumstances. In effect, according to the learned counsel, in 'Rajesh Das's case, it was held that the inquiry report and recommendations are inseparable. But the position is that they are two different parts. The

learned Judge has over looked the above distinction between the two. The learned counsel would also refer to the decision of the Hon'ble Supreme Court of India in the matter of ***Ram Krishna Dalmia versus Justice S.R.Tendolkar and others*** reported in MANU/SC/0024/1958.

88. In fact, the above decision has already been cited by the counsel Mr.P.Sreenivas, learned counsel appearing for SHRC. Para 11 of the decision has already been extracted supra in order to emphasis that the Commission under the C.I.Act cannot recommend punishment which the Hon'ble Supreme Court held as completely out side scope of the C.I.Act, as above. However, the learned counsel would submit that the Commission established under the C.I. Act can suggest punishment as a matter of deterrent to delinquents in future. Comparing the power of the Commission under the C.I. Act, the learned counsel would draw the reference to Sub Clauses (a) (i) and (ii) of Section 18 of H.R.Act, which provide the power to the Commission to initiate proceedings for prosecution and as such other suitable action the Commission may deem fit against the concerned person or persons and also to recommend for payment of compensation towards damages to the complainant or to the victim etc. Therefore, the recommendation in such context has to be construed as legally enforceable.

89. The learned counsel would further elaborate his submissions that in the matter of recommendations that there are four possible scenarios when the Commission concludes its inquiry followed by recommendations. (i) no violation of human rights was found and on such conclusion either complainant or the victim can approach the Constitutional Court for redressal. (ii) The Commission finding violation of human rights and the Constitutional Court is approached and the Court confirms the recommendations, in which case, the recommendation merges with the decision of the Constitutional Court and becomes a command. iii) The Commission holding violation in part and even in that situation, the decision of the Constitutional Court accepting such recommendation becomes a mandate to be implemented by the concerned Government or authority. iv) The Commission holding the Government guilty of violation and no one approached the Court at all, in that event, the Commission may invoke Section 18(b) of H.R.Act for enforcement of its recommendation and once again that becomes binding on the concerned Government. Lastly, the learned counsel would quote a Latin maxim ***sublato fundamento cadit opus*** meaning thereby that 'foundation being removed, the structure would fall. The recommendation being the foundation, if removed, the structure of the

Act would fall. He would therefore, sum up that the Commission is not a toothless body and its recommendations are the result of the adjudication of the complaint preferred before it and therefore binding on the concerned Government.

90. Ms.Nagasaila, learned counsel appearing for one of the writ petitioners, would also support the arguments advanced by Mr.R.Srinivas, learned counsel for SHRC. However, she would wish to elaborate in the context of violation of Human Rights globally and its impact on the individual Nation States, including India. At the risk of repetition, the learned counsel would submit that Sub Clauses (e) and (f) of Section 18 do not provide for any option for the Government to refuse/accept as in the case of Sub Clauses (2) of Sections 20 and 28 respectively. According to her, the Parliament has consciously omitted to use the expressions as found in Sections 20(2) and 28(2) and in Sub Clauses (e) and (f) of Section 18. Therefore, the framers of the Act have intended to provide enough power to the Commission leaving no option to the Government to reject the recommendation.

91. Ms.Nagasaila, learned counsel would also submit that the earliest

decision of the Division Bench of this Court in ***CDJ 1997 MHC 793 (Tamil Nadu Pazhankudi Makkal Sangam, rep. by V.P.Gunasekaran, General Secretary versus Government of T.N., rep. by the Home Secretary and others)***, which was relied upon by the learned counsel for SHRC, was in fact, rendered in the context of Human Rights Courts as provided under Section 30 of H.R.Act. Human Rights Courts established under H.R.Act, are empowered to try the offences arising from human rights violation. The Division Bench, according to the learned counsel, in that context felt that it was only the Human Rights Courts which can convict the persons involved in human rights violations and impose punishments and not Human Rights Commission established under Sections 3 and 21 of H.R.Act. She would refer to paragraphs 98, 99 and 100 of the judgment, which in fact, have already been extracted supra.

92. The learned counsel would further submit that when the decision was rendered by the Division Bench, i.e. on 23.06.1997, the rules or the procedure under the Human Rights Act were not referred to or brought to the knowledge of the Division Bench and therefore, the Division Bench had held that the Human Rights Commission's recommendations, in the absence of any procedure, regulating the inquiry cannot give a definite judgment and

therefore, it was akin to the Commission under C.I.Act. The Division Bench proceeded on the assumption that no proper procedure was in place and reached its conclusion which was not the correct view considering the entirety of H.R.Act and also the elaborate procedure framed for conduct of proceedings before the Commission.

93. In regard to evolution of the concept of human rights in the global arena, the learned counsel would rely on Manual of Human Rights prepared by Asia Pacific Forum Advancing Human Rights. She has chronicled as how the National Human Rights Institutions (NHRIs) have come into existence in 1970s and evolved over the years. She would refer to few passages of the Manual in regard to NHRIs and their performance. The introduction to the formation of NHRIs is extracted as under:

> 'National human rights institutions (NHRIs) are official, independent legal institutions established by the State and exercising the powers of the State to promote and protect human rights. They are established by national constitutions or acts of legislatures, guaranteeing their independence from political direction or interference, both governmental and non-governmental. They have broad mandates for the promotion and protection of human rights. They comply with the international minimum standards for NHRIs, the Principles relating to the Status of National Institutions for

> the Promotion and Protection of Human Rights (the Paris Principles).1
>
> NHRIs are innovative institutions, occupying space within the State structure among the three primary institutions of government, parliament and judiciary. They lie between the State and civil society; they are State institutions but independent of government. Because they are a new type of State institution, their natures, roles and responsibilities are still being explored and developed. This manual draws from and contributes to that work of exploration and development.
>
> The first NHRIs were established in the late 1970s and 1980s. In 1991, there were still fewer than 20 NHRIs. At their first international meeting in Paris that year, they adopted the Paris Principles, which were subsequently endorsed by the United Nations (UN) Commission on Human Rights and the United Nations General Assembly (UNGA).2 The Paris Principles provide a benchmark, a set of minimum requirements, for NHRIs.

94. She would also refer to the State obligations under International Human Rights law, which are stated herein:

> **'State obligations under International Human Rights Law:**
>
> Obligations under international human rights law fall on States. States are responsible for the promotion and protection of the human rights and the performance of the obligations that they voluntarily accept through becoming parties to (that is, ratifying or acceding to) treaties and that they acquire under international customary law.
>
> The human rights obligations of States are said to fall into

three categories:

* the obligation to respect: States themselves and their agents, including the police and the military, must not violate human rights;

* the obligation to protect: States must prevent human rights violations by others, including individuals, corporations and other organisations and actors;

* the obligation to fulfil: States must take positive action to ensure the full enjoyment of all human rights by all people;

States are accountable internationally for their performance of these obligations. Through the UN Human Rights Council's Universal Periodic Review (UPR), each State must report every four and a half years on its performance, expose itself to questioning and the responses of other States to its report and answers, and receive the recommendations of other States on what action it should take to improve its performance.11 Through the treaty monitoring bodies established by each of the core human rights treaties, each State party to each treaty must report regularly to the relevant treaty monitoring body, attend its meeting, answer the questions of its independent expert members and receive its findings and recommendations.

1.2. Domestic implementation and monitoring mechanisms

The international human rights system has developed a range of mechanisms, including the UPR and the treaty monitoring bodies, to encourage and monitor implementation of human rights obligations. However, the international system recognises that implementation and monitoring are best undertaken at the national or domestic level. The international system is at best a residual system that, first, promotes domestic action and monitoring and, second, where domestic systems are ineffective or inadequate, provides some limited measures of international action.

There is a large range of domestic mechanisms and measures that States can use to implement and monitor the performance of their international human rights obligations. All the ordinary institutions of a democratic, pluralistic State can and should contribute.

* **Parliaments** can enact laws that respect, protect and fulfil human rights. They can hold governments to account for

their policies, programs and actions that affect human rights.

* **Governments and their civil servants** can develop, adopt and implement policies and programs that respect, protect and fulfil human rights. They can take action to ensure that violations are prevented and, where violations occur, that violators are held to account and victims are provided with reparations.

* **Courts** can enforce laws that respect, protect and fulfil human rights. They can

punish perpetrators of human rights violations and provide protection and reparations for victims. In particular, they can uphold the rule of law and ensure equality before the law and due process for all persons within their jurisdiction.

* **Official governance institutions,** such as anti-corruption commissions, administrative ombudsmen's offices and administrative review tribunals, have roles to play in promoting and protecting human rights within their specific mandates in the governmental structure of the State.

* **Political parties** have particular responsibilities, both positive and negative. Positively, they should be promoters of human rights, developing good policies and promoting those policies within the electorate through community education to build a constituency for human rights. Negatively, they must avoid campaigns that build on popular prejudices, such as racism and sexism, and reject policies that would lead to the violation of human rights.

* **The media** have similar responsibilities to promote positively human rights values and principles and to avoid committing, endorsing or encouraging actions and views that violate human rights. They can and should investigate and publicise the actions and defects of formal State institutions – parliaments, governments and courts – so that the broader community knows what is happening and the electorate can hold them to account.

* **Civil society, including non-government organisations (NGOs), trade unions, business associations, universities and schools, religious communities and groups,** share the responsibilities of the media in promoting positively human rights values and principles and avoiding committing, endorsing or encouraging actions and views that violate

human rights. They too can encourage the implementation of human rights obligations and monitor and expose deficiencies in State performance.

National human rights institutions (NHRIs) established in accordance with the international minimum standards for NHRIs are another domestic mechanism to assist the State to meet its international obligations to respect, protect and fulfil human rights. NHRIs do not compete with or take the place of other domestic institutions and mechanisms, such as the courts, but rather complement other institutions and mechanisms in their work.

National Institutions are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground.

This manual focuses specifically on the mechanism of NHRIs rather than other domestic mechanisms, although the manual also comments on how NHRIs can and should relate to other domestic mechanisms and to international mechanisms.14

1.3. Early encouragement of NHRIs

The international system has recognised since its earliest days that the implementation of human rights obligations is, first and foremost, a domestic responsibility. For almost 70 years it has encouraged the development and establishment of specialised domestic mechanisms for this.

In 1946, two years before it adopted the Universal Declaration of Human Rights, the UN Economic and Social Council (ECOSOC) asked UN member States to consider -the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the [UN] Commission on Human Rights. These -local human rights committees were not envisaged to be independent monitoring and investigation institutions that NHRIs are, but the ECOSOC resolution recognised the need for domestic human rights groups and anticipated the later development of NHRIs. However, there was little evidence of States rushing to respond to this request.

Fourteen years later, in 1960, ECOSOC went further and was more specific. It recognized that national institutions could play a unique role in the promotion and protection of human rights and invited States to establish and strengthen them. There were some stirrings in that direction but little action.

After another 18 years, in 1978, the UN Commission on Human Rights took up the challenge of promoting domestic monitoring by specialised domestic institutions.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978, during which a series of guidelines was approved. These guidelines suggested that the functions of national institutions should be:

(a) To act as a source of human rights information for the Government and people of the country;

(b) To assist in educating public opinion and promoting awareness and respect for human rights;

(c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;

(d) To advise on any questions regarding human rights matters referred to them by the Government;

(e) To study and keep under review the status of legislation, judicial decisions and

administrative arrangements for the promotion of human rights, and to prepare and

submit reports on these matters to the appropriate authorities;

(f) To perform any other function which the Government

may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

(a) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;

(b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;

(c) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the protection and promotion of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.

With this international encouragement, States began to establish NHRIs. However, in spite of the international encouragement, progress was slow. In 1990, there were fewer than 20 NHRIs.18 Two events in the early 1990s led to the rapid increase in NHRIs over the following 20 years.

1.4. The Paris workshop and the Paris Principles

The first significant event was a workshop of NHRIs, convened by the UN Commission on Human Rights in Paris, France, from 7 to 9 October 1991. The workshop was attended by representatives of NHRIs and of States, the UN and its agencies, intergovernmental organisations and NGOs. The key participants for the first time were the NHRIs themselves. The workshop was to review and update information on existing NHRIs, review patterns of cooperation of NHRIs with international institutions and explore ways of increasing the effectiveness of NHRIs.

The workshop did what it was told to do but, in addition, and

far more importantly, it drafted the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles). The Paris Principles were endorsed by the UN Commission on Human Rights in 1992 and by the General Assembly in 1993. They are the standard against which NHRIs are assessed for recognition and participation in the international human rights system and are -the test of an institution‘s legitimacy and credibility.

The Paris Principles are not lengthy – only about 1,200 words. They are quite general overall, though some parts are very specific. -They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.

This manual will examine the various requirements of the Paris Principles in detail in later sections.

1.5. Vienna Declaration and Programme of Action

The second significant event was the Second World Conference on Human Rights, held in Vienna, Austria, in June 1993. The Vienna World Conference saw the participation of NHRIs for the first time in such an important international forum. They participated in their own rights, not as members of their governments‘ delegations, as they had until then in meetings of the UN Commission on Human Rights. They had designated seating and independent speaking rights in the Conference plenary sessions. They played a major role in drafting and negotiating the Conference statement, the Vienna Declaration and Programme of Action (VDPA)

Most importantly for NHRIs, the VDPA gave strong endorsement for the establishment and strengthening of NHRIs in accordance with the Paris Principles. It encouraged States that did not have an NHRI to establish one. It said:

The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information,

and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

1.6. Regular resolutions on NHRIs by UN bodies

Over the past 20 years, the most important UN bodies with human rights responsibilities have regularly passed resolutions on NHRIs. These resolutions continue the VDPA's recommendation to States for the establishment of NHRIs and, where established, their strengthening. They take account of developments each year. In particular, they have expanded the role of NHRIs within international human rights system, including the participation rights of NHRIs within the official inter-governmental forums, such as the UN Human Rights Council. It has now been proposed that NHRIs have recognition and status, including participation rights, in the General Assembly itself.

The former Commission on Human Rights adopted an annual resolution on NHRIs for many years before its abolition in 2006. When the Human Rights Council was established to replace the Commission, it implemented Commission decisions relating to NHRI participation but it did not at first continue the practice of annual resolutions. That practice has now been revived and the Council has given the strongest endorsement yet to the important roles and functions of NHRIs established in accordance with the Paris Principles.

1.7. The global spread of NHRIs

Since the Vienna World Conference in 1993, the number of NHRIs has increased more than fivefold, from less than 20 to more than 100, of which around 70% are recognised as fully compliant with the Paris Principles. In large part, this growth is due to the work of the High Commissioner for Human Rights.

Another of the VDPA's recommendations was the consideration of establishing the position of High Commissioner for Human Rights, a new UN official at the

> highest level with specific responsibility for human rights.27 When the position was established, the High Commissioner and the Office of the High Commissioner for Human Rights (OHCHR) gave priority for implementing the VDPA's recommendation on NHRIs and General Assembly and Commission on Human Rights resolutions on NHRIs, supporting their establishment and strengthening in all regions. From 1995 to 2003, this support was provided by a Special Adviser to the High Commissioner.28 More recently, it has been provided by a specialist unit within OHCHR, now called the National Institutions and Regional Mechanisms Section (NIRMS). The efforts of the High Commissioner and OHCHR have contributed significantly to the expansion in the numbers of NHRIs.'

95. The learned counsel would submit that over the years the human right laws have assumed great importance that gave rise to the establishment of NHRI in various Nation States and the above principles evolved from 'the Paris Principles' of the Vienna World Conference on Human Rights, would strongly out-lined the necessity of Institutions to address the concerns of human rights violations and effectiveness of mechanism provided by the Nation States. India being an active participant in the workshops, conventions and international treaties concerning the human rights, has therefore, established the Human Rights Commissions by bringing in enactment of the Protection of Human Rights Act in 1993 close on the heels of the above convention and the principles extracted supra.

96. The learned counsel would also refer to the power and ambit of

NHRIS in Human Rights matters in comparison with the regular Courts, she would particularly rely on the following two paragraphs in the Manual under Chapter 'the Nature and Concept of NHRIs.

> 'NHRIs do not compete with the courts. They complement the courts. Formally, they have similarities with the status of courts. Courts are set up under the State‘s constitution and laws. They too are independent institutions. Courts and NHRIs are both subject to and limited by the provisions of the laws that establish them. Both courts and NHRIs must operate according to the rule of law and the principles of natural justice and due process. The members of courts and of NHRIs are appointed through executive or legislative processes or some mix of the two. The funding of courts and NHRIs is determined through the ordinary budgetary processes of the State and requires some form of parliamentary approval and allocation. Both courts and NHRIs have responsibilities for the promotion and protection of human rights. Courts and NHRIs may have some overlapping responsibilities. Most NHRIs, for example, have jurisdiction to receive and investigate individual complaints of human rights violations and some NHRIs have power to make binding, enforceable determinations on those complaints, much as courts do. For the most part, however, courts and NHRIs have different but complementary roles and functions. NHRIs do things that courts cannot do or cannot do well.

97. The learned counsel would submit that it is not for the Commission to inflict punishment on the delinquent as a substitute for disciplinary proceedings to be initiated by the department concerned, nor it can hand out conviction or punishment under criminal law, but it can certainly make recommendation towards that and the same is enforceable. She would also draw the attention of this Court to the 'Paris Principles' which according to the learned counsel, were the minimum international standards prescribed for NHRIs.

98. The learned counsel would also refer to the powers to be exercised by NHRIs as exemplified in the Manual, as under:

> '11.1. Basic powers
>
> NHRIs require the powers necessary to perform their functions effectively. The Paris Principles set out some of those powers, including:
>
> * to initiate inquiries and investigations
> * to take evidence
> * to obtain documents and information
> * to make public statements and to publicise reports, findings and recommendations
> * to undertake consultations
> * to cooperate with other State institutions, including courts, and with NGOs.209
> * Certain additional powers that are implied in the broad mandates of NHRIs include the power to enter premises,

including prisons and detention centres, for the purpose of inspection and investigation. These powers are necessary means of exercising NHRIs' broader responsibilities under the Paris Principles. It may also be that additional powers arise under other international law, for example, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

NHRIs with quasi-judicial competence necessarily require powers related to the performance of those responsibilities. Those powers are not specified in the Paris Principles but they are necessary to the responsibilities set out there. The powers are basic powers of investigation, including:

* to take evidence from victims and witnesses
* to compel the attendance of a witness for questioning, even if in custody
* to obtain documents and information
* to enter premises.

The existence of a power requires the imposition of a penalty if any person or organisation fails to comply with an order issued pursuant to that power. NHRIs should be able to issue orders under their investigative powers and have the courts enforce the orders and penalise those who do not comply.'

99. The learned counsel would further in extenso, refer to 'the Paris Principles' in relation to status of National Institutions, which were in fact, adopted by the General Assembly of United Nations by resolution 48/134 dated 20.12.1993. The principles adopted would give a broad mandate and

Institutions to be established by Nation States that need to have certain responsibilities. She would draw reference to the competence and responsibilities enumerated in the principles as under:

> **'Principles relating to the Status of National Institutions**
>
> **(The Paris Principles)**
>
> **Adopted by General Assembly resolution 48/134 of 20 December 1993**
>
> **Competence and responsibilities**
>
> 1. A national institution shall be vested with competence to promote and protect human rights.
>
> 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
>
> 3. A national institution shall, inter alia, have the following responsibilities:
>
> (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
>
> (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to

preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and,

where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.'

100. The above observations clearly spelt out that the complaints of Human Rights violations need to be settled with binding determination and the Human Rights Bodies ought to have the ability to seek the enforcement through the Court system.

101. The learned counsel would also refer to Articles 8 of Universal Declaration of Human Rights adopted by the United Nations on 10.12.1948, which read as under:

'**Article 8**

Everyone has the right to an effective remedy by the competent national Tribunals for acts violating the fundamental rights granted him by the constitution of law.'

102. The learned counsel would further submit that in line with the principles as enumerated above, the National Human Rights and State

Commissions have been established to carry out the international obligations and also to fulfill the Constitutional goals. According to the learned counsel, the National Human Rights Institutions as envisaged in the principles have also been accredited institutions functioning under the aegis of Global Alliance of National Human Rights Institutions whose Statute was adopted by the U.S.General Assembly and accredition was granted to the NHRIs, there is a provision available in Article 23 of the Statute that NHRI may lose its rights and privileges through the accredition, if NHRIs are not carrying out the mandate on the basis of 'Paris Principles' adopted. Therefore, she would submit that so much importance has been given to the Human Rights Institutions and elaborate guidelines as to how those institutions should function in the realm of Human Rights Laws.

103. According to the learned counsel, the provisions of H.R.Act are in fact in furtherance of the powers attributable to NHRIs as part of the Global obligations on the part of the Nation States. The learned counsel, therefore, submit that viewing from such Global perspective, the Human Rights Commission cannot be reduced to a helpless state and its recommendations cannot held to be not enforceable. Holding that the recommendation of the Commission is merely recommendatory would cut at

the root of H.R.Act itself and would be against all international principles and treaties and declaration, to which India was a party too.

104. The learned counsel would also refer to another recent resolution adopted by the United Nations General Assembly on 17.12.2015. Out of several resolutions adopted by the General Assembly, more particularly the following resolutions are important for consideration of this Bench.

> 'Taking note with appreciation of the reports of the Secretary-General on national institutions for the promotion and protection of human rights and on the process currently utilized by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national institutions in compliance with the Paris Principles,
>
> Welcoming the strengthening in all regions of regional cooperation among national human rights institutions, and noting with appreciation the co ntinuing work of the Network of African National Human Rights Institutions, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia-Pacific Forum of National Human Rights Institutions and the European Network of National Human Rights Institutions,
>
> '1. Takes note with appreciation of the report of the Secretary-General;
>
> 2. Reaffirms the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles;
>
> 3. Recognizes the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level, including by contributing to

follow-up actions, as appropriate, to the recommendations resulting from the international human rights mechanisms;

4. Welcomes the increasingly important role of national institutions for the promotion and protection of human rights in supporting cooperation between their Governments and the United Nations in the promotion and protection of human rights;

5. Underlines the value of national human rights institutions, established and operating in accordance with the Paris Principles, in the continued monitoring of existing legislation and in consistently informing the State about the impact of such legislation on the activities of human rights defenders, including by making relevant and concrete recommendations;

6. Recognizes the role that national human rights institutions can play in preventing and addressing cases of reprisals as part of supporting the cooperation between their Governments and the United Nations in the promotion of human rights, including by contributing to follow-up actions, as appropriate, to recommendations made by international human rights mechanisms;

7. Also recognizes that, in accordance with the Vienna Declaration and Programme of Action, it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

8. Encourages Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all, as outlined in the Vienna Declaration and Programme of Action;

9. Welcomes the growing number of States establishing or considering the establishment of national institutions for the promotion and protection of human rights, and welcomes in particular the growing number of States that have accepted recommendations to establish national institutions compliant with the Paris Principles made through the universal periodic review and, where relevant, by treaty bodies and special procedures;

10. Encourages national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international human rights instruments;

11. Stresses that national human rights institutions and their respective members and staff should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries, and calls upon States to promptly and thoroughly investigate cases of alleged reprisal or intimidation against members or staff of national human rights institutions or against individuals who cooperate or seek to cooperate with them;

12. Recognizes the role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies, in accordance with Council resolutions 5/1 and 5/2 of 18 June 2007 9 and Commission on Human Rights resolution 2005/74 of 20 April 2005;10

13. Welcomes the strengthening of opportunities for national human rights institutions compliant with the Paris Principles to contribute to the work of the Human Rights Council, as stipulated in the Council review outcome document annexed to Council resolution 16/21 of 25 March 201111 adopted by the General Assembly in its resolution 65/281 of 17 June 2011, and encourages and welcomes the increasing use made by national human rights institutions of these participatory opportunities;

14. Also welcomes the contribution of national human rights institutions compliant with the Paris Principles to the work of the United Nations, including of the Commission on the Status of Women, the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, the Open-ended Working Group on Ageing and the

intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system;

15. Encourages national human rights institutions compliant with the Paris Principles to continue to participate in and to contribute to deliberations in all relevant United Nations mechanisms and processes in accordance with their respective mandates, including the discussions on the implementation of the 2030 Agenda for Sustainable Development;

16. Encourages all relevant United Nations mechanisms and processes, in accordance with their respective mandates, including the Commission on the Status of Women, the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, the Open-ended Working Group on Ageing and the 2030 Agenda for Sustainable Development, including the high-level political forum on sustainable development, to further enhance the participation of national human rights institutions compliant with the Paris Principles and to allow for their contribution to these United Nations mechanisms and processes, bearing in mind the relevant provisions dealing with their participation contained in General Assembly resolution 60/251 of 15 March 2006, Human Rights Council resolutions 5/1, 5/2 and 16/21 and Commission on Human Rights resolution 2005/74;

17. Invites the human rights treaty bodies, within their respective mandates and in accordance with the treaties establishing these mechanisms, to provide for ways to ensure the effective and enhanced participation by national human rights institutions compliant with the Paris Principles at all relevant stages of their work;

18. Requests the Secretary-General to continue to provide support to national human rights institutions compliant with the Paris Principles as they engage with relevant United Nations mechanisms and processes, with full respect for their respective mandates, and with a view to enabling their most effective contributions, in order to further the implementation of international human rights obligations and commitments;

19. Encourages all United Nations human rights mechanisms and relevant United Nations agencies, funds and

programmes to work, within their respective mandates, with Member States and national institutions in the promotion and protection of human rights with respect to, inter alia, projects in the area of good governance and the rule of law, welcomes in this regard the efforts made by the United Nations High Commissioner for Human Rights to develop partnerships in support of national institutions, including the tripartite partnership between the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, and in this respect encourages all United Nations human rights mechanisms and relevant United Nations agencies, funds and programmes to enhance their interaction with national human rights institutions, including facilitating their access to relevant information and documentation;

20. Stresses the importance of the financial and administrative independence and stability of national human rights institutions for the promotion and protection of human rights, and notes with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a rol e, and encourages other Governments to consider taking similar steps.'

105. The above resolutions re-affirm strengthening the Human Rights Institutions on the basis of Paris Principles, stressing the need for providing functional and administrative independence to the Human Rights Institutions for its effective functioning.

106. The learned counsel would refer to the Constitution of the Republic of South Africa, 1996. She would refer to Chapter 9-***State***

institutions supporting constitutional Democracy, which provides for '***Establishment and governing principles***' towards strengthening Constitutional democracy in the country, which are extracted as under:

Chapter 9:
State Institutions supporting
Constitutional democracy

Establishment and governing principles

1. The following state institutions strengthen constitutional democracy in the Republic:

a. The Public Protector.
b. The South African Human Rights Commission.
c. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
d. The Commission for Gender Equality.
e. The Auditor-General.
f. The Electoral Commission.

2. These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

3. Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

4. No person or organ of state may interfere with the functioning of these institutions.

5. These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

107. According to Chapter 9, among other institutions, she would rely on the Institution of Public Protector and South African Human Rights

Commission. She would refer to the functions of Public Protector and South African Human Rights in the same Chapter of the Constitution, which are extracted as under:

Public Protector
Functions of Public Protector

1. The Public Protector has the power, as regulated by national legislation-

a. to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

b. to report on that conduct; and

c. to take appropriate remedial action.

2. The Public Protector has the additional powers and functions prescribed by national legislation.

3. The Public Protector may not investigate court decisions.

4.The Public Protector must be accessible to all persons and communities.

5. Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

Tenure

The Public Protector is appointed for a non-renewable period of seven years.

South African Human Rights Commission
Functions of South African Human Rights Commission

1. The South African Human Rights Commission must

a. promote respect for human rights and a culture of human rights;

b. promote the protection, development and attainment of

human rights; and

c. monitor and assess the observance of human rights in the Republic.

2. The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power -

a. to investigate and to report on the observance of human rights;

b. to take steps to secure appropriate redress where human rights have been violated;

c. to carry out research; and

d. to educate.

3. Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

4. The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

108. After referring to the South African Human Rights Commission and the Constitution, she would refer to a decision of the Constitutional Court of South Africa. At the out set, she would refer to the background facts of the case decided by the Constitutional Court in paragraph nos.5 and 6 of the judgment, which are extracted as under:

Background

[5] Several South Africans, including a Member of Parliament, lodged complaints with the Public Protector concerning aspects of the security upgrades that were being

effected at the President's Nkandla private residence. This triggered a fairly extensive investigation by the Public Protector into the Nkandla project.

[6] The Public Protector concluded that several improvements were non-security features. Since the State was in this instance under an obligation only to provide security for the President at his private residence, any installation that has nothing to do with the President's security amounts to undue benefit or unlawful enrichment to him and his family and must therefore be paid for by him.

Then, she would rely on numerous observations of the Constitutional Court as found in several paragraphs of the judgment, viz., Paragraph nos.10, 12, 13, 48, 49, 50, 52, 54, 56, 65, 66, 67, 68, 72, 97 and 98, which are extracted as under:

'[10] Having arrived at the conclusion that the President and his family were unduly enriched as a result of the non-security features, the Public Protector took remedial action against him in terms of section 182(1)(c) of the Constitution. The remedial action taken reads:

'11.1 The President is to:

11.1.1 Take steps, with the assistance of the National Treasury and the SAPS, to determine the reasonable cost of the measures implemented by the DPW [Department of Public Works] at his private residence that do not relate to security, and which include [the] visitors' centre, the amphitheatre, the cattle kraal and chicken run and the swimming pool.

11.1.2 Pay a reasonable percentage of the cost of the measures as determined with the assistance of the National Treasury, also considering the DPW apportionment document.

11.1.3 Reprimand the Ministers involved for the appalling manner in which the Nkandla Project was handled and state funds were abused. 11.1.4 Report to the National Assembly on his comments and actions on this report within 14 days.'

[11] ….. …… ….

[12] For its part, the National Assembly set up two Ad Hoc Committees, 15 comprising its members, to examine the Public Protector's report as well as other reports including the one compiled, also at its instance, by the Minister of Police. After endorsing the report by the Minister exonerating the President from liability and a report to the same effect by its last Ad Hoc Committee, the National Assembly resolved to absolve the President of all liability. Consequently, the President did not comply with the remedial action taken by the Public Protector.

[13] Dissatisfied with this outcome, the EFF launched this application, claiming that it falls within this Court's exclusive jurisdiction. It, in effect, asked for an order affirming the legally binding effect of the Public Protector's remedial action; directing the President to comply with the Public Protector's remedial action; and declaring that both the President and the National Assembly acted in breach of their constitutional obligations. The DA launched a similar application in the Western Cape Division of the High Court, Cape Town and subsequently to this Court conditional upon the EFF's application being heard by this Court.

14. to 47. ….. ….. ……

[48] The history of the office of the Public Protector, and the evolution of its powers over the years were dealt with in

two judgments of the Supreme Court of Appeal.46 I do not think that much benefit stands to be derived from rehashing that history here. It suffices to say that a collation of some useful historical data on that office may be gleaned from those judgments.

[49] Like other Chapter Nine institutions, the office of the Public Protector was created to 'strengthen constitutional democracy in the Republic'.47 To achieve this crucial objective, it is required to be independent and subject only to the Constitution and the law. It is demanded of it, as is the case with other sister institutions, to be impartial and to exercise the powers and functions vested in it without fear, favour or prejudice.48 I hasten to say that this would not ordinarily be required of an institution whose powers or decisions are by constitutional design always supposed to be ineffectual. Whether it is impartial or not would be irrelevant if the implementation of the decisions it takes is at the mercy of those against whom they are made. It is also doubtful whether the fairly handsome budget, offices and staff all over the country and the time and energy expended on investigations, findings and remedial actions taken, would ever make any sense if the Public Protector’s powers or decisions were meant to be inconsequential. The constitutional safeguards in section 181 would also be meaningless if institutions purportedly established to strengthen our constitutional democracy lacked even the remotest possibility to do so. [50] We learn from the sum-total of sections 18149 and 18250 that the institution of the Public Protector is pivotal to the facilitation of good

governance in our constitutional dispensation.51 In appreciation of the high sensitivity and importance of its role, regard being had to the kind of complaints, institutions and personalities likely to be investigated, as with other Chapter Nine institutions, the Constitution guarantees the independence, impartiality, dignity and effectiveness of this institution as indispensable requirements for the proper execution of its mandate. The obligation to keep alive these essential requirements for functionality and the necessary impact is placed on organs of State. And the Public Protector is one of those deserving of this constitutionally-imposed assistance and protection. It is with this understanding that even the fact that the Public Protector was created, not by national legislation but by the supreme law, to strengthen our constitutional democracy, that its role and powers must be understood.

[52] The Public Protector is thus one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety in State affairs and for the betterment of good governance. The tentacles of poverty run far, wide and deep in our nation. Litigation is prohibitively expensive and therefore not an easily exercisable constitutional option for an average citizen. 55 For this reason, the fathers and mothers of our Constitution conceived of a way to give even to the poor and marginalised a voice, and teeth that would bite corruption and abuse excruciatingly. And that is the Public Protector. She is the embodiment of a biblical David, that the public is, who fights the most powerful and very well-resourced

Goliath, that impropriety and corruption by government officials are. The Public Protector is one of the true crusaders and champions of anti-corruption and clean governance.

[54] In the execution of her investigative, reporting or remedial powers, she is not to be inhibited, undermined or sabotaged. When all other essential requirements for the proper exercise of her power are met, she is to take appropriate remedial action. Our constitutional democracy can only be truly strengthened when: there is zero-tolerance for the culture of impunity; the prospects of good governance are duly enhanced by enforced accountability; the observance of the rule of law; and respect for every aspect of our Constitution as the supreme law of the Republic are real. Within the context of breathing life into the remedial powers of the Public Protector, she must have the resources and capacities necessary to effectively execute her mandate so that she can indeed strengthen our constitutional democracy.

[56] If compliance with remedial action taken were optional, then very few culprits, if any at all, would allow it to have any effect. And if it were, by design, never to have a binding effect, then it is incomprehensible just how the Public Protector could ever be effective in what she does and be able to contribute to the strengthening of our constitutional democracy. The purpose of the office of the Public Protector is therefore to help uproot prejudice, impropriety, abuse of power and corruption in State affairs, all spheres of government and State-controlled institutions. The Public

Protector is a critical and indeed indispensable factor in the facilitation of good governance and keeping our constitutional democracy strong and vibrant.

[65] Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles. This is done not only to observe the constitutional values and principles necessary to ensure that the 'efficient, economic and effective use of resources [is] promoted', that accountability finds expression, but also that high standards of professional ethics are promoted and maintained. To achieve this requires a difference-making and responsive remedial action. Besides, one cannot really talk about remedial action unless a remedy in the true sense is provided to address a complaint in a meaningful way.

[66] The language, context and purpose of sections 181 and 182 of the Constitution give reliable pointers to the legal status or effect of the Public Protector's power to take remedial action. That the Public Protector is required to be independent and subject only to the Constitution and the law, to be impartial and exercise her powers and perform her functions without fear, favour or prejudice,66 is quite telling. And the fact that her investigative and remedial powers target even those in the throne-room of executive raw power, is just as revealing. That the Constitution requires the Public Protector to be effective and identifies the need for her to be assisted and protected, to create a climate conducive to independence, impartiality, dignity and effectiveness,67 shows just how potentially intrusive her investigative powers

are and how deep the remedial powers are expected to cut.

[67] The obligation to assist and protect the Public Protector so as to ensure her dignity and effectiveness is relevant to the enforcement of her remedial action. The Public Protector would arguably have no dignity and be ineffective if her directives could be ignored willy-nilly. The power to take remedial action that is so inconsequential that anybody, against whom it is taken, is free to ignore or second-guess, is irreconcilable with the need for an independent, impartial and dignified Public Protector and the possibility to effectively strengthen our constitutional democracy. The words 'take appropriate remedial action' do point to a realistic expectation that binding and enforceable remedial steps might frequently be the route open to the Public Protector to take. 'Take appropriate remedial action' and 'effectiveness', are operative words essential for the fulfilment of the Public Protector's constitutional mandate. Admittedly in a different context, this Court said in Fose:

> 'An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated.'

[68] Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. It connotes providing a proper,

fitting, suitable and effective remedy for whatever complaint and against whomsoever the Public Protector is called upon to investigate. However sensitive, embarrassing and far reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint. Remedial action must therefore be suitable and effective. For it to be effective in addressing the investigated complaint, it often has to be binding. In SABC v DA the Supreme Court of Appeal correctly observed:

> 'The Public Protector cannot realise the constitutional purpose of her office if other organs of State may second-guess her findings and ignore her recommendations. Section 182(1)(c) must accordingly be taken to mean what it says. The Public Protector may take remedial action herself. She may determine the remedy and direct the implementation. It follows that the language, history and purpose of section 182(1)(c) make it clear that the Constitution intends for the Public Protector to have the power to provide an effective remedy for State misconduct, which includes the power to determine the remedy and direct its implementation.'

[72] It has been suggested, initially by both the President and the National Assembly, that since the Public Protector does not enjoy the same status as a Judicial Officer, the remedial action she takes cannot have a binding effect. The President has since changed his position but it appears, only in relation to this case, not necessarily as a general proposition. By implication, whomsoever she takes remedial action against, may justifiably and in law, disregard that remedy, either out of hand or after own investigation. This very much accords with the High Court decision in DA v SABC to the effect

that:

> 'For these reasons I have come to the conclusion that the findings of the Public Protector are not binding and enforceable. However, when an organ of state rejects those findings or the remedial action, that decision itself must not be irrational.'

It is, of course, not clear from this conclusion who is supposed to make a judgement call whether the decision to reject the findings or remedial action is itself irrational. A closer reading of this statement seems to suggest that it is the person against whom the remedial action was made who may reject it by reason of its perceived irrationality. And that conclusion is not only worrisome but also at odds with the rule of law.

'73. to 96. …. ….. ……

[97] On a proper construction of its constitutional obligations, the National Assembly was duty-bound to hold the President accountable by facilitating and ensuring compliance with the decision of the Public Protector. The exception would be where the findings and remedial action are challenged and set aside by a court, which was of course not done in this case. Like the President, the National Assembly may, relying for example on the High Court decision in DA v SABC, 103 have been genuinely led to believe that it was entitled to second-guess the remedial action through its resolution absolving the President of liability. But, that still does not affect the unlawfulness of its preferred course of action.

[98] Second-guessing the findings and remedial action does not lie in the mere fact of the exculpatory reports of the

> Minister of Police and the last Ad Hoc Committee.104 In principle, there may have been nothing wrong with those 'parallel' processes. But, there was everything wrong with the National Assembly stepping into the shoes of the Public Protector, by passing a resolution that purported effectively to nullify the findings made and remedial action taken by the Public Protector and replacing them with its own findings and 'remedial action'. This, the rule of law is dead against. It is another way of taking the law into one's hands and thus constitutes self-help.'

109. She would submit that the Constitution Court of South Africa in extenso dealt with the Human Rights Laws as to how the institutions of the office of the Public Protector was to function with reference to the purpose for which, such institutions have been established under the Constitution. The South African Court has elaborately dealt with remedial action and the powers of the Public Protector, which can be an eye opener as to how such an important institution need to function and discharge its obligations.

110. The learned counsel would refer to a decision of the Division Bench of the Allahabad High Court in W.A.No.7890 of 2014 dated 01.02.2019 in the matter of ***State of U.P. versus National Human Rights Commission',*** wherein, the Division Bench has clearly held the expression

'recommendation' under Section 18 of H.R.Act is not to be treated as opinion or suggestion which can be ignored with the impunity in para 16 of the judgment (extracted supra). Therefore, she would sum up, saying that in order to achieve the end object of the Act, the profound judgment of the South African Constitution Court and decision of a Division Bench of the Allahabad High Court as cited supra, may be followed.

111. The learned counsel would proceed to refer to a decision of the Hon'ble Supreme Court of India, reported in (1985) 4 SCC 71 (***Workmen of American Express International Banking Corporation versus management of American Express International Banking Corporation)',*** wherein, she would rely on the profound observation of the Hon'ble Supreme Court as found in paragraph 4, which reads as under:

> '4. The principles of statutory construction are well settled. Words occurring in Statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its mis-application must be recognised and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such Statutes. (We have borrowed the words from Lord Wilbei force's opinion in Prenn v.

> Simmonds 1971 (3) AER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind some island of literal interpretation but is to enquire beyond the language, un-isolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Government Industrial Tribunal* cum-Labour Court, we had occasion to say,
>
> > 'Semantic luxuries are misplaced in the interpretation of 'bread and butter' Statutes. Welfare Statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is, not to make inroads by making etymological excursions'.'

112. She would impress upon this Court that the principles of statutory construction must be undertaken in the broader context of the Scheme of the Act. She would particularly lay emphasis on the fact that the Human Rights enactment is a welfare legislation and operative in the realm of public law, it should receive broader interpretation in the larger public interest. She would refer to another decision reported in (2013) 1 SCC 311 (***Medha Kotwal Lele and others versus union of India and Others, etc.),*** wherein, she would rely on paragraph no.2, which is extracted herein under:

> '2. Notice had been issued to several parties including the Governments concerned and on getting appropriate

responses from them and now after hearing the learned Attorney General for UOI and the learned counsel, we direct as follows:

> 'Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka case, SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter call the CCS Rules) and the Page No.# 11/33 report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.'

113. The above observation of the Hon'ble Supreme Court has been relied on for the purpose that the finding of the Internal Complaints Committee in respect of the sexual harassment matters, the report of the Committee was deemed to be an inquiry report under the service Rules. She would therefore, submit that once the Commission gives its report after complying with the principles of natural justice, as provided under the Act, no further opportunity need be given to the delinquent/public servant in so far as recovery of any compensation amount ordered by the Commission. According to her when a Complaints Committee report can be substituted for an inquiry report under the relevant service rules/regulations of the Government servants, the Commission's recommendations cannot have a lesser legal status particularly, when the Commissions are headed by a retired Chief Justice of India or Judges the Supreme Court and Chief

Justice and Judges of High Court as the case may be.

114. In this regard, the learned counsel would also refer to a decision of Delhi High Court reported in '2014 SCC OnLine Del 1856 **(*Avinash Mishra versus Union of India)*** wherein, the Division Bench of that Court, has succinctly observed as under:

> '14. This Court is of the opinion that having regard to the very nature of the proceedings which is mandated on account of the kind of allegations leveled, the disciplinary authority is empowered to hold an inquiry 'as far as practicable in accordance with the procedure laid down' in the Rules. This expression 'as far as practicable', in the opinion of the Court, clothes the Complaints Committee with the discretion not to follow, in letter, the entirety of the procedure. Consequently, so long as the allegations of sexual harassment are fairly disclosed to the official charged with it and he is made aware of the materials proposed to be used against him in the inquiry, during the course of which he is afforded adequate opportunity to explain such adverse material, the entire procedure and the initiation of proceedings cannot be declared invalid.'

115. The Division Bench has held in the above case that when an inquiry is conducted by the Internal Committee, adequate opportunity has to

be afforded to the Officer charged with the harassment and if this analogy is taken, the public servant charged for violation of Human Rights need not be given any further opportunity, if any adverse recommendation is given against him by the Commission. She would further add that if at all the Government proposes to impose any major punishment on the delinquent Government servant, it is always open to the Government to invoke the Disciplinary and Conduct Rules/Regulations and not in regard to the matters which come under the purview of the recommendations of the Commission.

116. She would lastly refer to a decision of the Hon'ble Supreme Court reported in (1994) 1 SCC Page 243 (***Lucknow Development Authority versus M.K.Gupta)***, wherein, she would rely on Paraghaph nos.10 and 11 as under:

> '10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No. ... of 1993 arising out of SLP (Civil) No. 659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs 2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to

him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by alloting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

> 'Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.' (p. 777)

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in

Cassell & Co. Ltd. v. Broome13 on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard14 it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may

result in improving the work culture and help in changing the outlook. Wade in his book Administrative Law has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government 13 1972 AC 1027 (1972) 1 All ER 801 14 1964 AC 11 29 (1964) 1 All ER 367, 410 or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In Ashby v. White, the House of Lords invoked the principle of ubi jus ibi remedium in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In Roncarelli v. Duplessis, the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's

Witnesses, which was then unpopular with the authorities. It was observed that, 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry.' In Smith v. East Elloe Rural District Council, the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In Farrington v. Thomson18 the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

> 'Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer.'

In Wood v. Blair a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This

was done even though the finding was that the officers had acted from the best motives.

> '11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by 15 (1703) 2 Ld Raym 938 16 (1959) 16 DLR 2d 689 17 1956 AC 736: (1956) 1 All ER 855 18 1959 UR 286 19 The Times, July 3, 4, 5, 1957 (Hallet J and Court of Appeal) public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio economic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modem society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than

> today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.'

117. In the above case, the Hon'ble Supreme Court has dealt with the issue in great detail, that who should pay the amount determined by the Commission for Human Rights violation. In effect, the Hon'ble Supreme Court held that the department concerned must first pay the compensation and recover the same from the delinquent.

118. The learned counsel would submit that once the Commission on the basis of its findings comes to the conclusion that affected citizen is to be compensated, the State has an obligation to compensate from the public fund but at the same time, can proceed to recover from the Government

servant found responsible for causing human rights violation. Thus, she concluded her submissions.

119. Mr.Sankara Narayan, learned Additional Solicitor General of India appearing for the Government of India as well as for NHRC would at the out set submit that the scope of H.R. Act and the recommendations of the Human Rights Commission cannot be enlarged beyond what is provided in the scheme of the Act. He would therefore, venture to draw the attention of this Court to the important provisions of H.R. Act in support of his principal contention. He would first rely on Section 12 of H.R.Act under Chapter III providing for 'Functions and the powers of the Commission. According to the learned Additional Solicitor General, the said Section can be dissected into three categories. The first one being Section 12 in relation to receipt of complaint under Sub Clauses (a) (i) and (ii). The second part of it is Sub Clause (b) which is advisory and the third one is Sub Clauses (c) to (j) which are completely academic. If these provisions are spilt into three categories and from that, perspective examining the functions and the powers of the Commission, it cannot be concluded that the inquiry undertaken by the Commission would be an adjudicatory exercise. It can at best be only a recommendation and recommendatory in nature.

120. The learned Additional Solicitor General would also submit that the violation of Human Rights is relatable only to Commission by a public servant which is not defined in the Act. However, 'public servant' is defined under Section 21 of Indian Penal Code. In effect, the learned Additional Solicitor General is attempting to impress upon this Court that the Commission of violation of human rights must always mean that it is by a servant in the service of the Government or under the service of the local authority, Corporation etc., which has a characteristics of the State.

121. Thereafter, the learned Additional Solicitor General would also refer to Section 13 of H.R. Act which delineates the powers relating to the inquiries by the Commission. He would draw the attention of this Court parallel to similar provisions in Section 4 of the C.I. Act. Likewise, he would refer to Sub Clauses of Sections 14 and 15 of H.R.Act which are also akin to Sub Clauses of Section 5 of C.I. Act. The learned Addl.Solicitor General would therefore, submit that cumulatively taken together, the Commission's power and the effect of his recommendations can only be construed as recommendatory as in the case of the report of the Commission established under the C.I. Act. In the course of his arguments, the learned

Addl.Solicitor General would also refer to Section 145 of the Indian Evidence Act 1872, which reads as under:

> '145. Cross-examination as to previous statements in writing.-A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.'

122. Section 15 of H.R. Act stipulates that no statement made by a person in the course of giving evidence before the Commission will be used against him in any civil or criminal proceedings. According to the learned Additional Solicitor General, the statement made before the Commission by any witness has no evidentiary value at all and therefore, in the absence of any evidentiary value, it is too much to hold that the inquiry by the Commission is of an adjudicatory character.

123. The learned Additional Solicitor General proceeded and referred to Section 16 and its Sub Clauses (a) and (b) referring to 'conduct of any person'. According to him, ‘any person’ referred to in the said Section need not be a public servant. He would then refer to Section 155 of the Evidence

Act Section 155 of the Evidence Act, which reads as under:

> '155. Impeaching credit of witness:
>
> The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him: -
>
> (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
>
> (2) by proof that the witness has been bribed, or has [1] accepted the offer of bride, or has received any other corrupt inducement to give his evidence;
>
> (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

124. The above Section of Evidence Act cannot be used to impeach the persons enquired under Section 16 of H.R. Act in terms of the scope and ambit of the said Section. The said submission is made in order to lay emphasis on the point that the scope of the inquiry of the Commission is not akin to the trial of the criminal Court or any other Court and the inquiry by the Commission is some kind of investigation and nothing more than that. In effect, the Commission is not exercising adversarial jurisdiction, but it is only exercising inquisitorial jurisdiction. According to the learned ASG, both the Sections 15 and 16 of H.R. Act negate Sections 145 and 155 of the

Evidence Act. The learned ASG would also draw the reference to Section 17 of H.R.Act to elaborate on the use of expression over 'inquiry into complaints'. 'Inquiry' by no stretch of legal standards can be equated to 'trial' or 'adjudication'. It is, in fact, 'inquiring into complaints' would mean collecting of facts and presenting the same to the Government as recommendations. No further meaning could be attached to such inquiry contemplated under the provisions of H.R. Act.

125. He would then referred to Section 18 and its Sub Clauses (a) (i), (ii) and (iii). According to him, Sub Clause (ii) is a residuary Clause, Sub Clause (i) provides payment of compensation or damages. Compensation can mean equivalence like solatium payable under the provisions of the Land Acquisition Act for acquisition of land by the State from its owners. On the other hand, damages is a tortious claim. The learned Addl.Solicitor General would underscore that no specific provisions have been incorporated in the Act to determine the quantum of compensation, nor any method or standard has been found in the scheme of the Act for determination of damages payable. According to the learned Addl.Solicitor General, there has to be a proper mechanism of taking evidence for the purpose of arriving at the quantum of compensation or damages payable.

No such procedure is available in the Scheme of the Act and therefore, the recommendation for payment of compensation for damages as found under Section 18 (a)(i) can never be construed as a result of adjudicatory process binding on the Government. The learned Addl.Solicitor General would also submit that the enactments, like Arbitration Act and Consumer Protection Act have provided comprehensive procedure for determination of compensation and damages payable while in H.R. Act, such procedure is conspicuously absent. Therefore, in the absence of any proper procedure contemplated in the Act, any recommendation towards compensation or damages can never said to be binding and enforceable.

126. As far as the criminal liability as a consequence of commission of human rights violation, only Human Rights Courts as provided under Section 30 of H.R. Act would have jurisdiction. It is the Government alone which can prosecute the offender of human rights violation pursuant to any recommendation by the Commission. Likewise, for compensation and damages, the Commission is not the proper forum for determination of either compensation or damages. Therefore, the contention that the Commission's recommendations are binding is not a valid submission, which can draw support from the Scheme of the Act.

127. The learned Addl.Solicitor General would also refer to various provisions contained under Chapter II of National Human Rights Commission (Procedure) Regulations 1997. In fact, he has taken this Court through almost all the provisions contained in the Regulations as to the procedure contemplated in the Regulations while dealing with complaints. He would submit that from the entirety of the Regulations it could be easily understood that no standard or effective procedure is outlined for quantifying compensation or damages. In fact, section 18 itself does not deal with the expression 'determination' but it only deals with the 'recommendation' for making payment of compensation and damages. Cumulatively, one looks at both the Regulations and the scheme of the Act, the recommendation made under Section 18 is not a result of adjudicatory proceeding of the Commission and consequently, it cannot be said it is binding on the concerned Government or authority. He would also submit that once the Commission assumes the role of a party before the Hon'ble Supreme Court of India or High Court as the case may be under Section 18 (b) of H.R. Act, the question of its recommendation binding on the Government would not arise at all. If the recommendation is based on the adjudication, the Commission is not under any legal obligation to approach

the Constitutional Court for enforcement of the same. Therefore, the framers of the Act, have clearly intended that the recommendations of the Commission under Section 18 are 'recommendatory' simpliciter and nothing more. He would refer National Human Rights Commission (Procedure) Regulations 1997, particularly, Regulation 28, which is extracted as under:

> '28.Steps after calling for Comments
>
> (a) If no comments are received within the time allowed, the case shall be placed before the Commission forthwith for further direction.
>
> (b) If comments are received, the case shall be placed before the Commission with a brief note containing the following information regarding:
>
> (i) acceptance of the recommendation in full or in part.,
>
> (ii) the action, if any, taken or proposed to be taken by the concerned Government/authority.,
>
> (iii) the reasons, if any, given for not accepting the recommendations, and
>
> (iv) the action that may be takes pursuant to the comments received.
>
> (c) on consideration of the comments received and the note referred to in clause (b), the Commission may pass such order as it deems proper.'

128. According to learned Addl.Solicitor General, in Sub Clause (iii) the Regulation contemplates non-acceptance of recommendation. If the inquiry of the Commission is to be construed as an adjudication, the above

provision would not have found a place in the Regulations. The Regulations framed under the Act are to be read as part of the scheme of the Act and nothing has been spelt out in the Regulation as to what remedial measure is available if the report of the Commission is not taken forward or refused.

129. He would draw a reference to 'European Convention on Human Rights' which was adopted by the European Council in pursuance of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10.12.1948. Among various Articles of the Conventions, he would refer to Section II- European Court of Human Rights, establishment of the Human Rights Court was provided under Article 19, which is extracted hereunder:

SECTION II

EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

> To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as 'the Court'. It shall function on a permanent basis.'

130. He would then refer to Article 26 regarding formation of Human Rights Courts and also refer the Competence of the Committees in Article

28, the Procedure adopted by the Court under Article 39; Final judgments as provided in Article 44; Reasons for judgments and decisions in Article 45; Binding force and execution of judgments as found in Article 46. He would also refer to Article 53 providing safeguard for existing human rights. The above referred to Articles are part of the European Convention on Human Rights, which are extracted as under:

ARTICLE 26
Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.'

ARTICLE 28
Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 39
Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 44
Final judgments

1. The judgment of the Grand Chamber shall be final. 2. The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43. 3. The final judgment shall be published.

ARTICLE 45
Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46
Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 53
Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.'

131. According to the learned Addl.Solicitor General, the above Articles have been relied upon only to provide a bird's eye view for this Bench to appreciate the importance of human rights in the global arena and also the competence and the scope of the Courts and Committees functioning in the realm of Human Rights Laws.

132. The learned Addl.Solicitor General would also refer to Australian Human Rights Commission which was established under the Australian Human Rights Commission Act 1986. He would particularly refer to Part II in relation to Australian Human Rights Commission and draw reference to various provisions, viz., Sections 7, 11, 13, 20, 23, 26 and 29 which are extracted as under:

'**7. Australian Human Rights Commission**

(1) There is established by this Act a Commission by the name of the Australian Human Rights Commission.

(2) The Commission:

(a) is a body corporate, with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

'11. Functions of Commission

(1) The functions of the Commission are:

(a) such functions as are conferred on the Commission by the *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment; and

(aa) to inquire into, and attempt to conciliate, complaints of unlawful discrimination; and

(ab) to deal with complaints lodged under Part IIC; and

(b) such functions as are to be performed by the Commission pursuant to an arrangement in force under section 16; and

(c) such functions as are expressed to be conferred on the Commission by any State enactment, being functions in relation to which the Minister has made a declaration under section 18; and

(d) the functions conferred on the Commission by section 31; and

(e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be,

inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination; and

(f) to:

(i) inquire into any act or practice that may be inconsistent with or contrary to any human right; and

(ii) if the Commission considers it appropriate to do so —endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; ....'

13. Powers of Commission

The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

20. Performance of functions relating to human rights

(1) Subject to subsection (2), the Commission shall perform the functions referred to in paragraph 11(1)(f) when:

(a) the Commission is requested to do so by the Minister; or

(b) a complaint is made in writing to the Commission, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the act or practice is inconsistent with or contrary to any human right; or

(c) it appears to the Commission to be desirable to do so.

(2) The Commission may decide not to inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if:

(a) the Commission is satisfied that the act or practice is not inconsistent with or contrary to any human right; or

(b) the Commission is satisfied that the person aggrieved by the act or practice does not want the Commission to inquire, or to continue to inquire, into the act or practice; or

(c) in a case where a complaint has been made to the Commission in relation to the act or practice:

(i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice; or

(ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; or

(ii) the Commission is satisfied that there is no reasonable prospect of the matter being settled by conciliation; or

(iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or

(iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice; or

(v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or

(vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority; or

(vii) the Commission is satisfied that the complaint has been settled or resolved. ...'

23 Failure to comply with requirement

(1) A person shall not refuse or fail:

(a) to be sworn or make an affirmation; or

(b) to give information or produce a document; when so required under this Act.

Penalty: 10 penalty units. .....'

26 Offences relating to administration of Act

(1) A person shall not hinder, obstruct, molest or interfere with:

(a) a member participating in an inquiry or examination under this Act; or

(b) a person acting for or on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act.

Penalty: 10 penalty units. ...'

29 Reports to contain recommendations

(1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment is, or the proposed enactment would be, inconsistent with or contrary to any human right, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment is not, or the proposed enactment would not be, inconsistent with or contrary to any human right.

(2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice is inconsistent with or contrary to any human right, the Commission:

(a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;

(b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;

(c) may include in the notice any recommendation by the Commission for either or both of the following:

(i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;

(ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;

(d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);

(e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and

(f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice:

(i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or

(ii) if the complaint was made by another person—may serve a copy of that report on the complainant.'

133. The learned Addl.Solicitor General would submit that the above references have been made only with a view to have a broader understanding as to how various countries worldwide like Europe, Australia, etc., have dealt with the human rights and the Human Rights Commission established by those countries. As a matter of conclusion of his submissions, the learned Addl.Solicitor General would emphatically contend that the power of the Commission as intended, is limited only to the extent of making recommendation and such recommendations cannot stated to be binding at all on the concerned Government or authority. The Parliament in its wisdom, has intended that way only and the interpretation of the provisions of the Act has to conform and take note of the Parliamentary wisdom while construing the scope of the enactment.

134. Mrs.Jai Shah, learning counsel for NHRC would submit that she would adopt the arguments advanced by the learned Additional Solicitor General of India. The learned counsel would add that once the provisions providing for submission of the reports by the Commission to the Parliament or the Legislature as the case may be are incorporated in the Act, the question of the same binding on the Government would not arise at all. Therefore, the recommendations by the Commission *per se* cannot be stretched to mean it is binding on the concerned Government or authority.

135. The learned Additional Advocate General, Ms.Narmadha Sampath, in her submissions has broadly outlined the contentions in-line with the stand of the Government. But before making her submissions on the merits of the terms of Reference, she submitted that the very Reference itself was not necessary as there were no conflict of views as to the power of the H.R.Commission. The foremost of her submission is that the recommendation of the Commission is neither an order nor the same is in the nature of adjudicated decision and hence it is not binding on the concerned Government. It is only an obligation on the Government to consider the recommendation and not necessarily that the Government is

bound by the recommendation. According to her, when a recommendation is made and a report is submitted, the Government can call for explanation from the delinquent servant and thereafter, the Government can pass orders and till such orders are passed, no cause of action would arise for delinquent to feel aggrieved. In case, the Government decides to launch prosecution on the basis of the recommendation of the Commission, it has to resort to Section 173 of Cr.P.C.

136. The learned Addl.Advocate General would further add that regarding compensation, when the Government decides to pay compensation, recovery of such compensation paid or payable to the victim, would have to be recovered from the delinquent/Government servant after initiating appropriate proceedings under the relevant Service Rules. According to the learned Addl.Advocate General, the wisdom of Parliament which formed the basis of the enactment ought to be the guiding force in understanding the scheme of the Act. The scope of the enquiry by the Commission and its recommendations are to be interpreted by the provisions of the Statute as contained therein. She would also submit regarding the application of golden rule principle on the interpretation of a Statute, as according to her, Statute is edict, proclaim by the sovereign State. The

cardinal Rule of construction and the judicial interpretation must be in line with what is intended and supposed to be as the basis for any interpretation.

137. The learned Addl.Advocate General, then would refer to Universal Declaration of Human Rights 1948 and also the International Covenants on Civil Political Rights 1966 and also the International Covenants on Economical, Social and Cultural rights. As per the International Covenants and the UN Declaration, the Government of India, in furtherance of its obligation of International Covenants and UN declaration has passed Bill in 1993 and brought in H.R. Act, which came into effect on 28.08.1993. She would refer to the Statement of Objects and Reasons and would submit that the human rights embodied in two International Covenants of 1966 being substantially protected by the Indian Constitution, however, in order to bring about greater accountability and transparency and provide fairness to the procedure, H.R. Act was enacted. According to her, the Act was brought into force to instill more confidence in the minds of the people at large, as the Government does not want to be a judge of its own cause. Therefore, the Commission is created under the Statute to look into the grievance of the human rights violation and she would refer to Section 12 more particularly, Sub Clause (c) to (i), which are

explicitly recommendatory in nature and no other interpretation is possible. She would also refer to Section 13 which has no provision of execution and in the absence of any power of execution by the Commission, the Commission's recommendations can only be recommendatory in nature. According to learned Addl.Advocate General, the expression and the language used in all the provisions of the Act including Section 18 are clear, lucid and unambiguous and there is no scope for making any other construction in the enactment.

138. She would refer to the most crucial provision of the Act, Section 18 particularly, Sub Clause (e) wherein, it provides for an obligation on the part of the Government to forward its comment on the inquiry report, including the action taken or proposed to be taken there on. The meaning of the expression 'proposed to be taken' includes rejection of the recommendation considering the entire scheme of the Act. As according to her, the scheme of the Act must be interpreted within the statutory limitation. She would further develop this argument by submitting that the recommendation as contemplated under Section 18 of the Act is the same as the recommendation under Section 20(2) or 28(2) of the Act and such recommendation can be laid before the legislature or the Parliament and the

reasons for non-acceptance of the recommendation is also to be placed before the legislature or Parliament. She would therefore, submit that non-acceptance of the recommendation is provided for, which can only mean legally that the recommendation is not binding on the Government. In effect, she would submit that the Commission under H.R. Act is nothing but a fact finding body and the Government has delegated the power to a outside body like the Human Rights Commission while inquire into the complaints of violation of human rights.

139. The learned Addl.Advocate General would refer to a decision of the Constitutional Bench reported in AIR 1952 SC 123 (***Kathi Raning Rawat versus State of Saurashtra)*** in order to emphasize the legal position that the legislation must receive interpretation in conformity with the object indicated in the Statute. She would refer to a few lines in support of her contention which read as under from the Constitutional Bench 's judgment in para 34:

> '34. As has been observed by Frankfurter J. in Tinger v. Texas (Vide Weaver on Constitutional Law, p.404), 'laws are not abstract propositions...but are expressions of policy arising out of specific difficulties addressed to the attainment of specific ends by the use of specific remedies.' In my

> opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the Statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the Statute itself cannot be condemned as a piece of discriminatory legislation. After all 'the law does all that is needed when it does all that it can, indicates a policy.... and seeks to bring within the lines all similarly situated so far as its means allow". In such eases, the power given to the executive body would import a duty on it to classify the subject- matter of legislation in accordance with the objective indicated in the Statute. The discretion that is conferred on official agencies in such circumstances is not an un- guided discretion; it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested.'

140. The learned Addl.Advolcate General would also refer to another Constitutional Bench ’s decision reported in AIR 1958 SC 538 (***Shri Ram Krishna Dalmia versus Shri Justice S.R.Tendulkar and others)***. She would submit that the Government can always rely on a fact finding body like Human Rights Commission but that does not mean that its recommendation which is the result of the delegated power is binding on it. Though, she referred to some observations of the Hon’ble Supreme Court,

but in effect she would rely on paragraph no.21 of the judgment in support of her submission, which reads as under:

> '21. It is feebly argued that the notification is bad as it amounts to a delegation of essential legislative function. Assuming that there is delegation of legislative function, the Act having laid down its policy, such delegation of power, if any, is not vitiated at all, for the legislation by the delegates will have to conform to the policy so laid down by the Act. Lastly a point is raised that the notification is bad because it violates Art. 23 of the Constitution. It is frankly stated by the learned counsel. that this point is rather premature at this stage and that he desires to reserve his client's right to raise it in future.

141. She would further refer to Latin maxims '***mens*** and ***'Sententia legis'*** one is 'intention' and the other is 'there has to be a presumption that Legislature did not make a mistake'. The role of the Courts is to carry out the obvious intent of the Legislation in the matter of construction of a Statute. According to her, the golden rule is that if the recommendation is binding, it becomes a rule of law. Therefore, she would submit that by no stretch of legal standard, 'recommendation' could be compared to the 'rule of law'.

142. The learned Addl.Advocate General would then refer to a decision of the English Court, 1857 Halsbury's Law in the matter of ***John Grey versus William Pearson and others,*** wherein, she would rely on the following observations made by the English Court:

> 'The expression that the rule of construction is to be the intention of the testator is pat to lead into error, because that word is capable of being understood in two senses, viz., as descriptive of that which the testator intended to do, and of that which is the meaning of the words he has used. The will must be in writing, and the only question is, what is the meaning of the words used in that writing. To ascertain which every part of it must be considered with the help of those surrounding circumstances, which are admissible in evidence to explain the words, and put the Court as nearly as possible in the situation of the writer of the instrument, according to the principle laid down in the excellent work of Sir James Wigram on that subject.'

143. She would refer to an English decision of King's Bench Division dated 10.07.1933 in the matter of ***The Assam Railways & Trading Co.Ltd., versus The Commissioner of Inland Revenue***. She would particularly refer to a passage found in the judgment which reads as follows:

> '....The intention of the Legislature must be ascertained from the words of the Statute with such extraneous assistance as is legitimate. ...'

144. The learned Addl.Advocate General would also refer to another English decision in the case of ***Seaford Court Estates Ld. Versus Asher,*** dated 2nd May, 1949. She would rely on illuminating observations of the English Court as under:

> ' .....This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the Statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in *Heydon's case*, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume *Eyston v Studd*. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases. Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here. If it had would it not have put it on the same footing as an actual burden? I think it would. It would have permitted an increase of rent when the terms were so changed as to put a positive legal burden on the landlord. If

> the parties expressly agreed between themselves the amount of the increase on that account the court would give effect to their agreement. But if, as here, they did not direct their minds to the point, the court has itself to assess the amount of the increase. It has to say how much the tenant should pay 'in respect of' the transfer of this burden to the landlord. It should do this by asking what a willing tenant would agree to pay and a willing landlord would agree to accept in respect of it. Just as in the earlier cases the courts were able to assess the value of the 'fair wear and tear' clause, and of a 'cooker.' so they can assess the value of the hot water clause and translate it fairly in terms of rent; and what applies to hot water applies also to the removal of refuse and so forth. I agree that the appeal should be allowed, and with the order proposed by Asquith LJ.'

145. She would, taking cue from the above observation, submit that the Court can only iron out creases if there is ambiguity in the enactment. However, as far as the Act under consideration before this Bench is concerned, every provision is unambiguous, explicit and free from any doubtful interpretation. Therefore, the Bench may not substitute any other power or jurisdiction to the Commission than what is envisaged clearly in the Act.

146. She would also refer to a decision of the Hon'ble Supreme Court of India, reported in 2015 (9) SCC 209 (***Petroleum and Natural Gas Regulatory Board versus Indraprastha Gas Limited and others),*** wherein, she would refer to paragraphs nos.29, 37 and 38 which are extracted in the

latter part of the judgment.

147. According to the learned Addl.Advocate General, the said decision of the Hon'ble Supreme Court of India, dealt with the construction of a Statute to understand and ascertain the intention of the legislature. According to the Hon'ble Supreme Court, there has to be harmonious construction of various provisions and the interpretation does not lead to any absurdity.

148. She would submit that every word has to be understood with the help of surrounding circumstances and if such consideration is to be applied in respect of H.R. Act, no other conclusion is possible except to hold that the recommendation is only 'recommendatory' in nature.

149. The learned Addl.Advocate General would further refer to a decision of the Hon'ble Supreme Court of India, reported in 2004(2) SCC 579 (***N.C.Dhoundial versus Union of India and others)***. According to her, the Hon'ble Supreme Court has observed in the said judgement that the statutory limitation imposed on the Commission established under H.R.Act on two principles regarding the period of limitation and also the power of

review by the Commission. In this regard, she would refer to paragraph nos.13 to 15 of the judgment, which are extracted herein:

> 13. The three legal objections raised by the CBI officials were over-ruled by the Commission. Firstly, it was held that by virtue of Section 13 of the Protection of Human Rights Act, 1993, the power of review conferred on the civil court was available to the Commission. As the earlier order was not a decision on merits but merely an order abstaining from further enquiry the Commission felt that there was no bar to reconsider the entire issue in the interest of justice. The second objection based on Regulation 8(1)(b) of NH.R.C (Procedure Regulations) which bars complaints with regard to matters that are 'subjudice' was rejected with the observation that the question of violation of human rights as a result of alleged unauthorized detention of the complainant was not subjudice. The other important objection that the Commission is debarred from enquiring into the matter after the expiry of one year from the date on which the alleged illegal detention took place as per the mandate of Section 36(2) was answered by the Commission in the following words:
>
> > 'The violation of human rights is a continuing wrong unless due reparation is made. It gives rise to recurring cause of action till redressal of the grievance. The Protection of Human Rights Act, 1993 has been enacted with the object of providing better protection of Human Rights and it cannot be assumed that the mere lapse of a certain period would be sufficient to render the violation immune from the remedy of redressal of the grievance.'
>
> 14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of Statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or

ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.

15. Now, let us look at Section 36 of the Protection of Human Rights Act, which reads thus:

> '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.'

Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the Section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in S.S. Gadgil Vs. M/s Lal & Co. [AIR 1975 SC 171] may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus:

> '10. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of

> the Income-tax Officer to bring to tax escaped income.'
>
> The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide Uttam Das vs. S.G.P.C. [(1996) 5 SCC 71] and Bhinka Vs. Charan Singh [AIR 1959 SC 960].'

150. In fact, the above decision was relied on by Mr.R.Srinivas, learned counsel for SHRC to highlight the observation of the Hon'ble Supreme Court that Commission is an 'unique expert body'.

151. The learned Addl.Advocate General would submit that the Commission has to function within the limitation as contemplated in the Act and it cannot enlarge its power and reach out what is not explicitly stated in the Act.

152. She would therefore, sum up that the power of the Commission and the inquiry report and its recommendation never be construed as an order passed through adjudicating process. She would however, submit that the concerned Government has an obligation to consider the recommendation, but the obligation to consider cannot be construed as the

recommendation is binding on the Government. Therefore, she would submit that the decisions of the Division Benches of this Court referred to earlier holding the view of the learned single Judge (Shri Justice Nagamuthu) in Rajesh Das's case would be the correct legal position in terms of the scheme of H.R.Act.

153. Mr.Sarath Chandran, the learned counsel appearing for one of the Writ Petitioners in W.P.No.26496 of 2010 filed by a delinquent, has made his submissions. At the out set, he would refer to a decision of a Full Bench of this Court reported in 1992 (2) MLJ 573 (***Terminated Full Time Temporary LIC Employees' Welfare Association versus Sr.Divisional Manager, LIC of India Ltd., Thanjavur Division, Thanjavur).*** The said decision has been relied on by the learned counsel only to repulse the contention of the learned AAG that the reference itself was not necessary as there was no conflict of decisions by the learned Division Bench of this Court. He would refer to paragraph no.20, which is extracted hereunder:

> '20. At any rate, there is no substance in the contention of the petitioners' counsel that the reference is invalid. According to him, the question of law set out in the order of reference does not arise in these cases. That contention is clearly erroneous, inasmuch as the question of law does arise for consideration squarely. Apart from that, it is not necessary for the purpose of law reference to a Full Bench that a question of law should arise. Under Rule 6 of O. 1. of the Appellate Side Rules of this Court, the Chief

> Justice may direct that any application, petition, suit, appeal or reference shall be heard by a Full Bench notwithstanding anything in the earlier rules. In these matters, the Hon'ble the Chief Justice had directed the writ petition to be heard by this Full Bench. It might have been at the instance of a Division Bench on the footing that a question of law had arisen which required to be decided by a Full Bench. But, once the reference is made by the Hon'ble the Chief Justice, the competence of the Full Bench to hear the matter cannot be challenged on the ground that such a question of law does not arise.'

154. The learned counsel would submit that the above ruling of the Full Bench is self-explanatory and holding that once reference is made, the same cannot be challenged for the reason that such question of law does not arise.

155. The learned counsel would then proceed to submit in regard to first two issues of reference, he would rely on the Resolution of the General Assembly of United Nations as to setting up of National Institutions for the protection and promotion of human rights. He would particularly refer to paragraph nos.3 and 15.

> '3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the protection and promotion of human rights and to incorporate those elements in national development plans;
>
> 15. Also requests the Secretary-General to report to the General Assembly at its forty-eighth session on the implementation of the present resolution.'

156. As per the above mandate, the resolution was directed to be adopted before the General Assembly. The resolution was passed on 17.12.1991. Thereafter, in the 48th Session of the General Assembly of the United Nations, the General Assembly adopted the establishment of National institutions for the promotion and protection of human rights on 4th March 1994. Annexure to the Resolution deals with the Principles relating to the status of the National Institutions. He would particularly rely on the competence and the responsibilities of the National Institutions which are referred to hereunder:

'Principles relating to the status of national institutions
Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible,which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports

> on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas: .....'

157. He would also refer to the additional Principles concerning the status of Commissions, which are also extracted hereunder:

> **'Additional principles concerning the status of Commissions with quasi-jurisdictional competence**
>
> A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:
> (a) seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
> (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
> (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
> (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.'

158. The learned counsel would emphasise the position that what is envisaged in the principles adopted by the United Nations General Assembly that such Institution/Commission is empowered to make recommendation only on advisory basis. He would add that globally such institutions which are assigned to deal with the human rights violation, have been designed to have only restricted power of giving recommendation, which are more advisory in nature.

159. Now coming to Human Rights Act, 1993 is concerned, the learned counsel would in extenso refer to the deliberations and discussions which were held prior to the enactment by Hon'ble Ministers of Cabinet, Hon'ble Chief Ministers and the eminent persons representing a cross section of Society, such as jurists, lawyers, journalists, academicians, administrators, Human Rights activists etc. In this regard, the learned counsel would refer to the background materials before the Bill was introduced in the Parliament. He would particularly refer to few paragraphs, which read as under:

> A Chief Minister's Conference or Human Rights was convened in September, 1992. This Conference welcomed and endorsed the proposal to set up a National Human Rights Commission. A Committee under my Chairmanship,

comprising the Union. Ministers of Human Resource Development, Welfare, and Law and the Chief Minister of five States, cutting across party lines, was set up to look into the proposal. At the instance of this Committee, it was decided to have wide ranging discussions on the subject with eminent persons, representing a cross section of society such as jurists, lawyers, journalists, academicians, administrators, human rights activists and other public personalties. Four Seminars, one each In Bombay, Calcutta, Delhi and Hyderabad, were organised through the concerned State Governments. Another Seminar was organised under the auspices of the Bar Council of India. The Union Home Secretary had detailed discussions with Chief' Secretaries and Directors General of Police of the State Government. I discuss ad the proposal with leaders of the political parties in Parliament. Thereafter, the proposal was discussed by the Committee, which I referred to earlier. After this elaborate exercise, the Human Rights Commission Bill, 1993 was prepared and Introduced in the Lok Sabha on 14.5.1993.

The Bill had evoked widespread interest and reactions. When the Bill was listed for consideration in the last session a number of motions were moved by Hon'ble Members seeking inter-alia time to elicit opinion, and to refer the Bill to a Committee. The Hon'ble Speaker decided to refer the Bill to the Standing Committee of Parliament for the Ministry of Home Affairs. The Report of the Standing Committee is before the Home. The Committee held a large number of meetings in some of which officials of my Ministry were also asked to be present. During these meetings and discussions the main issues which apparently required reconsideration were identified.

In the meanwhile, keeping in view various developments on the global scene, Government felt that time was of the essence and that it would be in the national interest to speedy bring to fruition the year long exercise to set up the National Human Rights Commission. Accordingly, after giving due consideration to the various suggestions that had been received and Incorporating several changes lo the original Bill, the Protection of Human Rights Ordnance 1993, was promulgated on 28 September, 1993.'

160. The learned counsel would then refer to the report of the Standing Committee on the Human Rights Bill 1993. He would particularly refer to the Chapter relating to Functions of the Commission.

'Functions of the Commission:

> The functions of the Commission should not overlap or impinge upon the functions of the investigative agencies on the one hand and those of the courts on the other. The role ofthe Commission should, therefore, be confined to those which do not conflict with the role of the investigative agencies and the courts. Violation of human rights is normally a cognisable offence under the Indian Penal Code. It would also be a gross negligence not being able to take preventive measures. It would be actionable under the Criminal Law. The dividing line between the jurisdiction of the courts and the jurisdiction of the Human Rights Commission seems to be getting blurred. Unless we define the jurisdiction to be such as it does not impinge upon the statutory functions of the courts, there is going to be a greater confusion and duplication where the victims or the complainants would pursue remedy in one or the other of both. If in each case it is going to result in a parallel inquiry, it mayeventually result in more harassment of the complainant because he has got other bodies as well to cope with and he does not know when he is going to get the desired justice.Therefore, the complainant must know clearly that up to this level the remedy is with thepolice, after a certain level the remedy is with the Commission and thereafter the remedy is perhaps with the courts. If the Commission is confined to post-investigative activity and pre-adjudicatory activity, the Commission would be able to play a meaningful role. The significant role which the Commission can play atter the investigation and before the trialbegins is that of great of sanction under section 197 of the Code of Criminal Procedure. It is the sole prerogative of the concerned Government to either grant sanction or to withhold it to prosecute judges and public servants. The concerned Government acts in the best publicinterest in granting or withholding the sanction. If the grant or withholding of sanction is brought within the purview of the

> Commission, it would avoid overlapping of conflict between the functions of the Commission on the one hand and the investigative and adjudicatory machinery on the other.'

161. He would also refer to certain other relevant reports of the Standing Committee which are extracted hereunder:

> **'4. Functions, Powers and procedure of the Committee (Clause 12 to 18) :**
>
> Chapters III and IV of the bill incorporate important provisions in clauses 12-18 regarding the functions, powers and procedure of the Commission. Depending upon the nature and gravity of the act, the violation of Human Rights may bring into focus any one or all the three areas of law, namely civil, criminal and public law. The Society as well as the victims of Human rights violations should be able to effectively make use of the fruits of the labour of the commission. I would, therefore, suggest that the investigation into offences conducted at the instance of the commission and the consequent reports should be regarded as reports within the meaning of section 173(2) of the Code of Criminal Procedure to be filed before the court through the secretary general of the commission so that the court may take cognizance of the offence and proceed according to law. For this procedure, the relevant provisions of Chapter XII of the Code of Criminal Procedure should be deemed to be made applicable to the investigations into offences at the instance of the commission either by an investigation agency under Clause 14(1) and (2) or by an investigative agency made available in terms of Clause 11(1) of the bill. The idea is that this commission should become a part of the system of administration of justice so that the work of this commission can be of actual use for the society and the victims of Human Rights violations. I feel that the work of this Commission can be useful in the three areas of law. Wherever there is violation of Human Rights, the three areas of law at once come into picture. The Supreme Court has also now held that apart from the Criminal and Civil liability, whenever there is an injury caused due to human

rights violation, the public law springs into action and the courts can even award compensation.

The bill also states that the investigating officers to be associated with the work of the commission should not be below the rank of the Director General of Police. So, the investigations to be carried on by the police officers not below the rank of D.G. should be capable of being made use of in the court and these should be regarded as police reports under Section 173(2) of Code of Criminal Procedure. The Court can then proceed in accordance with the law. Similarly, in the field of civil law, I feel the evidence collected by the commission in exercise of the powers of Clause 13 should be made admissible in courts of civil or public law. Under this Clause, the Commission has vast powers.

I make this suggestion because this Commission is conceived of only as an investigation body. That is why, I did not want that the work of this Commission would not be capable of being used and it would, like all similar bodies, only produce reports which would contain recommendations, which would lie in the shelves, to be read or not to be read and if read, may be or may not be acted upon. Since we are engaged in a very serious exercise of reinforcing our resolve to uphold Human Rights, I examined the whole thing from the perspective of our freedom struggle through which we went and which was nothing but a struggle for upholding basic human rights. Our constitution provides for all these human rights. Our law courts are there to enforce these human rights. We are only making the enforcement machinery for protection of these human rights which we recognised in the fundamental charter of governance of our country i.e. Our Constitution. We are merely reiterating our resolve and making it more effective and that is why I suggested that the work of the Commission must be capable of being used in the courts of civil, criminal and public law jurisdiction. Clause 19 should, therefore, be suitably amended providing therein __ the investigation by the Commission shall be regarded as an investigation conducted under Section 173(2) of the Code of Criminal Procedure because unless because this is done the investigation will be an exercise incapable of being used in law.'

'8. Steps after Inquiry (Clause 18):

> The powers given to the Commission under this clause is like the one given to any other Commission. Every litigant can approach the Supreme Court. But as you know, unlike the foreign courts, our Supreme Court has gone much further. Anybody can move the Supreme Court for human rights violations and get relief. Now, what is not adequate here is the power of the Commission to award compensation on violation of human rights. This is the most important part and without this power it will be nothing and will serve no purpose at all. You give powers to the Commission to adjudicate and award compensation. Parliament has already passed laws like the MRTP Act, the Consumer Act. They have the authority to adjudicate and award compensation. There is no doubt that the Consumer Act has proved to be very effective. This Commission also should have the power to adjudicate and award compensation. You are having a very high-powered Commission with a Supreme Court Judge as their Chairman. There is no reason why you should deny the right to this Commission to award compensation, because it you do not do that, they will merely be a recommendatory body. What do they do? Therefore, I think this power must be provided to the Commission.'

162. According to the learned counsel, though the nature of power to be vested with the Commission was discussed extensively by the Experts and suggestions were also made in the Standing Committee's discussion to provide tooth to the Commission, ultimately those suggestions for providing effective power to the Commission were not accepted and specifically incorporated eventually, when the Bill became an Act. In fact, the learned counsel would refer to a discussion, wherein, it was observed that the Commission will be a 'fact finding body' in regard to the steps to be taken after inquiry. According to him, in the Standing Committee, several

measures were suggested to strengthen the Commission's judicial power and jurisdiction in order to bring it on par with the Court's jurisdiction. But ultimately, the measures suggested had been watered down and the Act was passed by the Parliament and in effect, making recommendation of the Commission only as a 'recommendatory' and not beyond that. There cannot be any other conclusion, since various suggestions for strengthening the Commission as found in the discussion of the Standing Committee, ultimately have not been accepted when the Bill was finally passed. He would, in that context, refer to debate which took place in the Parliament at the time of enacting H.R.Act in the Eighth Session of Parliament on 14.12.1993. He would refer to the following paragraphs in regard to the status of the Commission.

> 'On the issue of effectiveness of the Commission, the main points raised related to the provision of an independent investigative agency to the Commission and that its finding should be binding rather than recommendatory. Right from the beginning, the Commission had been conceived as a fact finding body, and there appeared to be general consensus, even in the preparatory Committee, that there should be no duplication with existing structure and the Judiciary. The Commission is not conceived as a stand alone institution but as a body which, through its multiple function, including inquiry into specific cases, can bring about a much sharper focus on and awareness about human rights promote the better enforcement of existing safeguards and bring in greater accountability into the system. Even so, a number of provisions have been made in the Bill to enhance the effectiveness of the Commission, viz its power to publish its reports immediately, reduction in the time period within

> which the concerned Government will report to the Commission, its ability to approach the higher judiciary for writs and order on its findings, and the power to intervene in on-going judicial proceedings. There are now additional provisions to enable the constitution of Special Investigation Teams, setting up of Human Rights Courts and appointment of Special Prosecutors.'

163. From the above discussion, it could be seen that right from the beginning, the Commission was conceived only as a 'fact finding body'. He would also refer to the other Debate as to the status of the Commission.

> 'With these objects and reasons,why should we call it only a fact finding body? It is not a mere fact finding body if the purpose of the Government is to termit only as a fact finding body, this could have been brought under the purview ofthe Commission of Inquiry Act. Anything can be done under the Commission of Inquiry Act as a fact finding body. But this is more than a fact finding body. If there is any deficiency in the very constitution of this body or in the functioning of theHuman Rights Commission, we are to make necessary amendments to make it more effective and for that purpose we will have to review whether the very purpose and credibility as well as the ability to function effectively can be served with these provisions? Will the provisions of this Act suffice?
>
> Sir, I am of the view that we are to make certain amendments with respect to the functioning of the Commission. The function of the Commission is only to inquire into and ask the respective Governments to take action against offenders. As many of my Hon. Friends have pointed out here, I am of the view that the Commission must be given sufficient power of initiate proceedings against the offenders. Unless such power has given to the Commission, the Commission will be only a fact finding body, as rightly or wrongly Interpreted in the Statement of Objects and Reasons.'

164. He would refer to further Debate which took place in the Parliament in the Eighth session on 18.12.1993. The important discussion on the power of the Commission among the Members of the Parliament, is referred to by the learned counsel and according to him, which would throw light on what was the nature of debate and how finally the Bill was passed. Crucial Debates on this issue, are extracted hereunder:

> 'The next point which was made was about publishing the report. The provision is it there is an urgent case, the National Human Rights Commission, or for that matter, the State Commission for that particular case, if it is so urgent, can give an interim report. But they are supposed to give their annual report. The annual report along with the report on action taken by the Government, has to be placed in both the Houses of Parliament so that you get the exact idea as to what was recommended and what action the Government has taken in the matter.
>
> The next point which the Hon.Members might be having in their mind is that suppose there is a very long gap between the annual report and the action taken report of the Government, it might be that the utility of the Commission's Report will get diluted. I can assure the Hon.Members that we have accepted that the response has to be given within one and a half months. If within one and a half months or thereafter, with the permission of the Commission, within the extended time, the State Governments as well as the Central Government will have to submit the Action Taken Report and both the things can be placed on the Table of the House.
>
> **SH.R.I SYED SHAHABUDDIN**: But you are not obliged to accept the recommendation. That is the point I made.
>
> **SH.R.I S.B. CHAVAN**: I am sure that the hon. Member is aware of the fact that we have the Finance Commission which

is a recommendatory body. The Government has a right to reject the recommendations of the Finance Commission. Have you ever come across any case where the recommendations of the Finance Commission have been rejected by the Government?

SH.R.I SYED SHAHABUDDIN: All right, we take that as an assurance.

SH.R.I S.B. CHAVAN: Yes, yes. Actually, this is a high-powered body presided over by the retired Chief Justice with two or three judges of the Supreme Court and a retired Chief Justice of the High Court.

These are the people who are constituting this Commission. That is why we will have to create necessary atmosphere. Government does not propose to have any kind of restrictive attitude with them. Let them go ahead. They have to bear in mind that it is the first Commission that this country has constituted, and every one has great hopes from this Commission.

Hon. Members have raised the point that why should we not have a provision that if two members are not there, then the Commission will not be able to take the decision in a matter. Sir, the idea that we have is that it being such a highbody, the decisions are not taken by majority. It is a consensus decision that they have to take. They will create a very healthy atmosphere if they were to give unanimous decision which will definitely be binding on all the States and the Central Government. But so far as the terminology is concerned, since it is analogous to the Commissions of EnquiryAct, similar kind of provisions have been made into this.'

165. The learned counsel would therefore submit that when the Debates in the Parliament which preceded the passing of the Bill, the frame work of H.R. Act was envisaged only as an advisory body, a fact finding institution. In fact, when suggestions were made by certain members of the Parliament in order to provide tooth to the Commission, it was not agreed to,

but there was a general consensus that the Government would be under the obligation to consider the recommendation of the Commission. According to the learned counsel, the Hon'ble Home Minister, who moved the Bill, in fact, compared the Human Rights Commission to the Finance Commission, and assured the members that the recommendations of the Finance Commission though were not binding on the Government, but as a matter of healthy convention invariably, the recommendations of the Finance Commission were accepted by the Government of India. Likewise, Governments are expected to follow the healthy convention and would also accept the recommendation of the Human Rights Commission though the recommendations are not binding by the very nature of the scheme of the Act.

166. The learned counsel would also bring to the knowledge of this Bench that the Annual Report submitted by the National Human Rights Commission 1999-2000 suggested many amendments, one of which, is to amend Section 18 to enable payment of interim compensation at any stage during the pendency of inquiry which suggestion was accepted and amended in 2006 in Section 18 of H.R.Act.

167. The learned counsel would also refer to the Protection of Human Rights (Amendment) Bill, 2012 which was a private bill piloted in the Parliament. One of the suggestions made was among many amendments sought, he would refer to the following amendments.

> '(ii) after clause (6), the following clause shall be inserted, namely,
>
> (7) The Commission shall, on being satisfied that the action taken or proposed to be taken by the concerned Government or authority is not in proportion to the offence committed, forward the complaint to the Magistrate, who shall proceed to try the case in accordance with sections 200 and 201 of the Code of Criminal Procedure 1973.'
>
> .....
>
> It has been observed that the powers of the National Human Rights Commission have been reduced to act merely as an agency to initiate an enquiry into cases of violation of human rights and to publish action taken report submitted to it by the Government. It has only recommendatory powers, whereas, taking into account the expertise, experience and specialization in handling cases of violation of human rights, the Commission should have been given powers to specify penal actions at least for cases which are not covered by any relevant Statute.'

168. He would submit that the above amendment suggested by the private Member of the Parliament, had ultimately failed to pass the preliminary test. In fact, the learned counsel would also submit that a Member of the Standing Committee, namely, Althaf Ahamed suggested the above amendment before the Act was brought in for Debate in the

Parliament. But it was not carried through and once again when it was part of the amendment suggested by a private Member of the Parliament in the year 2012, ultimately, it failed to become a law. Therefore, he would submit that the framers of the Act have intended the Human Rights Commission to function in a particular fashion with limited powers of only making recommendations and this Court cannot enlarge the scope of the Commission by entering into the domain of the legislature. In fact, he would further refer to 2019 Amendment Bill proposing to make certain amendments and in the Statement of Objects and Reasons, it is stated that the Commission will be in effect complying with the Paris principles.

169. He would further refer to Annual Report of the National Human Rights Commission (N.H.R.C) for the year 2014-2015 and would particularly rely on the report regarding non-acceptance of its recommendations.

> '18.1 During the year 2014-2015, in a total of 9 cases, the recommendations for monetary relief made by the Commission were not accepted by the State Central Government. The State Governments of Madhya Pradesh, Manipur and Uttar Pradesh besides the Ministry of Home Affairs (in the case relating to BSF) refused to accept the recommendations made by the Commission for award of monetary relief to the next of kin of the deceased in six cases. See Chart below. This cases related to death in police encounter. death in police custody and death due to firing by BSF personnel. The details of these cases arc given in

> Annexure-14. The Commission considered the responses received in five such cases and closed these cases. However, in one case. the Government of Uttar Pradesh was again asked to 'make payment of the amount of monetary relief as recommended by the Commission.'

170. He would submit that as it is clearly understood by NH.R.C, in some cases, where the recommendations were not accepted by the concerned Governments, those cases were ultimately closed. If the recommendation of NH.R.C is binding, the question of closing the cases would not have arisen at all. He would further refer to another Annual Report of NH.R.C for the year 2016-2017, which according to the learned counsel, would clinch the issue in support of his contention. The recommendation as found in paragraph no.19.4 is referred to, which is extracted as under:

> '19.4. Other constraint is that the recommendations made by the Commission are not binding upon the authorities, as a result the Commission is nicknamed as 'toothless tiger'. At the one hand the Section 2(d) of the Protection of Human Rights Act, 1993, defined these rights as enforceable by the court of Law, and the Section I 3(5) provides that every proceeding before the Commission shall be deemed to be a judicial proceeding, and the Commission has also been equipped with the powers of a Civil Court while enquiring a complaint, as per Section 13(1), but when it is concluded that human rights arc violated, and there should be remedial measures to protect the human rights and grant of compensations to the victims, the powers of the Commission as per Section 18(c) of the Protection of Human Rights Act, 1993 are confined to make recommendations to the government. Sometimes it is felt that the recommendations are left to the sweet will of the government, and they arc a liberty to ignore the Commission's recommendations. It is a fact that

> the recommendations are not simple opinions and advices, or consultancy, but these are orders in proceedings where the Commission after giving all possible opportunities to the State authorities has taken view to recommend monetary compensation to the victims or the family members of the deceased victims, as the case may be, or to initiate prosecution of the violator of human rights of the victim. The aforesaid provisions of the Act indicate that the compliance of the recommendations made the Commission, under the Act, cannot be left to the discretion of the government, but the government is under obligation to pay regard to the recommendations.'

171. To further fortify the position, finally, the learned counsel would refer to two of the paragraphs of N.H.R.C. Reports wherein, N.H.R.C concluded that there are decisions of the Courts defining the power of the Commission, however, the Commission felt that suitable amendment is required in the Act for greater clarity. Para nos.19.5 and 19.6 are extracted hereunder:

> '19.5 Though the High Court of Judicature at Allahabad in the Case of State of U.P. And 2 Others Vs. N.H.R.C. and 3 Others (WRIT - C No. - 15570 of2016), while upholding the view that due regard should be paid by the State Governments to the recommendations made by the Commission, has observed as follows:-
>
> > "..... the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and

> by the fundamental norms of the protection oflife and liberty and human dignity under a constitutional order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected.'
>
> '19.6 But there have been some contrary decisions of High Courts to the effect that acceptance of recommendations of the Commission may be left to the discretion of the concerned government. It is therefore felt the position in the matter be clarified by a suitable amendment in the Act.'

172. The learned counsel would submit that the above succinct observations of the N.H.R.C would make the position extremely clear that the recommendation of the Human Rights Commission is not an order to be binding on the concerned Government or authority. He would therefore, submit that the N.H.R.C itself has understood that its recommendation was not binding upon the authorities.

173. The learned counsel then would refer to a decision of the Patna

High Court reported in 2013 SCC OnLine Pat 998 (***The State of Bihar versus Bihar Human Rights Commission)***, wherein, a Division Bench of the Patna High Court dealt with the power of the Commission and held that it is not a judicial body. He would particularly refer to paragraph no.30 of the judgment of the Division Bench, which reads as under:

> '30. The Commission is not a judicial body. It has only been vested with certain powers of the Civil Court under Section 13 for the purpose of inquiry into complaints regarding summoning and enforcing attendance of witnesses, examining them on oath, discovery and production of documents, evidence on affidavit, requisitioning of any public record or copy, issuing commissions for examination of witnesses/documents etc. It is in that context it has been deemed to be a Civil Court for certain purposes and proceedings before it deemed to be a judicial proceeding for limited purposes. The residuary clause (j) of Section 12 cannot be expanded to include fixation of remuneration.'

According to the learned counsel, the above Division Bench order was also confirmed by the dismissal of the Special Leave Petition by the Hon'ble Supreme Court of India in SLP (Civil) No.6568 of 2014 dated 24.03.2014. To be noted, though the learned counsel submitted that the Hon'ble Supreme Court confirmed the aforementioned order of the Division Bench of the Patna High Court, we construe the arguments to be that of the Hon'ble Supreme Court declined to interfere, as it is a dismissal of SLP which is obviously pre-leave stage or in other words, the first part of Article 136 of

the Constitution of India.

174. The learned counsel would further refer to a decision of a Division Bench of Andhra Pradesh High Court reported in 2014 SCC OnLine AP 87 (***Southern Power Distribution Company for Andhra Pradesh Ltd.Tirupathi versus A.P.State Human Rights Commission, Hyderabad, rep. By its Secretary and another)***. The Division Bench of the Andhra Pradesh High Court had an occasion to deal with an issue as to whether the Commission can give a direction or mandate for payment of money? In that context, the Division Bench had observed as under in para 8:

> '8. Under the circumstances, we are constrained to uphold the argument of the learned counsel for the petitioner that without making any investigation and inquiry the above order has been passed by the Commission. While dealing with the contentions raised by the petitioner, we are of the view that the Commission has no jurisdiction and power to give any mandate or direction for payment of money which will be clear from the provisions of Section 18 (a) of the Act, which empowers the Commission to make recommendation to the concerned Government or authority to make payment of compensation of damages to the complainant or to the victim or the members of his family. If such payment is not made, the Commission may send a copy of its inquiry report together with its recommendations to the concerned Government or authority and they in their turn 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. Thus, it is clear that neither the Government nor the authority is bound to take action as per the

> recommendations of the Commission. It is for them either to accept or not to accept the recommendations and the Government authority concerned will forward its comments on that report. It is clear from clause (f) of the said Section that the Commission will 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. Clause (b) of Section 18 also provides as an optional measure, which might be taken by the Commission instead of inquiry or order, the Commission itself can approach the Supreme Court or the High Court for any directions, orders of writs as that Court may deem necessary. In view of the above discussion, we are of the view that this matter requires a fresh consideration.'

175. In the above decision, the Division Bench has clearly held that the concerned Government or authority is not bound to take action in pursuance of the recommendation of the Commission on the ground that the Commission has no jurisdiction or power to give any mandate.

176. The learned counsel would refer to another decision of a learned Single Judge of the Calcutta High Court reported in 2015 SCC OnLine Cal 631 (***Ambikesh Mahapatra and another versus The State of West Bengal and others),*** wherein, he would refer to paragraph nos.24 to 27 which have been extracted infra in the latter part of our judgment for our ultimate conclusion.

177. According to the learned counsel, the said decision of the learned Single Judge has clearly analyzed Section 18 thoroughly and coherently that the Commission has no power of enforcement of its recommendation. In fact, the learned Judge has held that the statutory body like the Commission, its recommendations need to be given due respect and ought to be graciously accepted. However, it held that it cannot said to be binding.

The crucial observation of the learned Judge is extracted as under:

> '.....If indeed the concerned Government or authority is conceded to have a final say in the matter and the report/recommendation is to remain only on paper and shelved only for gathering dust, much of the exercise undertaken by the Commission would be an act of futility rather than of utility for the victims of human rights violation. It requires no reiteration that the lofty ideals of providing succour to victims of human rights violation ought to be steadfastly pursued and any hole providing an escape route must be immediately plugged, or else the Statute is likely to be reduced to a mere dead letter. The concerned Government or authority cannot be allowed a free run despite proved violation of human rights by a delinquent public servant because of absence of teeth in the concerned legislation. If someone has been wronged, his grievance must be redressed.'

178. The learned counsel would further submit that the above learned Single Judge's order has also been confirmed by the Division Bench. The learned counsel would further submit that as regards the Sub Clause (b) of Section 18 is concerned, the Commission is only given an opportunity or

provided *locus standi* to approach the Hon'ble Supreme Court of India or this Court for enforcing its recommendation which by itself would make the nature of the recommendation as not enforceable. Such provision is available only in order to accord status to the Commission as in a given case, it can approach the Constitutional Court.

179. The learned counsel would also submit that there are similar enactments like, the Commission for Protection of Child Rights Act, 2005 and the National Commission for Women (Procedure) Regulations 2005. He would submit that in both the above said Act and the Regulations, similar provisions are made available for those Commissions to approach the Hon'ble Supreme Court of India or the High Court. The learned counsel would draw the attention of similar provisions available in the above said Act and Regulations also, which are extracted as under:

> **(In the Commission for Protection of Child Rights Act, 2005)**
>
> **'15. Steps after inquiry:**
>
> The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:-
>
> (i) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, 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;

(ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

'16. Annual and special reports of Commission:

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government concerned, as the case maybe, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any, within a period of one year from the date of receipt of such report.

(3) The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.'

(In the National Commission for Women (Procedure) Regulations 2005)

'16. Powers relating to inquiries.-

(i) 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 (5 of 1908), and in particular in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of witnesses

and examining 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.

'17. Steps after inquiry.-

The Commission may take any of the following steps upon the completion of an inquiry held under these regulations, namely-
(i) where the inquiry discloses, the commission of violation of any rights or negligence in the prevention or' violation of any 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;
(ii) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
(iii) Recommend to the concerned Government or authority for the grant of such immediate relief to the victim or the members of his family as the Commission may consider necessary;
(iv) Subject to the provisions of Sub clause (v) provide a copy of the inquiry report to the petitioner or her representative;
(v) the Commission shall send a copy of its inquiry report together with it's 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;
(vi) 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.

180. Therefore, the Commission under H.R. Act is not vested with any special powers or status different from the Commission under the above referred Acts and Regulations. In the context of meaning of word "inquiry", the learned counsel would refer to a decision of the Hon'ble Supreme Court reported in 2020 SCC OnLine SC 27 (***National Commission for Protection of Child Rights and others versus Dr.Rajesh Kumar and others),*** wherein, he would refer to paragraph nos.13 and 14, which are extracted hereunder:

> '13. Section 13(1)(c) empowers the State Commissions to inquire into the violation of child rights. In Advanced Law Lexicon 1 the word 'inquire' has been defined as follows:
>
> 'Inquire. To seek knowledge by putting a question; to ask; to make investigation or inquisition.'
>
> '14. In the context in which the word 'inquire' occurs in Section 13(1)(j), it obviously means something more than just making a request for information. It envisages the Commission playing an active role in ascertaining the facts relating to the three circumstances dealt with in this provision. It is more than just sending a letter. It is more akin to a preliminary inquiry and if such inquiry indicates that the rights of the children have been violated or the laws have not been implemented or the policy decisions or guidelines have been violated then the Commission must also suggest remedial measures. This power to inquire under Section 13(1)(j) will also have to be read with the power under Section 13(1)(c) which includes the power to inquire into the violation of child rights and recommend initiation of proceedings in such cases. Reading these two clauses together it is obvious to us that 'inquire' is not making note on the file but something more. We are dealing with children who cannot complain. The Commissions are meant to protect children who have no voice. It is these Commissions who have to give voice and feelings to the distress calls of children. The Commission can, thereafter, take action by

> itself if permitted under law or can recommend initiation of proceedings in accordance with law.'

181. He would particularly rely on the above portion of observations of the Hon'ble Supreme Court of India that the Commissions are meant to protect children, who have no voice and the Commissions are expected to provide voice to them and only in that context, they have been given an opportunity under the enactment to approach the Hon'ble Supreme Court or the High Court concerned.

182. In fact, in regard to the said Commission constituted under the National Commission for Protection of Child Rights Act, 2005, the Hon'ble Supreme Court in the said judgement has clearly held that the Commission has recommendatory power only. The observation as found in paragraph no.16 of the judgment, is extracted hereunder:

> '16. Any Commission, while conducting an inquiry under Section 13(1)(j) has been given wide powers akin to that of a civil court and has a right to forward any case to a magistrate and the magistrate is required to deal with such case forwarded to him as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973. The follow up action which a Commission can take is also clearly set out in Section 15 of the CPCR Act which empowers the Commission to make recommendations to the concerned Government or authority for initiation of proceedings including prosecution or such other action as the Commission may deem fit. This is a recommendatory power but normally we would expect that the

> Government would accept the recommendation of the Commission in this regard. The second power given to the Commission is to approach the Supreme Court or the High Court for an appropriate writ, order or direction. The Commission can also recommend the grant of interim relief to a victim under Section 15(iii) of the CPCR Act. The aforesaid provisions which set out the powers relating to inquiries and steps to be taken thereafter clearly indicate that the inquiry contemplated is more than only gathering of information, and is more in the nature of an investigation or inquisition.'

183. The learned counsel would also refer to a decision of the Hon'ble Supreme Court reported in 1988 (4) SCC 419 ***(Dr.Baliram Waman Hiray Versus Justice B.Lentin and others),*** wherein, he would draw the reference to paragraph no.36, as the Hon'ble Supreme Court has held as under:

> '36. We are satisfied that the decision of the Nagpur High Court in M.V. Rajwade's case and that of the Madhya Pradesh High Court in Puhupram lay down the correct law. The least that is required of a Court is the capacity to delivery a `definitive judgment'. and merely because the procedure adopted by it is of a legal character and It has power to administer an oath will not impart to it the status of a Court That being so, it must be held that a Commission of Inquiry appointed by the appropriate Government under s. 3(1) of the Commissions of Inquiry Act is not a Court for the purposes of s. 195 of the Code.'

According to the Hon'ble Supreme Court that unless the Commission has capacity to deliver a definite judgment, it cannot enjoy the status of the Court.

184. The learned counsel would also elaborately deal with the provisions as contained in Sections 20(2) and 28 (2) of the Act, as according to him that the Executive, being accountable to the Parliament or the legislature as the case may be, is under the constitutional obligation to submit Annual Reports as envisaged in the above Sections. According to the learned counsel, the Annual Reports would also include the recommendations made under Section 18 of the Act.

185. At this, doubts were raised as to whether the Annual Report would also include the recommendations of the Commission under Section 18, wherein, the acceptance of the same will only culminate in Executive passing an order and whether such recommendation required to be placed before the Parliament or Legislature, the learned counsel would draw the attention of this Court to the Annual Report of NHRC for the year 2015-2016. In para nos.18.1 to 18.3 of the Annual Report, it is clearly mentioned that how many recommendations were made in the year 2014-2015 and the steps taken by the Government in pursuance of the recommendations and allied details as to the fate of the recommendations. The Annul Report as contained in the above paragraphs are extracted hereunder:

Non-acceptance of N.H.R.C Recommendations by State Governments

18.1 The NH.R.C in exercise of its powers u/s 18(a)(i)(ii) makes recommendations for payment of compensation or damages to the complainant or the *victim* of the Members of the family and/or to initiate proceedings for prosecution and such other suitable action as the Commission may deem fit against the concerned public servant. The compliance reports in respect of Commission's recommendations for grant of monetary relief/disciplinary action against the errant public servant are awaited in 437 cases. Out of these, 299 cases were pertaining to the year 2015-2016, 66 cases were pertaining to the year 2014-2015 and 72 cases were pertaining to the years 2008-2009 to 2013-2014. Details may be seen at **Annexure-5 to Annexure-7** respectively).

18.2 The recommendations of the Commission are usually being accepted by the authorities concerned. Rare!y, the recommendations face resistance from the State Governments public authorities in so far as their compliance is concerned. There are delays in complying with the recommendations in certain cases on account of lack of co-ordination between the different wings of States. However, the Commission monitors such cases strenuously till the same reach their logical conclusion.

18.3 The Commission's recommendations dated 16 May 2015 to the Railway Board for grant of Rs. 5,00,000/- (Rupees Five Lakhs only) to Ms. Sangeeta *Devi,* wife of the deceased victim Shri San jay Kumar Aggarwal, has been challenged by the Union of India, trough Assistant Security Commissioner, (Prosecution) East Central Railway, by filing a Writ Petition (C) No. 5974 of 2015 before the High Court at Ranchi. Further in two cases, the State governments of Madhya Pradesh and Maharashtra respectively conveyed their reluctance to comply with the recommendations made by the Commission during the year 2015-2016 (details of these cases are mentioned at SI. No. 94, 105 and 115 of **Annexure-5,** respectively).

186. The above reports would unequivocally demonstrate that the recommendations under Section 18 are also part of the Annul Report to be placed before the Parliament/Legislature. Therefore, the learned counsel would submit that the recommendations cannot held to be binding on the concerned Government, since both the provisions namely 20(2) and 28(2) provide for reasons for non-acceptance of the recommendations.

187. Therefore, there cannot be any two opinions as to the nature of the recommendation of the Commission and any contra view would amount to enlarging of the jurisdiction of the Commission which cannot be done by the Courts.

188. The conferment of jurisdiction on the Commission and the scope of its power of inquiry squarely fall within the legislative domain and the Courts cannot encroach upon the domain, as per the decision of the Constitutional Bench . In this regard, he would refer 1988(2) SCC 602 (***A.R. Antulay vs R.S. Nayak & Anr)*** wherein, in paragraph 39, it was observed as follows:

> 39. .... The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no court, whether superior or inferior or

> both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal. See in this connection the observations in *M.L. Sethi* v. *R.P. Kapur* [(1972) 2 SCC 427 : AIR 1972 SC 2379 : (1973) 1 SCR 697] in which Justice Mathew considered *Anisminic* [(1969) 2 AC 147 : (1969) 1 All ER 208] and also see *Halsbury's Laws of England*, 4th Edn., Vol. 10, page 327 at para 720 onwards and also Amnon Rubinstein - *Jurisdiction and Illegality* (1965 Edn., pages 16-50). Reference may also be made to *Raja Soap Factory* v. *S.P. Shantharaj.* [AIR 1965 SC 1449 : (1965) 2 SCR 800]'

189. The learned counsel would then rely on a decision reported in 2002(5) CTC 122 ***(A.Soundarajan and 8 Others Vs. The Government of Tamil Nadu, rep. by its Secretary, Public (Law & Order) Department, Chennai and two Others)*** rendered by a learned Single Judge of this Court. He would refer to paragraph nos.9 to 13 which are extracted below:

> '9**.** As regards the scope of the findings of the State Human Rights Commission, it is contended before me by learned Government Pleader that there is no technical or statutory bar for the Police to initiate and proceed with any criminal proceedings notwithstanding the report of the State Human Rights Commission. The submissions of the learned Senior Counsel for the Petitioners is that the State Human Rights Commission is a Judicial Forum and therefore the executive authorities cannot ignore the same and there cannot be a further proceeding before any other Court or Forum.
>
> '10**.** I am unable to agree with the contentions raised by the learned Senior Counsel. I have gone through the entire records and the report of the State Human Rights Commission as well as the provisions of Protection of Human Rights Act, 1993 (hereinafter referred to as Act). On a perusal of the provisions of the said Act, I am unable to hold that the report of the Commission would result in barring any person to approach the Civil or Criminal Court. The object of the Act is

to ensure better protection of Human Rights and for matters connected thereto or which are incidental thereto. The only provision in the Act which requires to be examined in the context of the issue arising for consideration in this Writ Petition would be Section 13 (4) and Sec. 13(5) of the Act which is extracted below:

> *'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 (45 of 1860) 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 (2 of 1974) 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 Sec. 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 purpose of Section 196 of the Indian Penal Code (45 of 1860) 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 (2 of 1974)'.

11. A perusal of the above said provisions would disclose that the Commission shall be deemed to be a Civil Court and that the proceedings of the Commission will be deemed to be a Judicial Proceedings only in the context of certain specific provisions mentioned therein. None of the provisions mentioned therein could result in barring any party to take appropriate proceedings before the Civil or Criminal Court as the case may be. Sub-sections (4) and (5) of Section 13 only relate to the power of the Commission to initiate action against the persons committing contempt of the Commission or obstructing the proceedings before the Commission, refusing to give evidence or to obstruct the

evidence, etc. None of the provisions under the Act could clothe the report of the Human Rights Commission as a bar to take appropriate proceedings before the Civil or Criminal Court.

12. The nature of the enquiry before the State Human Rights Commission is summary in nature and the conclusion arrived at by the Commission cannot deprive the aggrieved persons to take appropriate action either before a Civil Court or before a Criminal Court. Just as the learned Senior Counsel had commented about the Revenue Divisional Officer's enquiry and witnesses having been examined behind the back of the petitioners, the manner of enquiry before the Commission is also summary. The witnesses have not been subjected to any cross-examination. The official status of the two authorities are certainly different, but the nature of enquiry does not differ. Therefore, persons feeling aggrieved by the Commission· s finding that there is no violation of Human Rights, cannot be deprived of appropriate remedies before the appropriate Court. To hold so, would be in fact violation of human rights, it is also necessary to bear in mind that even in cases where Commission awards any compensation or finds any one guilty of violation of human rights, there is no specific power to execute the award or to punish. The Commission can only recommend to the Government to take further action, or approach the Supreme Court or the High Court for the implementation of its award. In fact, in W.P. No.15652/1995 dated 19.02.1998, I had directed the implementation of the award of compensation *to* the Victim *(National Human Rights Commission v. State of Tamil Nadu).*

13. Therefore, having regard *to* the nature of the enquiry and proceedings before the Commission, in cases where the commission finds that there is no violation of human rights or custodial regulations, such a finding cannot be a bar for the Government or the victims to approach the regular Civil or Criminal Courts for appropriate action or remedy.'

190. The learned counsel would submit that the above case was in regard to the recommendation of the Commission holding that there was no

human rights violation. The learned Judge however, held that the finding was not binding on the persons still feel aggrieved and held that if there was human rights violation, such person can always seek remedies before the appropriate Court. The learned Judge further held that even if the Commission awards any compensation and finds any one guilty of violation of human rights, no specific power is found in the Act for execution of the award or to impose punishment. The learned Judge held that the Commission can only recommend and nothing beyond that. The learned Judge, in fact, also held that the proceedings before the Commission is summary in nature and therefore, the learned counsel would submit that what flows from the observations of the learned Judge is that the proceeding before the Commission was not like any other judicial adjudication.

191. From the above, it is clear that in order to qualify the definition of 'Court of law', it must have the capacity to deliver a definitive judgment. In the absence of the said capacity, making recommendations through a summary procedure, does not make recommendation binding on the Government. On the same line of his submission, the learned counsel would also refer to paragraph no.16 of a decision of the Hon'ble Supreme Court of India reported in AIR 1956 SC 66 (***Brajnandan Singh versus Jyoti***

Narain), which is extracted under:

> 'The same principle was reiterated by this Court in Bharat Bank Limited v. Employees of Bharat Bank Ltd.(1) and 'Maqbool Hussain v. The State of Bombay(1) where the test of a judicial tribunal as laid down in a passage from Cooper v. Wilson(1) was adopted by this Court:-
>
> 'A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:--(I) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and, often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law'.

192. The learned counsel would also rely on a English decision in the Court of Appeal of the year 1923 in the matter of ***(The King versus Electricity Commissioners)***. He would refer to the observations of the King's Bench Division , which reads as under:

> It is necessary, however, to deal with what I think was the main objection of the Attorney-General. In this case he said the Commissioners come to no decision at all. They act merely as advisers. They recommend an order embodying a scheme to the Minister of Transport, who may confirm it with or without modifications. Similarly the Minister of Transport comes to no decision. He submits the order to the Houses of Parliament, who may approve it with or without modifications. The Houses of Parliament may put anything

> into the order they please, whether consistent with the Act of 1919, or not. Until they have approved, nothing is decided. and in truth the whole procedure, draft scheme, inquiry, order, confirmation, approval, is only part of a process by which Parliament is expressing its will, and at no stage is subject to any control by the Courts. It is unnecessary to emphasize the constitutional importance of this contention. Given its full effect, it means that the checks and safeguards which have been imposed by Act of Parliament, including the freedom from compulsory taking, can be removed, and new and onerous and inconsistent obligations imposed without an Act of Parliament, and by simple resolution of both Houses of Parliament. I do not find it necessary to determine whether, on the proper construction of the Statute, resolutions of the two Houses of Parliament could have the effect claimed. In the provision that the final decision of the Commissioners is not to be operative until it has been approved by the two Houses of Parliament I find nothing inconsistent with the view that in arriving at that decision the Commissioners themselves are to act judicially and within the limits prescribed by Act of Parliament, and that the Courts have power to keep them within those limits. It is to be noted that it is the order of the Commissioners that eventually takes effect; neither the Minister of Transport who confirms, nor the Houses of Parliament who approve, can under the Statute make an order which in respect of the matters in question has any operation. I know of no authority which compels me to hold that a proceeding cannot be a judicial proceeding subject to prohibition or certiorari because it is subject to confirmation or approval, even where the approval has to be that of the Houses of Parliament. The authorities are to the contrary.'

193. The above passage of the King's Bench rulings is to substantiate the point that Commissioners, who act under the Statute are under obligation to work within the scheme of the Act and the Courts ought to keep them

within those limits.

194. Thereafter, the learned counsel would draw the analogy on the scope and power of the Human Rights Commission with that of the National Commission for Schedule Castes and Schedule Tribes established under Article 338 of the Constitution of India. In this regard, the learned counsel would refer to a decision of the Hon'ble Supreme Court reported in (1996) (6) SCC 606 (***All Indian Overseas Bank SC and ST Employees Welfare Association and others versus Union of India and others)*** wherein, he would refer paragraph nos.3, 5, 6 & 10 and also the relevant provisions of the Schedule Castes and Schedule Tribes Commission which are *pari materia* to Section 13 of the Act. The observations relied on by the learned counsel are extracted hereunder:

> '3. The short question that arises for consideration in this matter is whether the Commission had the power to issue a direction in the nature of an interim injunction? The appellant supports the letter dated 4-3-1993 of the Commission on the facts of the case which supposedly justify the passing of an interim direction of the type contained in the letter dated 4-3-1993. The appellant refers to Article 338, clauses (5) and (8) of the Constitution introduced by the Constitution (Sixty-fifth Amendment) Act, 1990 to argue that 'the Commission had power to requisition public record and hence it could issue directions as if it enjoyed powers like a civil court for all purposes. Further the appellant contends that even a single member of the Commission has every authority to pass a direction on behalf of the entire Commission and hence the High Court was wrong in

expressing the view that a single member of the Commission could not have issued the direction contained in the letter dated 4-3-1993. The appellant further contends that no writ would lie against an interim order of the Commission.

4. ....

5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.

6. Sub-clauses (a) to (j) of clause (8) clearly indicate the area in which the Commission may use the powers of a civil court. The Commission has the power to summon and enforce attendance of any person from any part of India and examine him on oath; it can require the discovery and production of documents, so on and so forth. All these powers are essential to facilitate an investigation or an inquiry. Such powers do not convert the Commission into civil court.

'7. to 9. ....

'10. Interestingly, here, in clause 8 of Article 138, the words used are 'the Commission shall... have all the powers of the Civil Court trying a suit.' But the words 'all the powers of a Civil Court' have to be exercised 'while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5'. All the procedural powers of a Civil Court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a Civil Court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause 8 of Article 338 of the Constitution.

195. The learned counsel would submit that despite the power of the civil Court exercisable by the Commission established under Article 338 of the Constitution, the Hon'ble Supreme Court has held that the powers of

Civil Court are limited to the purpose of investigation and inquiry and nothing more, in which case, it is undoubtedly clear that the frame work of H.R. Act and the Commission constituted under it, does not enjoy any better status than the status of the National Commission for Schedule Castes.

196. The learned counsel would also refer to a decision of a Division Bench of this Court reported in (2007) 7 MLJ 1067 (***T.Loganathan versus State Human Rights Commission, Tamil Nadu, rep. by its Chairman, Chennai and another),*** which was also one of the cases came into consideration for the purpose of referring the matter to this Full Bench, had in fact, observed in the last paragraph of the judgment, i.e. in paragraph no.16, which is extracted hereunder:

> '16. In the light of the above, the grievance projected by the writ petitioner has no substance and the writ petition is liable to be dismissed. However, there will be no order as to costs. As the writ petition is dismissed, there is no impediment for the State Government in implementing the order of the SHRC. As the writ petitioner is under the services of the State, we direct the Government to implement the orders of the SHRC and recover the amount from the writ petitioner and pay the same to the husband of the second respondent within a period of eight weeks from the date of receipt of a copy of this order. The State will also consider making the necessary amendments in the Act so as to provide necessary power to execute the orders of the SHRC. A copy of this order will also be marked to the Secretary, Home Department, Government of Tamil Nadu, for further actions and compliance of our order. Consequently, connected Miscellaneous Petition will also

stand dismissed.'

197. In the above paragraph, the Division Bench has clearly observed that necessary amendments were to be made in the Act providing power to the SHRC to execute its recommendations.

198. In regard to the first question as to the scope and binding nature of the recommendation, the learned counsel would submit that a decision rendered in ***Ambikesh Mahapatra Versus State of West Bengal*** reported in **(2015) SCC OnLine Calcutta 631** would be the correct understanding of the scheme of the Act and the learned Judge has taken a balanced view while considering the provisions of the Act and this view has also been upheld by the Division Bench of the High Court. Therefore, he would request this Bench to persuade itself in agreeing with the views expressed by the learned Judge in ***Ambikesh Mahapatra's*** **case** (cited supra) which would only do justice to the proper understanding of the scheme of the Act.

199. He would then elaborate on the principle that the decisions of the Commission on the grounds of illegality, irrationality, procedural irregularity and also on the basis of *Wednsebury* principle, the Courts can interfere with the recommendations of the Commission at any stage. In fact,

he would refer to a decision of the Division Bench of this Court, where the summons issued by the Commission was put to challenge and the Division Bench had quashed it. The learned counsel would refer to the unreported decision rendered by a Division Bench of this Court in WP.No.24544 of 2018 ***(Dr. G.Shanthi Vs. The State Human Rights Commission, Tamil Nadu, rep. by its Member and others***) dated 26.11.2018 wherein, the learned counsel would refer to paragraph nos.5 and 6 of the above judgment, which are extracted hereunder:

> "5. Before we consider the correctness of the submissions made on behalf of the petitioner, we may point out that one of us (Justice T.S.Sivagnanam), while sitting in the Madurai Bench of Madras High Court had dealt with the complaint lodged by the second respondent herein against one Mr.Devaraj, who has worked as Deputy Superintendent of Police, Srivilliputhoor, Virudhunagar District pertaining to the same incident and based on such complaint, the Commission had directed him to appear for an enquiry and these proceedings were put to challenge before the Division Bench in W.P(MD).No.11900 of 2009. The Court after taking into consideration the nature of the complaint pointed out that the only allegation in the complaint is that no arrest has been made by the Police for more than a month and this is because of political influence. The petitioner as Deputy Superintendent of Police has given an explanation as to what steps has been taken pursuant to the registration of the case. However, the Court thought fit not to go into the sufficiency of the explanation offered as it was fully satisfied that there was no specific allegation against the petitioner therein that he had exceeded in exercise of his official power or in any manner acted in violation of human rights. Furthermore, it was pointed out that the Commission without embarking upon the independent enquiry through its agency had mechanically issued summons to the petitioner and for such reasons, the writ petition was allowed and the proceedings were quashed.

> 6.The said decision would equally apply to the case of the petitioner herein. In fact, the case of the petitioner is far better in the sense that there is absolutely no allegation of any violation of human rights in the complaint dated 10.10.2009. Taking the allegations in the complaint as it is and reading the same would clearly establish that the complainant has not pointed out any violation of human rights, more particularly, to fall within the definition of Human Rights as defined under Section 2(d) of the Act. Furthermore, the delay in the instant case is also fatal because no explanation has been offered by the complainant as to why for more than two years, he had not raised any grievance against the petitioner/Doctor. Further, the complaint does not point out any violation committed by the petitioner in discharge of her official duties. However, the admitted position is that the petitioner had only conducted autopsy and the report has been made available. Thus, in the absence of any specific allegation against the petitioner for allegedly having violated any of the human rights, the Commission without undertaking proper exercise ought not to have issued summons to the petitioner. Thus, we are fully satisfied that the complaint deserves to be rejected at the very threshold and consequently, the summons issued by the Commission is held to be bad in law".

200. In the above decision, the Division Bench has thought fit it to intervene even at the stage of issuance of summons by the Commission on the basis of illegality and irrationality. In fact, the Division Bench has held that the complaint was liable to be rejected on the very threshold.

201. The learned counsel would further refer to a decision of the Hon'ble Supreme Court reported in (2016) 15 SCC 525 **(*Anitha Thakur and Others Vs. Government of Jammu and Kashmir and Others*).** This

case was relied on by the learned counsel in order to impress upon this Bench as to the State's liability in the realm of public law. He would rely on the observations made by the Hon'ble Supreme Court as under:

> 'The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the san1e, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence, cannot be used as a defence in public law".

202. According to the learned counsel, that as a vicarious obligation, the Government would have to bear liability in the first instance and thereafter, it can recover the compensation/damages paid by the Government to the victim, from the delinquents. In this regard, he would rely on a decision of the Hon'ble Supreme Court of India reported in 2019 (13) SCC 595 (***Amol Vitthal Rao Kadu versus State of Maharashtra and others)***. He would rely on paragraph nos.4 to 7 which are extracted hereunder:

> '4.The law on the point has been summarized by this Court in D.K. Basu vs. State of West Bengal1:-

'54. Thus, to sum up, it is now a well- accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act 1 (1997) 1 SCC 416 committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.'

'5. In a case dealing with default on part of the officials in

depositing the amount in terms of the Land Acquisition Act, Swatanter Kumar, J. had observed:

> '(iv) In this case, the claimants would be entitled to the costs of Rs 1,00,000 (Rupees one lakh only) which shall be deposited at the first instance by the State Government of Uttar Pradesh and then would be recovered from the salaries of the defaulting/erring officers/officials in accordance with law. The inquiry shall be completed within a period of six months from today and a report shall be submitted to the Secretary General of this Court on the administrative side immediately thereafter.' 6. Learned counsel for the State accepts that in connection with the death of the said Pravin, proceedings are pending in which the question of liability will be gone into and determined".

203. The above decision of the Hon'ble Supreme Court has held that once the Government fastens the liability on the delinquent employee, it can proceed to recover from him. The learned counsel would in that context submit that as far as the reference (iii) is concerned, the views expressed by Shri Justice K.Chandru in 'T.Vijayakumar's case that once the Commission gives its finding, no further opportunity need to be given to the delinquent may not be correct. The delinquent is entitled to put on notice by the Government, in case any liability is fastened on him/ her for recovery of any compensation or damages from him/her.

204. Mr.Ganesh Kumar, learned counsel appearing for the petitioner

in WP.No.31071 of 2005 would supplement the submissions made by Mr.Sarath Chandran, learned counsel by focussing on Point No.1, that the recommendations of the Commission are not at all enforceable. He would submit that this is because the Act does not contain any provision for implementation of its recommendation. Secondly, it does not provide any provision for appeal against the report/recommendation of the Commission. Thirdly, no hierarchical forum is available in the scheme of the Act, meaning that like in the case of the Consumer Protection Act, an appeal would lie from State Commission to the National Commission and such remedy is completely absent in the scheme of H.R. Act.

205. The learned counsel, in fact, refer to Section 18 (b) of the Act and would emphasise that the Commission may approach the Hon'ble Supreme Court of India or the High Court for such directions, orders etc as that Court may deem necessary. Therefore, he would submit that the recommendation is not an end in itself and it requires another adjudication which would inevitably demonstrate that no power is vested in the Commission for enforcement of its recommendation. The learned counsel would refer to a decision reported in (1996) 1 SCC 742 **(*National Human Rights Commission versus State of Arunachal Pradesh and another*).** He

would refer to paragraph nos.1,2 and 8 of the said judgment, which are extracted under:

> '1. This public interest petition, being a writ petition under Article 32 of the Constitution, has been filed by the National Human Rights Commission (hereinafter called 'NHRC') and seeks to enforce the rights, under Article 21 of the Constitution, of about 65,000 Chakma/Hajong tribals (hereinafter called 'Chakmas'). It is alleged that these Chakmas, settled mainly in the State of Arunachal Pradesh, are being persecuted by sections of the citizens of Arunachal Pradesh. The first respondent is the State of Arunachal Pradesh and the second respondent is the State of Arunachal Pradesh and the second respondent is the Union of India.
>
> '2. The NHRC has been set up under the Protection of Human Rights Act, 1993 (No.10 of 1994). Section 18 of this Act empowers the NHRC to approach this Court in appropriate cases.
>
> '3. to 7. ....
>
> '8. On October 12,1995 and again on October 28,1995, the CCRC sent urgent petitions to the NHRC alleging immediate threats to the lives of the Chakmas. On October 29,1995, the NHRC recorded a prima facie conclusion that the officers of the officers of the first respondent were acting in coordination with the AAPSU with a view to expelling the Chakmas from the State of Arunachal Pradesh. The NHRC stated that since the first respondent was delaying the matter, and since it had doubts as to whether its own efforts would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this Court to seek appropriate reliefs.'

206. The learned counsel after relying on above paragraphs would submit that the Commission in the case, NHRC had to approach the Hon'ble Supreme Court of India in regard to the large scale of human rights violation, as obviously the Commission had understood its limitation in

passing any directive against any human rights violation on a mass scale. According to the learned counsel, in fact, the above decision was referred to by Mr.R.Sreenivas, learned counsel for SHRC in support of his contention that the Commission has the power to enforce its recommendation, but on the contrary it does not have such power as could be deduced from this decision. The learned counsel would then refer to a decision reported in (2004) 8 SCC 610 (***National Human Rights Commissioner versus State of Gujarat and others)***. He would refer to paragraph nos.1, 6 & 7 which are extracted hereunder:

> "1.This application has been made for the setting up of a committee for overlooking a Special Investigation Team to be set up by the State Government of Gujarat to enquire into those cases in which final reports have been filed by the local police stations closing the same. The State Government has filed an application in which it is stated that the State Government has already authorised high-ranking officers to monitor each and every investigation which has been carried out in connection with the communal riots which have taken place in the State. It is submitted that the communal riots which have taken place, have taken place in particular districts of the State and not throughout the State. It is also stated to this Court by the State that the particular police districts in which there have been communal riots are under the supervision of Range Inspector Generals.
>
> 2 to 5. ....
>
> 6.The IA as well as the other matters being disposed of by this order relate to the payment of compensation to the victims of the communal riots which have taken place in the State of Gujarat.
>
> 7.There is no dispute that the issue of compensation to the victims of the Godhra carnage is the subject-matter of

> Writ Petitions by victims and a non-Governmental organisation before the Gujarat High Court. In addition, the Gujarat High Court is also in seisin of a petition filed by Citizens for Justice and Peace in Special Civil No.3217 of 2003 in which the question of implementation of a Rehabilitation Scheme framed by the State is in question. It is, however, pointed out to us by the learned amicus curiae and the petitioners that while the High Court is monitoring the implementation of the Scheme framed by the State Government for payment of compensation to the victims, the Scheme itself is questionable in that may aspects of the Scheme are deficient. For example, it is submitted, the Scheme does not provide for a realistic compensation in respect of damage to property. It is also submitted that the Scheme limits the compensation payable only to death or permanent disablement while excluding cases where the victim may have otherwise suffered grievously, for example, by burning, etc. It is also submitted that the victims of sexual offences have not been brought within the purview of the Scheme at all. It is also submitted that the Scheme should be according to the one formulated by this Court in connection with the Cauvery riots reliefs as in Ranganathan Vs. Union of India."

207. The above decision was relied on by the learned counsel in order to highlight that in regard to riots in the State of Gujarat, the NHRC had to approach the Hon'ble Supreme Court of India for quantifying the payment of compensation to the victims of riot. Therefore, the learned counsel would submit that the Commission on its own, felt that its power was inadequate to deal with such situation and had to approach the Court under Section 18(b) of H.R. Act.

208. The learned counsel would draw the attention of this Court to the other enactments where the appeal provision is provided. He would, in fact, refer to the Consumer Protection Act, the Right to Information Act and also Arbitration and Conciliation Act. In the Right to Information Act and the Consumer Protection Act, there are specific provisions for filing of appeals and only when such provisions are made available in the Statute, enforcement is possible. In fact, analogy drawn to the Arbitration and Conciliation Act appeared to be misplaced which was pointed out by the Bench as the award passed under the provisions of the Act by a private arbitral Tribunal is final and binding. However, the learned counsel would submit that the analogy was drawn only for the purpose of highlighting the point that even in the realm of private contractual law, the award rendered under the Act is enforceable and binding and such self-contained provisions are not consciously included in H.R. Act.

209. The learned counsel would further elaborate the point that in the absence of any mechanism for complainant or delinquent to file an appeal when the Commission dismisses the complaint or pass the recommendation adverse to the delinquent, the recommendation remains recommendation simplicitor and nothing more. Moreover, the learned counsel would also

submit that in certain cases of human rights violation both the SHRC and NHRC can take note of the violations simultaneously as fact finding bodies as there were no recognised hierarchy between the two. The learned counsel would proceed to submit that the meaning of the word "inquiry" is found in Section 2(g) of the Criminal Procedure Code, which defines "inquiry" as below:-

> '2(g). "Inquiry" means every inquiry, other than a trial conducted under this Code by a Magistrate or Court".

210. In this connection, the learned counsel would refer to Section 18(e) of the Act which in fact, provides for forwarding of comments by the Government or the authority only on the report not on the recommendation. Therefore, he would submit that the Government or the authority is not under any obligation to positively respond to the recommendation of the Commission.

211. He would then refer to Sub Clauses (b) to (j) of Section 12 of H.R.Act, which do not contain the word "inquiry" but the word "inquiry" is found only under sub Clause (a) of Section 12 and such an inquiry is relatable to Section 18. He would refer to similar Commissions established by the Government of India like National Commission for Backward

Castes, National Commission for Minorities, National Commission for Protection of Child Rights, National Commission for Scheduled Castes, National Commission for Scheduled Tribes and the National Commission for Women. He would refer to Section 12 of H.R. Act and the functions specified in Clause (b) to (j) of Section 12. Moreover, under Section 20(2) and 28(2), the Government has discretion to record its reasons for non-acceptance of recommendation. These provisions which are cumulatively read together, would only establish the status of the Commission that its recommendations are only to remain as recommendations.

212. The learned counsel would then proceed to refer to two decisions on the principle of construction and interpretation of words in Statute. He would refer to a decision reported in (2005) 2 SCC 271 (***Nathi Devi versus Radha Devi Gupta)*** and draw the attention of this Court to paragraph nos.13 and 14, which are extracted as under:

> '13. The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a Statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of Statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may

follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the Statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the Statute unconstitutional.

'14. It is equally well settled that in interpreting a Statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the Statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See State of U.P. and others vs. Vijay Anand Maharaj: AIR 1963 SC 946 ; Rananjaya Singh vs. Baijnath Singh and others: AIR 1954 SC 749 ; Kanai Lal Sur vs. Paramnidhi Sadhukhan : AIR 1957 SC 907;Nyadar Singh vs. Union of India and others : AIR 1988 SC 1979 ; J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P. : AIR 1961 S.C. 1170 and Ghanshyam Das vs. Regional Assistant Commissioner, Sales Tax : AIR 1964 S.C. 766).'

213. The above observation of the Hon'ble Supreme Court would illustrate as to how the interpretative function of the Court has to be exercised by discovering true legislative intent and efforts should be made to give effect to each and every word used by the legislature. According to the learned counsel, when the provisions of the Act are very clear and unambiguous, the question of any interpretation filling any gap would not

arise at all as in the present case. The learned counsel would refer to an another decision reported in (2011) 11 SCC 334 (***Grid Corporation of Orissa Limited and others versus Eastern Metals and Ferro Alloys and others)*** and he would draw the attention of this Court to paragraphs no.25, which is extracted hereunder:

> '25. This takes us to the correct interpretation of clause 9.1. The golden rule of interpretation is that the words of a Statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See Bengal Immunity Co. v. State of Bihar - 1955 (2) SCR 603 and Kanailal Sur v. Paramnidhi Sadhukhan - 1958 SCR 360 and generally Justice G.P.Singh's Principles of Statutory Interpretation, 12th Edition, published by Lexis Nexis - Pages 124 to 131, dealing with the rule in Haydon's case).'

214. The learned counsel was drawing support from the above observation of the Hon'ble Supreme Court regarding golden rule of

interpretation. He would emphasise the legal position that interpretation for advancing the object of the provisions, can be exercised only when the language used in the Statute is capable of more than one understanding, meaning 'construction'. In this case, the Act as such does not suffer from any ambiguity at all for this Court to indulge in interpretative exercise. The learned counsel therefore, would sum up that when the scheme of the Act is free from any lacunae or from any ambiguity, reading something more into the Statute may not be called for.

215. Ms.Madhuri, the learned counsel for the petitioner in WP.No.22760 of 2017 would make her submissions contending that the reference must be addressed on two aspects, one from the Statute point of view and the other from the point of view of the international convention relating to the subject matter. She relied on the typed set of documents containing certain provisions relating to Settlement Commission, Finance Commission, Competition Commission of India, Central Vigilance Commission, Central Information Commission, Security Enforcement Bureau of India, Telecom Regulatory Authority of India, Insurance Regulatory and Development Authority of India. According to the learned counsel, these enactments provide specific ambit of power to the

Commission and other quasi judicial bodies under the respective statutues and those enactments have come into force just prior or immediately after H.R. Act, 1993. According to her, when the legislative intent is clearly reflected in those enactments of providing specific provisions clarifying their powers and the scope of their exercise, as far as H.R. Act is concerned, there is a concious omission to include any such provisions. Therefore, it is needless to emphasise that the power of the Commission is restricted only to make recommendations and nothing more can be read into the Act.

216. The learned counsel would also submit that the international covenants cannot be *ipso facto* applied in our country mechanically. She would submit that many countries in fact have not made Human Rights Commissions' recommendations as mandatory. The learned counsel would also refer to the principles enunciated in United States of America towards granting of qualified immunity to the Government Officials from being proceeded against for their acts done in line of their duty. She would in fact refer to a decision of the Federal Supreme Court of USA, the State of California in this regard.

217. According to the learned counsel, the delinquent officials who

have to face adverse recommendations of the Commission in the process would also suffer from human rights violation as they become defenceless. However, the learned counsel would finally sum up that the recommendations made by the Commission are not to be held as binding on the Government or the authority.

218. Mr.B.Vijay, learned counsel who has been appointed as Amicus Curiae by this Court, has made his submissions as follows:

219. As far as the Reference No.1 is concerned, the learned counsel would submit that all the decisions so far rendered by this Court and other High Courts, proceeded on the basis that the Commission of Inquiry Act, 1952 and Human Rights Act, 1993 are in *pari materia* and therefore, the Commission under H.R. Act is only a fact finding body and only from that perspective, the decisions were rendered. According to the learned counsel, there is a material difference between two enactments and unfortunately, the judgements rendered earlier by various Courts in interpreting the provisions of H.R. Act, have lost sight of the most important and crucial provision as contained in Section 18 (e) of H.R. Act. The learned counsel, as a matter of comparison, would refer to Sub Section (4) of Section 3 of the C.I. Act and

Section 18(e) of H.R. Act. As far as the C.I.Act is concerned, the recommendation made by the Commission constituted under the said Act is to be placed before the Legislature of the State along with memorandum of action taken there on. The Commission therefore, has no further role after making its recommendation. As far as Section 18(e) of H.R. Act is concerned, the Government is under a legal obligation to forward its comments on the report including the action take and proposed to be taken thereof to the Commission. Therefore, the scope and the ambit of 'inquiry' and the recommendation of the Commission under H.R. Act can never be compared to the status and position of the Commission under C. I. Act.

220. According to the learned Amicus Curiae, if Section 18(e) is closely examined, no discretion is available with the Government to reject or modify the recommendations of the Commission. The learned counsel painstakingly explained the import and the contextual meaning of the words "comments" and 'proposed to be taken' as found in Section 18(e) of H.R. Act. According to the learned counsel, that the expression "comments" as found in the said Section means that the Government is under legal obligation to provide remarks as to the action to be taken by it on various aspects, like payment of compensation, initiating criminal action against the

violators and also departmental action if any. He would also add that the expression 'proposed to be taken' may have to be read in conjunction and in tune with the entirety of Section and must receive liberal construction.

221. The learned counsel would further elaborate that the first limb of Section 18(e) i.e., 'action taken', is affirmative action and the second limb, i.e. 'proposed to be taken' is positive reaction to the recommendation for timely response. The learned counsel would submit that the expression 'proposed to be taken' must connote positive action and not any negative response. The learned counsel would therefore, submit that the fundamental premise of the said difference was not appreciated by the Courts which rendered the decisions, holding that the Commission's recommendations were only recommendatory. The learned counsel would also submit that merely because Section 18(b) provides an opportunity for the Commission to approach the Constitutional Court, does not mean that the recommendation made by the Commission is only an expression of opinion or suggestion.

222. The learned counsel would also submit that the report contemplated under Section 20(2) and 28(2) of H.R.Act *vis-a-vis* the report

contemplated under Section 18(e) are altogether different and cannot be compared. The learned counsel would lay emphasis that the expressions contained in Section 18 (e) should be interpreted to give thrust and force to the scheme of the Act and not to defeat its purpose by literal or ordinary construction.

223. The learned counsel would further submit that earlier to H.R. Act, in respect of the human rights violations, there were only two remedies available, viz., one is criminal and the other is in the realm of civil law namely, tortious claim. After coming into force of H.R.Act in 1993, a quasi judicial mechanism has been provided under the Act and the Commission which is assigned the role of conducting an inquiry into the human rights violations enjoys all the powers of a Civil Court, as specifically provided under Section 13 of the Act. He would specifically draw reference to Sub Clause (5) of Section 13, which provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 195 of 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. Such power is also referable to Sub Clause (4) of Section

13. Therefore, he would submit that the inquiry conducted by the Commission under Section 13 is not inquisitorial, but a quasi judicial adjudication.

224. In support of his contentions, the learned counsel would also refer Regulation 25 of State Human Rights Commission Tamil Nadu (Procedure) Regulation, 1997, which reads as under:

> '25. Opportunity to persons before the Commission – The Commission may in its discretion afford a personal hearing to the petitioner or any other person on his behalf and such other person or persons as in the opinion of the Commission should be heard for the proper disposal of the matter before it and where necessary, call for records and examine witnesses in connection with it. The Commission shall afford a reasonable hearing including opportunity of cross examining witnesses, if any, in support of his stand to a person, whose conduct is enquired into by it or where in its opinion, the reputation of such person is likely to be prejudicially affected.'

225. The above regulations afford a personal hearing and adequate opportunity to persons to examine and cross-examine the witnesses by persons whose conduct is being inquired into. When such opportunity is being provided in the regulations, the ultimate recommendations by the Commission after conduct of inquiry, cannot said to be recommendatory in

nature. The learned counsel would proceed to refer Section 15 of the Act submitting that the evidentiary value in any quasi judicial proceedings is always different from the evidence tendered before the criminal or civil Courts. In fact, he would compare the evidences given in the departmental proceedings which cannot be compared to the evidence given in Courts. This is because of strict Rules of evidence are not always followed in quasi judicial proceedings, but however, the principles of evidence, would be always adhered to.

226. The learned counsel would refer to Regulations 27 & 28 of National Human Rights Commission (Procedure) Regulations, 1997. According to the learned counsel, Regulation 27 is a supplementary provision to Section 18(e) of the Act whereas, Regulation 28 being a subordinate legislation does not supplement the Act, but on the other hand, it seeks to supplant the contingency of non-acceptance of the report as found in Sub Clause (ii) of Regulation 28.

Regulations 27 and 28 are extracted as under**:**

> '**27**. **Communication of Recommendations**:- When the Commission, upon consideration of the inquiry report, makes any recommendation, a copy of the inquiry report along with a copy of the

recommendation shall be sent with utmost expedition, not. later than seven days from the date of such recommendation, to the concerned government or authority calling upon it to furnish its comments on the report including the action taken or proposed to be taken, within a period of one month or such further time as the Commission may allow.

28. Steps after calling for Comments- (a) If no comments are received within the time allowed, the case shall be placed before the Commission forthwith for further direction.

(b) If comments are received, the case shall be placed before the Commission with a brief note containing the following information regarding:

(i) acceptance of the recommendation in full or in part;

(ii) the action, if any, taken or proposed to be taken by the concerned government/authority;

(iii) the reasons, if any, given for not accepting the recommendations; and

(iv) the action that may be taken pursuant to the comments received.

(c) On consideration of the comments received and the note referred to in clause (b), the Commission may pass such order as it deems proper.

He would therefore submit that Regulation 28 is liable to be read down to provide efficacy to the Parent Act.

227. The learned counsel thereafter, would draw the reference to the Annual Report of NHRC for the year 1998-1999 and would rely on paragraph no.48 which is extracted herein:

> '48. Unlike the case of Commissions of Inquiry, the recommendations of the National and State Human Rights Commissions have to be dealt with by the Governments, not as some recommendations amenable to their discretion whether to accept or reject them. Rather, the State Governments, under the Protection of Human Rights Act, 1993, are bound, within the time frame prescribed by Section 18(5), to forward to the Commission their comments 'including the action taken or proposed to be taken thereon. This obligation has significant relationship to and requires to be read with Sub-section (2) of Section 18, under which the Commission has the right, and in appropriate cases the duty, to approach the Supreme Court or the High Courts. The provisions in Section 18(2) and (5), read together and properly construed, impose 'reporting obligations' on the Central and State Governments. It would, indeed, be appropriate for National and State Commissions, wherever they consider that the responses of the State Governments do not accord with justice and fail to protect and promote human rights, to hold if necessary public sittings, in which the appropriateness, reasonableness, propriety and the legality of the responses of the State Governments would be heard and discussed so as to enable the Commissions to decide whether further steps under Sub-sections (2) of Section 18 would be necessary to be adopted. This understood, the existing provisions in the 'Act' could be seen to be adequate, provided they are imaginatively implemented for the promotion and protection of Human Rights. (Paras 15.1 6, 15.1 7, 15.1 8)'

228. The above paragraph would demonstrate that the recommendation of the Commission are not amenable to the discretion of the Government whether to accept it or not. In fact, it is understood by the Commission that the existing provisions of the Act were found to be adequate if they were imaginatively implemented. He would then refer to various reports of the NHRC in order to highlight that strong observations have been made in the reports by NHRC that the recommendations were not simple opinions or advices but those recommendations were orders and the proceedings and the compliance of the recommendations of the Commission under the Act, cannot be left to the discretion of the Government. In support of his contention, the learned counsel would rely on the following NHRC reports which are extracted hereunder:

'**NHRC-Annual Report 1999-2000**:

Section 18 Marginal Note. Steps after Inquiry	Steps during and after inquiry	The Ahmadi Committee had suggested a complete overhaul of the present provision from Section 14 to Section 18 to cater to various requirements but the Commission has narrowed them down to a few important changes keeping in view the need to reduce amendments to the bare minimum while at the same time ensuring that essential elements as are required for increasing the effectiveness of the provisions are not lost sight of.

'**NHRC-Annual Report 2015-2016**:

'18.2 The recommendations of the Commission are usually being accepted by the authorities concerned. Rarely, the recommendations face resistance from the State Governments public authorities in so far as their compliance is concerned. There are delays in complying with the recommendations in certain cases on account of lack of co-ordination between the different wings of States. However, the Commission monitors such cases strenuously till the same reach their logical conclusion.'

... .

'19.6 As per the Section 18 of the Protection of Human Rights Act, 1993, the Commission may only recommend to the concerned Government or authority the steps listed in the said Section and not give any directions, 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.

'19.7 Though Commission is of a firm view that the recommendations are binding on the Government, until same remain unchallenged, but there is a contrary view expressed by certain quarters that the recommendation of the Commission have no binding force. The stand of the Commission about the binding nature of its recommendations has been affirmed by the Allahabad High Court in Writ (C) No. 15570 of 2016 in which the Government of Uttar Pradesh instead of making the payment of monetary compensation of Rs. 2,00,000/- to the next-of-kin of deceased, who had died in custody due to lack of proper and timely medical care, challenged the Commission's recommendations, in Case No. 16187/24/57/2012-JCD for the said payment of monetary compensation. The High Court dismissed the Writ Petition and observed that 'the State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed, disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to

this right is duty bound to comply with the order. Otherwise, the purpose of the enacting the legislation would be defeated.'

'19.14.Public officials/authorities quite often than not deliberately fail to submit/ send a public record/report/order required by the Commission in an inquiry or send it late probably for the reason that the orders/recommendations of the Commission do not have a binding force. This adversely affects the efficiency of the working of the Commission as far as inquiry into cases is concerned or at least delays the action on the part of the Commission.'

'**NHRC-Annual Report 2016-2017**:

'19.4 Other constraint is that the recommendations made by the Commission are not binding upon the authorities, as a result the Commission is nicknamed as 'toothless tiger'. At the one hand the Section 2(d) of the Protection of Human Rights Act, 1993, defined these rights as enforceable by the court of Law, and the Section 13(5) provides that every proceeding before the Commission shall be deemed to be a judicial proceeding, and the Commission has also been equipped with the powers of a Civil Court while enquiring a complaint, as per Section 13(1), but when it is concluded that human rights are violated, and there should be remedial measures to protect the human rights and grant of compensations to the victims, the powers of the Commission as per Section 18(c) of the Protection of Human Rights Act, 1993 are confined to make recommendations to the government. Sometimes it is felt that the recommendations are left to the sweet will of the government, and they are a liberty to ignore the Commission's recommendations. It is a fact that the recommendations are not simple opinions and advices, or consultancy, but these are orders in proceedings where the Commission after giving all possible opportunities to the State authorities has taken view to recommend monetary compensation to the victims or the family members of the deceased victims, as the case may be, or to initiate prosecution of the violator of human rights of the victim. The aforesaid provisions of the Act indicate that the compliance of the recommendations made the Commission, under the Act, cannot be left to the discretion of the government, but the government is under obligation

to pay regard to the recommendations.'

229. The above report would throw light on the thinking of the NHRC on the scope and power of the Commission and how the recommendations ought to be dealt with by the Government. According to the learned counsel, that these reports cumulatively act as guidance to provide effective teeth to the scheme of the Act.

230. The learned counsel, in regard to the interpretation of the statutory provisions, would rely on a decision of a Constitutional Bench of the Hon'ble Supreme Court reported in (2005) 2 SCC page 271 (***Nathi Devi versus Radha Devi Gupta),*** wherein, he would particularly, draw the reference to paragraph nos.13 and 14 of the judgment, which in fact, relied on by learned counsel Mr.Ganesh Kumar and the same paragraphs have been extracted supra.

231. According to the learned counsel, the observations of the Hon'ble Supreme Court, that the function of the Court to look at the Statute as a whole and give meaning to the words on the basis of its appropriateness with reference to the scheme of the Act. The learned counsel would also

submit that the comparison of H.R. Commission with the National Commission for Protection of Child Rights is misplaced and the reliance placed on a decision of the Hon'ble Supreme Court of India reported in 2020 SCC On-Line SC 27 (***National Commission For Protection of Child Rights and Others versus Dr.Rajesh Kumar and others)***, wherein, an observation has been made in paragraph no.16 (already extracted supra) that the Commission constituted under the said enactment has only recommendatory power. The comparison is impermissible for the simple reason that Section 15 as per Sub-Clause (3) merely provides recommendation to be made to the concerned Government or authority for grant of any relief and not like the provisions as contained in Section 18 of H.R. Act.

232. As regards the issue whether at what point of time the Constitutional Courts could be approached by any person aggrieved by the recommendation of the Commission, he would submit that in view of the binding nature of the recommendation, the person aggrieved could approach the Constitutional Courts at any stage. He would further submit that even at the very preliminary stage of the Commission going into the inquiry of the complaint, the Courts can be approached on the aspect of limitation as

provided under the Act and in case of serious violation of principles of natural justice, while initiating inquiry under the Act. Therefore, the view taken by the learned single Judge in 'Rajesh Das' case that unless a decision is taken by the Government on the recommendation, the Courts cannot be approached, is not correct view considering the scheme of the Act.

233. The learned counsel would also submit that in view of full opportunity is being extended under Regulation 25 which is extracted supra, a delinquent need not be extended any further opportunity before the Government or before his employer. He would, in fact, borrow the words of one of the Judges, rendered judgment holding as such that 'further remedy available to delinquent in service regulations, would amount to providing paradise of remedies and that will only lead to multiplicity of challenges.

234. The learned counsel would submit that the Division Benches' decisions which are referred to, rendered by this Court which have been the basis of reference before this Bench, did not in fact, render any divergent views. However, those Division Benches dealt with only one or two aspects of the Act and there was no consideration of the entire scheme of the Act. Therefore, he would submit that the Division Benches' decisions of this

Court rendered in the past, may not be the guiding factors as this Bench in terms of the reference is called upon to consider the entire scheme of the Act and the Regulations framed thereunder.

235. According to the learned Amicus Curiae, the High Court in the decisions cited supra, has taken a view that the recommendation of the Commission is not binding as none of the judgments took note of the State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997. According to the learned counsel, Sub Para (c) of Regulation 23 clearly provides that on consideration of the comments received from the Government, the Commission may pass such order as it deems fit.

Regulation 23 reads as under:

> '23.**Follow up action** –
>
> (a) If no comments are received within the specified time, the case shall be placed before the Commission forthwith for further direction.
>
> (b) If comments are received, the case shall be placed before the Commission with a brief not indicating whether the recommendation of the Commission has been accepted in full or part or not accepted at all, the reasons for such not acceptance or part acceptance and the action that may be taken or proposed to be taken.
>
> (c) After considering the comment and the brief

note on it, the Commission shall pass such order as it deems fit.'

236. According to the learned counsel, this would clearly enlarge the scope of the recommendation to include that the Commission may issue even directions after receipt of comments from the Government for enforcing its recommendations. These Regulations have not been the subject matter of consideration by various decisions of the High Courts in the past when the Courts have held that the recommendations of the Commission were only recommendatory.

237. He would also submit that the reliance placed on by the learned counsel Mr.Sarath Chandran, on the decision of the Division Bench of the Patna High Court reported in 2013 SCC On-Line page 998 (***The State of Bihar through the Chief Secretary, Government of Bihar, Patna and others versus Bihar Human Rights Commission and others)***, wherein, an observation has been made in paragraph no.5 of the judgment that the Commission cannot issue mandatory directions and has only limited jurisdiction, this according to the learned Amicus Curaie that such observation has been made with reference to the entertaining a complaint in regard to the remuneration payable to employees and whether less

remuneration than minimum wages would constitute human rights violation or not? In that context, the Court held that the Commission cannot exceed its jurisdictional limit. He would therefore, submit that such observations made in the light of a different subject matter, cannot be relied upon for the purpose of canvassing that the Commission has only a very limited jurisdiction and its recommendations are merely advisory. On the other hand, he would submit that the Commission is an adjudicatory body and the recommendation of the Commission is not to be ignored or rejected by the Government and no such discretion could be formed in the scheme of the Act. He would therefore, sum up that the recommendation of the H.R. Commission is a result of exercise of adjudicatory process by the Commission into the complaints of human rights violation and the same is very much binding on the concerned Government or authority.

238. Dr.Saravanan Karuppaswamy, who is appearing Party-in-Person in WP.No.32041 of 2014 in the capacity as Chairman and Editor-in-Chief of 'World Human Rights Commission & Rescue Centre, has made his submissions sharing his valuable experience with the National and State Human Rights Commissions as being a crusader of human rights for many years. He would submit that the human rights is the most cardinal right to

be enjoyed by all the citizens and that need to be safeguarded and protected in terms of the fundamental rights enshrined in the Constitution. When such human rights issues are to be inquired into by constituting a Commission under H.R. Act, the role of the Commission assumes constitutional importance. He would refer to certain observations of the Hon'ble Supreme Court of India in a decision reported in 2014(10) SCC 406. In the said case, the Hon'ble Supreme Court was concerned with the filling up of vacancy of Chair Person of SHRC and in the absence of Chair Person, the function of the Commission becomes ineffective. In that context, the observation of the Hon'ble Supreme Court in paragraph no.21 is extracted herein:

> '21. Protection of Human Rights Act 1993 has been enacted to provide for better protection of human rights by constituting a National Human Rights Commission and also State Human Rights Commission and Human Rights Courts. Section 2(1)(d) of the Act defines 'human rights' as the rights relating to life, liberty, equality, dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The above rights are traceable to Part III of the Indian Constitution guaranteeing Fundamental Rights and particularly Articles 14, 19, 20, 21, and 22. Chapter V of the Act consisting of Sections 21 to 29 deals with the constitution of State Human Rights Commission and its functions thereto. State Commission consists of a Chairperson who has been a Chief Justice of a High Court and four Members. The Act has put in place various remedial measures for prevention of any human rights violations and confers power upon the NHRC/SHRC to inquire suo motu or on a petition not only of violations of human rights or abetment thereof or even negligence exhibited by a public servant in preventing such violations. The Statute has conferred wide range powers upon

> NHRC/SHRC. The Commission is therefore required to be constituted with persons who have held very high constitutional offices earlier so that all aspects of good and adjudicatory procedures would be familiar to them. Having regard to the benevolent objects of the Act and the effective mechanism for redressal of grievances of the citizens against human rights violations, the office of Chairperson of SHRC cannot be allowed to remain vacant for a long time. State of Tamilnadu has always shown zero tolerance towards human rights violations and has always sent clear message of its commitment towards protection of human rights. We see no reason as to why the post of Chairperson, SHRC which is to be headed by a person who has been the Chief Justice of a High Court should remain vacant for more than three years. In our view, pending the State Government's request for amendment to Section 21(2)(a) of the Act which process will take long time, it will be in order if the State of Tamilnadu takes steps to fill up the vacancy of the post of Chairperson, SHRC, Tamilnadu in terms of Section 21(2)(a) by constituting a Search Committee at an early date.'

239. The above observation of the Hon'ble Supreme Court would highlight the fact that the Commission's role as a guarantor of the Constitutional rights of the citizens is to be a guiding factor for this Bench to take it forward and interpret the provisions of the Act to infuse both purpose and meaning to the Act. He would sum up that the recommendation of the Commission is perforce binding on the concerned Government or authority and there cannot be two opinions on that aspect.

240. Mr.R.Sreenivas, learned counsel for NHRC, by way of reply,

would submit that in regard to the elaborate submissions of the learned Additional Solicitor General for the Union Government and the NHRC that the Act is bereft of any procedure for quantifying the compensation or damages as provided under Section 18 and therefore, the Commission's power to order relief towards damages or compensation is limited, he would submit that the said submission was made without proper reading of the Sections 13, 16 and 17 of the Act. Section 13 vests in the Commission the powers of Civil Court while the Commission undertaking its inquiry and as per Clause (4) of Section 13, the Commission while inquiring into the complaint is deemed to be a Civil Court and as per Sub Clause (5), the proceedings before the Commission is deemed to be judicial proceedings within the meaning of the provisions of the Indian Penal Code and the Code of Criminal Procedure. Further, the Commission is also empowered to summon any person for inquiry and provide an opportunity of being heard in the inquiry, if any person is likely to be prejudicially affected by the inquiry. Section 17 also provides an elaborate procedure describing the power of the Commission and calling for information and report from the Governments or any other authority in receipt of the inquiry to be conducted by the Commission into complaints of human rights violation. All these Sections would cumulatively demonstrate that the Commission has all the

powers of deciding the reliefs to be granted to the victims and the recommendations to be made in pursuance of the complaint are no inferior to any decision in that regard by any other judicial forum. Therefore, it cannot be contended that the Commission lacks any power of quantifying the damages or compensation.

241. The learned counsel would refer to Section 18(a) (i), (ii) and (iii), which were in fact, introduced by way of amendments in the Act only in 2006 and the very fact that these amendments were brought about in 2006 to the existing Section 18 would show that the intention of the Parliament was to clothe the Commission with more power. In this regard, he would submit that this Bench can always take cue from the subsequent amendments to the Act in order to appreciate the intention of the Parliament in its exercise of the interpretation of Statute. He would also submit that Section 18 and Sub Classes (a) to (f) are self-contained code, meaning that the power of the Commission exercising under the Act does not suffer from any inadequacy. He would also submit that the inquiry report, which is contemplated under Sections 20(2) and 28(2) is materially different from the inquiry report contemplated under Section 18. In fact, he would submit that no where in the Statute, it is explicitly stated that the recommendation

of the Commission is recommendatory in nature. The learned counsel would submit that the common fabric runs through all the decisions rendered by the Courts holding that the Commission's power was limited and circumscribed by the Act and it can only make recommendations by comparing the Commission of H.R. Act to that of Commission under the C.I. Act which comparison is thoroughly mis-placed. Those decisions have not analysed Section 18 of the Act decisively and incisively. Those decisions fundamentally suffer from the principle of *sub-silentio*. More over, those decisions have also not read the distinction, scope and meaning of Sections 12 and 18 of H.R. Act.

242. The learned counsel would submit that the Commission, in fact, enjoys distinct and varied of powers under Section 12. It has the power of inquiry, power of intervention, power to do research, power to spread education, power to encourage NGOs and Institutions and in the field of human rights, the power to promote safeguards of human rights and its protection etc. Such wide and distinct powers are enumerated under Section 12 of the Act and such power read in conjunction with Section 18, would make the Commission as a powerful judicial body and in that view of the matter, the recommendations of the Commission cannot be termed as

recommendatory at all.

243. According to the learned counsel, none of the judgments so far rendered on the provisions of H.R. Act have dissected and examined critically, the power of the Commission with reference to various provisions of the Act. In those judgments, the findings were rendered on the basis of superficial consideration of the Act and its provisions. The learned counsel would also submit that the debates in the Parliament which preceded to passing of the Human Rights Bill, as cited and relied on by the learned counsel, Mr.Sarath Chandran, the debates were grossly insufficient to be taken as a guide for interpreting the Statute. When internal aids are available, no external aids are required for interpretation of H.R. Act. The learned counsel would make this submission specifically with reference to the other provisions of H.R. Act and also the amendments which have been brought introduced in 2006 after the original enactment in 1993. He would also refer to Section 36 of the Act for the reason that when the State Commission is inquiring into the matters relating to the human rights violation, neither National Commission nor any other Commission constituted any other law, would entertain any complaint. Such power of exclusivity is vested in the Commission and in that view of the matter, it

cannot be gainsaid that the Commission is a toothless tiger.

244. The learned counsel finally would submit that the present legal trend is that the rule of construction will also include creative interpretation. He would submit that other interpretations namely liberal interpretation and strict interpretation which are also part of the concept of rule of construction have limited application to the reference on hand as the scheme of H.R. Act requires a creative interpretation, without offending the basic structure of the Act. If the Act is to be construed with reference to each and every provision and to be given a purposive interpretation, the principle of strict interpretation is to give way to creative interpretation.

245. The learned counsel would rely on the following decisions in regard to the concept of interpretation of Statute as propounded by the Hon'ble Supreme Court of India, viz.,

(2017) 15 SCC 133 (***Eera through Dr.Manjula Krippendore versus State (NCT of Delhi) and another)***, wherein, the learned counsel would draw reference to paragraph nos.64 and 65 of the judgment which are extracted hereunder:

> '64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the

legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to herein above encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the 'colour', 'content' and the 'context of Statutes' and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

'65. I have perceived the approach in *Hindustan Lever Ltd.* [*Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*, (1995) 6

SCC 326 : 1995 SCC (L&S) 1385] and *Deepak Mahajan* [*Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] , *Pratap Singh* [*Pratap Singh* v. *State of Jharkhand*, (2005) 3 SCC 551 : 2005 SCC (Cri) 742] and many others. I have also analysed where the Court has declined to follow the said approach as in *R.M.D. Chamarbaugwalla* [*R.M.D. Chamarbaugwalla* v. *Union of India*, AIR 1957 SC 628] and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the Statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the Statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the Statute. If the meaning is intelligible, the said principle has no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires. '

246. The above observations of the Hon'ble Supreme Court would show that how the Courts have to construct the statutory scheme by interpretation providing larger purpose and meaning and enhance functional provisions of the Statute. The intention of the legislature as per the Hon'ble Supreme Court of India is more important than the words of the Statute.

247. He would refer to another decision reported *in (*2018) 9 SCC 1 (***Commissioner of Customs (Import), Mumbai versus Dilip Kumar and Company and others)***. The learned counsel would refer to paragraph nos.15, 18 to 23 which are extracted hereunder:

> **'15.** We may passingly, albeit, briefly reiterate the general principles of interpretation, which were also adverted to by both the counsel. In his treatise, *Principles of Statutory Interpretation*, Justice G.P. Singh lucidly pointed out the importance of construction of Statutes in a modern State as under:
>
> > 'Legislation in modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for,

> and, words chosen to communicate such indefinite 'referents' are bound to be, in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction.'

18. The purpose of interpretation is essentially to know the intention of the legislature. Whether the legislature intended to apply the law in a given case; whether the legislature intended to exclude operation of law in a given case; whether the legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of Statutes, there are certain internal aids and external aids which are tools for interpreting the Statutes.

19. The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions or dictionary clause, a *proviso* to a section, explanation, examples, a schedule to the Act, etc., are internal aids to construction. The external aids to construction are parliamentary debates, history leading to the legislation, other Statutes which have a bearing, dictionaries, thesaurus.

20. It is well accepted that a Statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In this connection, the following observations

made by this Court in *District Mining Officer* v. *Tisco* [*District Mining Officer* v. *Tisco*, (2001) 7 SCC 358] , may be noticed: (SCC pp. 382-83, para 18):

> '*18*. … A Statute is an edict of the legislature and in construing a Statute, it is necessary, to seek the intention of its maker. A Statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a Statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of

> the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

21. The well-settled principle is that when the words in a Statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the Statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.

22. In *Kanai Lal Sur* v. *Paramnidhi Sadhukhan* [*Kanai Lal Sur* v. *Paramnidhi Sadhukhan*, AIR 1957 SC 907] , it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

23. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal Statutes and penal Statutes. Nevertheless, if the plain language results in absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. [*Commr.* v. *Mathapathi Basavannewwa*, (1995) 6 SCC 355] Not only that, if the plain construction leads to anomaly and absurdity, the court having regard to the

> hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation. '

248. He would submit that the Hon'ble Supreme Court once again emphasised that though the interpretation by the Courts must be *vis-a-vis* the intention of the legislature, the Courts have a latitude to determine the meaning of the words to save the Act from absurdity.

249. The learned counsel would rely on (2018) 2 SCC 674 (***Macquarie Bank Limited versus Shilpi Cable Technologies Limited***), wherein, he would refer to paragraph nos.27, 28, 29, 30 to say as to how the Hon'ble Supreme Court has come up with the concept of creative interpretation in order to understand the ultimate scheme of the Act and the intention of the legislature.

> '27. Equally, Dr Singhvi's argument that the Code leads to very drastic action being taken once an application for insolvency is filed and admitted and that, therefore, all conditions precedent must be strictly construed is also not in sync with the recent trend of authorities as has been noticed by a concurring judgment in Eera v. State (NCT of Delhi)

[Eera v. State (NCT of Delhi), (2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588] decided on 21-7-2017. In this judgment, the correct interpretation of Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012 arose. After referring to the celebrated Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , and to the judgments in which the golden rule of interpretation of Statutes was set out, the concurring judgment of R.F. Nariman, J., after an exhaustive survey of the relevant case law, came to the conclusion that the modern trend of case law is that creative interpretation is within the Lakshman Rekha of the Judiciary. Creative interpretation is when the court looks at both the literal language as well as the purpose or object of the Statute, in order to better determine what the words used by the draftsman of the legislation mean. The concurring judgment then concluded: (Eera case [Eera v. State (NCT of Delhi), (2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588] , SCC p. 204, para 127):

> '127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] , which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in

Heydon case [Heydon case, (1584) 3 Co Rep 7a : 76 ER 637] .'

28. In dealing with penal Statutes, the Court was confronted with a body of case law which stated that as penal consequences ensue, the provisions of such Statutes should be strictly construed. Here again, the modern trend in construing penal Statutes has moved away from a mechanical incantation of strict construction. Several judgments were referred to and it was held that a purposive interpretation of such Statutes is not ruled out. Ultimately, it was held that a fair construction of penal Statutes based on purposive as well as literal interpretation is the correct modern day approach.

29. However, Dr Singhvi cited Raghunath Rai Bareja v. Punjab National Bank [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230] and relied upon paras 39 to 47 for the proposition that the literal construction of a Statute is the only mode of interpretation when the Statute is clear and unambiguous. Para 43 of the said judgment was relied upon strongly by the learned counsel, which states: (SCC p. 244)

'43. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn., pp. 45-49). Hence departure from the literal rule should only be done in

very rare cases, and ordinarily there should be judicial restraint in this connection.'

30. Regard being had to the modern trend of authorities referred to in the concurring judgment in Eera [Eera v. State (NCT of Delhi), (2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588] , we need not be afraid of each Judge having a free play to put forth his own interpretation as he likes. Any arbitrary interpretation, as opposed to fair interpretation, of a Statute, keeping the object of the legislature in mind, would be outside the judicial ken. The task of a Judge, when he looks at the literal language of the Statute as well as the object and purpose of the Statute, is not to interpret the provision as he likes but is to interpret the provision keeping in mind Parliament's language and the object that Parliament had in mind. With this caveat, it is clear that Judges are not knight-errants free to roam around in the interpretative world doing as each Judge likes. They are bound by the text of the Statute, together with the context in which the Statute is enacted; and both text and context are Parliaments', and not what the Judge thinks the Statute has been enacted for. Also, it is clear that for the reasons stated by us above, a fair construction of Section 9(3)(c), in consonance with the object sought to be achieved by the Code, would lead to the conclusion that it cannot be construed as a threshold bar or a condition precedent as has been contended by Dr Singhvi.'

250. He would lastly refer to (2011) 14 SCC 1 (***Om Prakash versus Union of India)*** in order to emphasize the changing concepts of rule of

interpretation and construction etc., by passage of times. He would draw reference to paragraph no.40, which is extracted hereunder:

> '40. Section 2(l) CrPC defines a 'non-cognizable offence', in respect whereof a police officer has no authority to arrest without warrant. The said definition defines the general rule since even under the Code some offences, though 'non-cognizable' have been included in Part I of the First Schedule to the Code as being non-bailable. For example, Sections 194, 195, 466, 467, 476, 477 and 505 deal with non-cognizable offences which are yet non-bailable. Of course, here we are concerned with offences under a specific Statute which falls in Part II of the First Schedule to the Code. However, the language of the scheme of the 1944 Act seems to suggest that the main object of the enactment of the said Act was the recovery of excise duties and not really to punish for infringement of its provisions. The introduction of Section 9-A into the 1944 Act by way of amendment reveals the thinking of the legislature that offences under the 1944 Act should be non-cognizable and, therefore, bailable. From Part I of the First Schedule to the Code, it will be clear that as a general rule all non-cognizable offences are bailable, except those indicated herein above. The said provisions, which are excluded from the normal rule, relate to grave offences which are likely to affect the safety and security of the nation or lead to a consequence which cannot be revoked. One example of such a case would be the evidence of a witness on whose false evidence a person may be sent to

the gallows.

251. He would submit that the amendments to the Act can be a source of inspiration and guidance to this Court to interpret the statutory scheme. To sum up, the learned counsel, Mr.R.Sreenivas, would submit that the provisions as contained in Section 18 (e) and (f) are not available in other Acts viz., Commission for Protection of Child Rights Act, 2005 and National Commission for Women Act, 1990 and therefore, the decision rendered with reference to those decisions cannot be applied to the Commission constituted under H.R. Act which by the very scheme of the Act is placed on a different footing in the exercise of its power and ambit. Therefore, he would submit that the power of the Commission to inquire ought not to receive restricted meaning. The recommendations made under the provisions of Section 18 of the Act are the result of adjudicatory process undertaken by the Commission and consequently, the same are binding on the concerned Government or authority.

252. Ms.Naga Saila, learned counsel, by way of reply, would submit that several parallels could be drawn among the Commissions constituted for various purposes like, Commission for Protection of Child Rights Act,

2005 and National Commission for Women Act, 1990 National Commission for Schedule Castes and Schedule Tribes, which are functioning under the respective enactments or under the Constitution of India as the case may be, wherein, similar functions and powers could be noticed. But what is unique about the Human Rights Commission is Section 18(e) which speaks about 'the action taken' or 'proposed to be taken there on' to be forwarded to the Commission with its comments. There is a clear indication in the provision unlike in the other Commissions that the executive is accountable to the Commission which is a unique feature in the Act. She would further elaborate her submissions, saying that the recommendations as provided under Sections 12 and 18 of the Act are mutually complementary and they operate at two levels. One set of recommendations, impose larger accountability of the executive to the legislature and other set of recommendations mandate accountability of the executive to the Commission for enforcement of the recommendations of the Commission through provisions contained in Section 18(b) of the Act. The Act removes the rule of *locus standi* and clothes the Commission's jurisdiction to approach the Constitutional Courts for enforcement of its recommendations, which means that the jurisdiction of the Commission does not stop or end after making the recommendations.

253. The learned counsel would refer to a decision of the Madhya Pradesh High Court in ***M.P.Human Rights Commission versus State of M.P. and others*** reported in 2011 (3) M.P.L.J. 168, wherein, she would refer to the facts and the ruling of the High Court in a situation where the State Human Rights Commission has approached the High Court under Section 18(b) of the Act. Relevant portion as found in paragraph nos.1 to 8, 13, 15, 16, 18 to 21 are extracted hereunder:

> '1. Issue which crops up for consideration in this writ petition under Article 226/227 of the Constitution of India is as to whether the findings in a Departmental Enquiry in respect of conduct of police personnel leading to breach of human rights of a citizen, will have a precedent over the findings of the Human Rights Commission recorded earlier on the basis of complaint leading to an investigation under section 14 and proceedings under section 16 of the Protection of Human Rights Act, 1993.
>
> 2. Facts giving rise to the above issue lies in a narrow compass. On 16-10-2000, the Commission received a complaint from one Smt. Geetabai against respondent Nos. 2 and 3, who as alleged, came with other policemen to their village, abused and misbehaved with them and also threatened them, preventing them from harvesting their crops, as a result whereof the agricultural labours ran away from the field and the police personnel destroyed their crop Allegation was also that, the police party hauled up the labours and took them to police station and kept them in custody and were harassed.
>
> 3. The investigation and the enquiry held on the basis of the complaint led to establishment of the correctness of complaint wherein respondent Nos. 2 and 3 were found guilty of violating human rights. The Commission, therefore, recommended for a Departmental Enquiry against them and directed State Government for payment of Rs. 30,000/- as

interim compensation to the complainants and awarded Rs. 3,000/- to the labour Radheshyam.

4. The respondent Nos. 2 and 3 against whom the Commission had tendered recommendation for a Departmental Enquiry preferred writ petition before the Court forming subject matter of W.P No. 4166/2001 and W.P No. 4190/2001. These writ petitioners were dismissed on 22-11-2001.

5. As per recommendations, the respondent Nos. 2 and 3 were charge-sheeted on 13-2-2003. After holding an enquiry and on the basis of the statement recorded during the course of enquiry, the respondents were exonerated of the charges as per enquiry report dated 5-5-2003. The respondent State, therefore, on the basis of recording of exoneration of the respondent Nos. 2 and 3, declined to pay the compensation awarded by the Commission. It is this action of the State Government, which has led the Human Rights Commission to file this writ petition under Article 226/227 of the Constitution of India.

6. In the background of these facts the question which crops up for consideration, as posed in the beginning is as to whether the recommendation by the Commission being based on full fledged inquiry would have any bearing over a Departmental Enquiry or conversely whether the Departmental Enquiry held in pursuance to the recommendations have an overriding effect.

7. In other words in a given case like the present one wherein the Officers/Govt. servants in discharge of their official duties having found violating the human right of the citizens would be exonerated on the ground that in a domestic enquiry which is held against such an erring officer, the witnesses have not supported the charges.

8. Conduct of the officials like respondent Nos. 2 and 3 are governed by the rules framed under Article 311 of the Constitution of India. In the present case, it is M.P Civil Services (Conduct) Rules, 1965 (referred to as 'Rules of 1965').

....

13. The function and powers are as delineated under Chapter III of the Act of 1993 Section 12 lays down function

of the Commission. Relevant whereof for the present case is Clause 12(a) and (j) which stipulates that Commission shall—

(a) inquire suo motu or on petition presented to it by a victim or any person or on his behalf which complaint of—

(i) violation of human rights or abetment thereof;

(ii) negligence in the prevention of such violation by a public servant.

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

15. The Act of 1993 is thus a special enactment making provision of better protection of human rights and for matters connected therewith or incidental thereto. It includes within its ambit the conduct of the Government servant amongst the public while discharging the official duties. In other words, if he is found having violating the human rights even while discharging official duties he is liable for the consequences under the Act of 1993. This inference is drawn after combined reading of Rules 3, 3-A of the Rules of 1965 and the provisions contained under the Act of 1993: In other words Government servant cannot be absolved if found committing breach of human rights merely because he was discharging the official duties.

16. The question is as to whether the object with which the Act of 1993 has been brought into existence would be allowed to whittle down by construing that the Rules framed under Article 311 of the Constitution of India will have overriding effect. As in the present case, despite there being a categorical finding by the Commission regarding violation of human rights by respondent Nos. 2 and 3, thus establishing their conduct being unbecoming of a Government servant under the Rules, 1965. The department exonerate them by holding a Departmental Enquiry, whereas apparent they are exonerated of the charges.'will have an overriding effect on the provisions of other enactment in respect of the field covered by it over the general provisions. Combined reading of Rule 3 and Rule 3-A of the Rules of 1965 as well as sections 2(d) and 12(a) and (j) of the Act of 1993 would reveal that they are complementing rather than contradicting each other. There being no head on collusion in a field where both the Rules and said sections would harmoniously operate when

> an Inquiry is undertaken in respect of allegation of the breach of human rights against a Government servant during discharge of his official duties.
>
> 19. Thus, in a matter like the present one wherein a Government servant in discharging of his duties exceeds his powers and commits breach of human rights for which he is tried as per the procedure laid down under the Act of 1993. And on the basis of such enquiry the Commission returns a finding and directs the employer to take action, in the considered opinion of this Court, it will not be within the power of authorities to dilute the finding of the Commission in a domestic enquiry.
>
> 20. In view of above the action of respondent-State of M.P in exonerating the respondent Nos. 2 and 3 cannot be given a stamp of approval.
>
> 21. The petition is allowed with a direction to respondent-State of M.P to inflict punishment on respondent Nos. 2 and 3, on the basis of findings and the recommendations by the Commission, as also pay the compensation to victims along with interest @ 7.5% per annum from the date or order of commission till final payment.'

254. The above decision was heavily relied on by the learned counsel as to how the conflict between the general enactment verses special enactment as dealt with by the High Court. The Madhya Pradesh High Court has held that the Human Rights Act being a special enactment, will have an over riding effect on the general provisions of the Service Rules applicable to the Government servants. In any event, the Court has held that a combined reading of the Service Rules and also the provisions of H.R. Act would reveal that they are complementing to each rather than contradicting

to each other.

255. The learned counsel would also rely on an another decision reported in 2014 SCC OnLine MP 7536 ***(M.P.Human Rights Commission versus State of M.P. and others),*** wherein, She would refer to the following observation of the High Court.

> '4. The mute question is whether the recommendation made by the Human Rights Commission will prevail over any independent enquiry conducted by the respondent State or not. The law in this respect is well settled. This Court on number of occasion while interpreting the provisions of the said Act has held that the recommendation made by the Human Rights Commission are binding on the State and are to be implemented, in case the same are not called in question before any appropriate Court by the aggrieved person or who was going to be affected by the said recommendation. Nothing has been pointed out by the respondents that such a recommendation made by the Human Rights Commission were called in question anywhere or were subjected to the judicial review by this Court and, therefore, it has to be held that the said recommendations are binding on the State. This aspect has been considered by this Court in the case of M.P.Human Rights Commission Vs. State of M.P.(2011 (3) M.P.L.J.168) and in WP.No.28038 of 2003 & WP.No.1039 of 2006. In view of this, the stand taken by the respondents cannot be accepted.'

256. The Court has held in the above paragraph that the recommendations made by the Human Rights Commission were binding on the State. Extending her arguments, she would submit that when the

recommendation is made and is adverse to the interest of the delinquent/Government servant, the Government is under the obligation to act on that recommendation and no further opportunity need be given to the delinquent employee. However, she would make a slight distinction in her submission in this regard, contending that if the recommendation of the Commission does not specifically apportion any quantum of compensation payable to the victims or it does not make any specific recommendation taking action against the delinquent employee, in that circumstances, the Government need to conduct a separate enquiry to prove as to whether the Government servant was involved in the act of human rights violation, but it can issue a second show cause notice seeking explanation from the delinquent Government employee in regard to the proportionality of the punishment to be inflicted acting on the recommendations of the Commission. She would submit that in regard to the specific amount of compensation recoverable from the delinquent employee, it is only ministerial act by the concerned Government and no further opportunity is required to be given to the delinquent employee.

257. In regard to the purposive interpretation, the learned counsel would refer a decision of the Hon'ble Supreme Court reported in (2009) 7

SCC 1 (***N.Kannadasan versus Ajoy Khose and others)***. She would particularly refer to paragraph nos.51, 54 to 59, 62, 63 and 66 which have been extracted infra in the discussion part of the judgment.

258. The learned counsel would submit that any literal interpretation of words would not advance the object of the Act. When the Act seeks to achieve larger public interest, the interpretation of the provisions of the Act must receive liberal construction more particularly, in the domain of public law. She would submit that whatever the interpretation, the Courts may give in the context of any enactment, such interpretation is normally read into the Statute.

259. Lastly, the learned counsel would refer to a Constitution Bench decision of the Hon'ble Supreme Court reported in (2016) 5 SCC 1 (***Supreme Court Advocates-on-Record Association and another versus Union of India),*** wherein, the learned counsel would refer to few observations as regards the importance of the debates in the Parliament before enacting the laws and to what extent the Courts can adopt those debates as guiding factors in interpreting the provisions of any enactment. She would draw the attention of this Court to paragraph nos.620, 621, 630,

633, 647, 647.1 and 647.2, which are extracted herein below:

'620. Patanjali Sastri, J. was of the same opinion and so the learned judge held as follows: (A.K.Gopalan versus State of Madras, SCR pp 201-02: AIR p.73, para 112):

> '112. ... The learned counsel drew attention to the speeches made by several members of the Assembly on the floor of the House for explaining, as he put it, the 'historical background'. A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental processes lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all those legislators were in accord. The Court could only search for the objective intent of the legislature primarily in the words used in the enactment, aided by such historical material as reports of statutory committees, preambles etc. I attach no importance, therefore, to the speeches made by some of the members of the Constituent Assembly in the course of the debate on Article 15 (now Article 21)'.[395]

621. Justice Mukherjea noted the concession of the learned Attorney- General that the CAD are not admissible to explain the meaning of the words used – a position quite the opposite from what is now taken by the learned Attorney-General. The learned judge then observed that such extrinsic evidence is best left out of account and held as follows: (A.K.Gopalan case, SCRpp.273-74: AIR p.101, para 190)

> '190. .... The learned Attorney-General has placed before us the debates in the Constituent Assembly centering round the adoption of this recommendation of the Drafting Committee and he has referred us to the speeches of several members of the Assembly who played an important part in the shaping of the Constitution. As an aid to discover the meaning

of the words in a Constitution, these debates are of doubtful value. 'Resort can be had to them' says Willoughby, 'with great caution and only when latent ambiguities are to be solved. The proceedings may be of some value when they clearly point out the purpose of the provision. But when the question is of abstract meaning, it will be difficult to derive from this source much material assistance in interpretation.'

The learned Attorney-General concedes that these debates are not admissible to explain the meaning of the words used and he wanted to use them only for the purpose of showing that the Constituent Assembly when they finally adopted the recommendation of the Drafting Committee, were fully aware of the implications of the differences between the old form of expression and the new. In my opinion, in interpreting the Constitution, it will be better if such extrinsic evidence is left out of account. In matters like this, different members act upon different impulses and from different motives and it is quite possible that some members accepted certain words in a particular sense, while others took them in a different light.'[396]

630. In Kesavananda Bharati v.State of Kerala, (1973) 4 SCC 225, it was held by Sikri, C.J. that 'speeches made by members of the legislature in the course of debates relating to the enactment of a Statute cannot be used as aids for interpreting any provisions of the Statute.' The learned Chief Justice held that the same rule is applicable to provisions of the Constitution as well and for this reliance was placed, inter alia, on Prem Lal Mullick, A.K Gopalan, State of Travancore-Cochin and Golak Nath. Explaining Union of India v. H.S. Dhillon, the learned Chief Justice said:

' 183. In Union of India v. H.S. Dhillon (1971) 2 SCC 779, on behalf of the majority, before referring to the speeches observed at p. 58 that 'we are however, glad to find from the following extracts from the

> debates that our interpretation accords with what was intended'. There is no harm in finding confirmation of one's interpretation in debates but it is quite a different thing to interpret the provisions of the Constitution in the light of the debates.'

633. Justice H.R Khanna was also of the opinion that the CAD could be referred only for the limited purpose of determining the history of the constitutional provision. The CAD 'cannot form the basis for construing the provisions of the Constitution.' The learned judge further said that the intention of the draftsman of a Statute would have to be gathered from the words used. The learned judge said: (Kesavananda Bharati case, SCC pp.743-44)

> '1368. The speeches in the Constituent Assembly, in my opinion, can be referred to for finding the history of the Constitutional provision and the background against which the said provision was drafted. The speeches can also shed light to show as to what was the mischief which was sought to be remedied and what was the object which was sought to be attained in drafting the provision. The speeches cannot, however, form the basis for construing the provisions of the Constitution. The task of interpreting the provision of the Constitution has to be done independently and the reference to the speeches made in the Constituent Assembly does not absolve the[pic]court from performing that task. The draftsmen are supposed to have expressed their intentions in the words used by them in the provisions. Those words are final repositories of the intention and it would be ultimately from the words of the provision that the intention of the draftsmen would have to be gathered.'
>
> ....

647. It is quite clear that the overwhelming view of the various learned judges in different decisions rendered by this Court and in other jurisdictions as well is that:

647.1. A reference may be made to the CAD or to Parliamentary debates (as indeed to any other 'relevant material') to understand the context in which the constitutional or statutory provisions were framed and to gather the intent of the law makers but only if there is some ambiguity or uncertainty or incongruity or obscurity in the language of the provision. A reference to the CAD or the Parliamentary debates ought not to be made only because they are there;

647.2. The CAD or Parliamentary debates ought not to be relied upon to interpret the provisions of the Constitution or the Statute if there is no ambiguity in the language used. These provisions ought to be interpreted independently – or at least, if reference is made to the CAD or Parliamentary debates, the Court should not be unduly influenced by the speeches made. Confirmation of the interpretation may be sought from the CAD or the Parliamentary debates but not vice versa.'

260. The learned counsel would submit that the above observations succinctly elucidate that the Courts can rely on the debates took place in the Parliament when the interpretation of the Courts are supported by such debates and not vice versa. Therefore, she would implore this Court to adopt the principles and observations made by the Hon'ble Supreme Court of India in appreciating the exchange of wisdom among the members of the

Parliament, particularly, with reference to the Hon'ble Home Ministers' assurance to the members of the Parliament that when the doubts were raised by some members as to the enforceability of the recommendations of the Human Rights Commission, the Hon'ble Home Minister assured the members that the Human Rights Commissions were like Finance Commissions, and the Government had never disagreed with the recommendations of the Finance Commission and always implemented the same. Taking guidance from such statement made on the floor of the Parliament, this Court can safely interpret the provisions of the Act to provide tooth to the Commission. In fact, the statement of the Hon'ble Minister was in-line with the Paris Principles which were one of the underlying International treaties which impelled the Government to come up with the present enactment.

261. Lastly, the learned counsel would sum up stating that as far as the compensation to be awarded, doubts have been raised as to lack of mechanism in the Act towards quantification. In any matter of ordering compensation even by the Civil Courts, there is no hard and fast rule or any standard set of guidelines, to be followed, nevertheless compensation or damages have always been ordered on the basis of various factors

connected to the claims and also on the basis of various principles laid down by the Superior Courts. More so, NHRC or SHRC is headed by the high Dignitaries, viz., the Chief Justices, Judges of Hon'ble Supreme Court of India and High Courts and the compensation arrived at by the Commission headed by such high Dignitaries can never said to be arbitrary or unreasonable.

262. Mr. S.Prabakaran, learned Senior Counsel appearing for one of the parties, would submit that the recommendations of the Human Rights Commission are only recommendatory in nature. According to the learned Senior Counsel, for non acceptance of recommendation under Section 20(2) of the Act, the Government has to simply assign reasons and therefore, by no stretch of legal standards, the recommendations of the commission could be an adjudicatory order. The learned Senior counsel would refer to a decision of the Hon'ble Supreme Court in Civil Appeal No.5112 of 2012 batch dated 10.01.2019 that even till 2019, many of the States have not designated Judges as Human Rights Courts to be constituted under the Human Rights Act. In that circumstances, the Hon'ble Supreme Court issued notices to Chief Secretaries of all the States as to why appropriate direction should not be issued for designating of Human Rights Courts in

each State in terms of Section 30 of Human Rights Act. In this regard, the learned Senior Counsel would also refer to the expressions used in Section 30 which states that the State Government may with the concurrence of Chief Justice of High Court, specify each District Court of Sessions to be Human Rights Courts. According to the learned Senior counsel, the expression 'may' means recommendatory in nature. In fact, on the same lines, the learned counsel would also refer to the expression 'may' used in Section 18, which clearly meant that the recommendation made under Section 18 also cannot be binding and can only be recommendatory.

263. The learned Senior counsel would submit that in the contextual reading of the expression 'may' in terms of the provisions of the Act would only mean, that it is a discretion vest with the Government to accept the recommendation or not. In fact, the learned Senior counsel would elaborate his arguments on interpretation of the expressions 'may' and 'shall' as per Maxwell Law of Interpretation (12th Edition). The learned Senior counsel would also draw a reference to a decision reported in AIR 1965 SC 895 as to the interpretation of expression of 'may' and 'shall' in the context of the statutory schemes. The learned Senior counsel would also refer to Section 35 of the Advocates Act. According to the learned Senior counsel, that

Section 35 provides for punishment for misconduct of advocate and such provision is not available in the Human Rights Act. Therefore, it cannot be gainsaid that recommendations of the Commission are binding on the concerned Government. He would also refer to Section 13 of the Human Rights Act which deals with the power of the Commission to make inquiry which has a limited scope. For this, he would invoke the principle of legal interpretation on '*ejusdem' generis'* maxim. The learned Senior counsel would therefore submit that the recommendation can never be compared to an order passed through an adjudicatory process.

264. By way of reply, Mr.Sarathchandran, learned counsel would add that in 2006, there was an amendment to the Act. With reference to the amendment, the learned counsel would draw reference to the Debates which took place in both Houses of the Parliament. He would particularly refer to the most crucial discussion which is extracted hereunder:-

> 'The second area - - before I come to the contentious area of retired Chief Justice or Judge – which, I think, needs to be thought out, is a little technical. But I must address that. The interim relief could be given by the NHRC earlier also, and it is being continued by the amendment. There is no change, which is good. However, earlier, compensation could not be

> specifically given. Now, we have provided that compensation can be awarded. It seems to be a good thing. But let me raise a few questions which, I think, can be easily met by amendments to make it efficacious. We must not forget that the NHRC, as it today stands before and after the amendment, has only recommendatory powers; it has no enforcement powers. Secondly, the compensation can normally be awarded after full adjudication by a decree. 'Compensation' means, you have adjudged, adjudicated, found one party guilty or innocent and then awarded money. Now, both these things, the NHRC does not do and cannot do under the present Act. It does not do a full adjudication. It cannot pass a full decree and whatever order it ultimately passes is not enforceable. If that be so, to merely provide that compensation may be granted may create two problems of a serious nature, which may not have been foreseen.'

265. The above discussion by the Members of the Parliament would unequivocally point out to the fact that even in the year 2006, when amendment was sought to be made in the Act, it was clearly understood by the Members that the NHRC before and after the amendment, has only recommendatory powers and no enforcement powers. He would submit that the above discussion itself is self-explanatory and nothing more is required to be added further.

266. Mrs. Jai Sha, learned counsel appearing for NHRC would submit that expression 'order' is used only in Sub clause (6) of Section 13 of the Human Rights Act and in no other place, such expression is used and that expression is confined only to that Section and in which case the power of the Commission is limited to making recommendations and not order.

267. The learned Amicus Curiae, Mr.B.Vijay, would refer to a decision of the Full Bench of this Court, wherein, by order dated 14.06.2019, the Government was directed to submit a report as to what the Government had done with the earlier recommendations of the Commission and what is the mechanism they have followed and what was the process which had gone into while evaluating the recommendation of the Commission while accepting or differing.

268. Finally Mr. R. Srinivas, learned counsel for SHRC would submit that SHRC under the scheme of the Act is not subordinate to NHRC and the learned counsel reiterated his submission strongly that the scheme of the Act provides enforceable right to the affected citizens in regard to the

human tights violation as mandated by International Covenants as embodied in the Constitution of India.

269. Considered the valuable submissions of various counsel who have pitched in their arguments adding their respective points of view to the terms of the reference made to this Bench.

270. The arguments and submissions with the supportive materials and the legal precedents by the respective counsel have been quite illuminating and illustrative in our destined endeavor to answer the terms of the reference. Before we get down to the brass-stacks, it is essential to understand as to how the concept of modern Human rights has evolved on the international arena which influenced the global communities to bring in institutional mechanism for the protection of Human rights and for safeguarding the rights from abusement.

Summary of development of Concept of Human Rights globally and its impact on India:

271. The conceptualized development of modern Human Rights Laws

could be traced to the Universal declaration of Human rights, 1948 which was adopted and proclaimed by the General Assembly of the United Nations vide its resolution dated 10th December, 1948. The said declaration was an affirmation of faith in the fundamental human rights globally and the Member Nations were bound to respect the Human rights in terms of various Articles contained in the declaration.

272. The process of evolution of Human rights internationally is required to be stated, since all the Member Nations including India, over the decades, have taken guidance from the declaration and enacted their own Municipal laws to protect fundamental Rights/Human rights in their respective countries. In fact, in the Statement of Objects to the Protection of the Human rights Act, 1993, it is stated that India being the party to the International Covenant on Civil and Political Rights. 1966 and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December 1966, the human rights embodied in the aforesaid Covenants stand substantially protected by the Constitution.

273. In the above context, a brief introductory to the development of

Human rights, need to be analyzed and how the developments globally influenced the policy framers of India while bringing in the enactment in 1993 i.e., The Protection of Human Rights Act, 1993. The Universal Declaration of Human Rights was a pioneering crusade of global community, resulting in codification of human rights that were to be mandatorily to be protected by all the Member Nations. Preamble to the Universal declaration would highlight the paramount importance to the fundamental human rights and dignity to be enjoyed by all human beings, cutting across race, religion, creed, colour, language, nationality etc. The following statements in the preamble are extracted under, in order to understand the concept of Fundamental Human Rights and its importance.

> 'WHEREAS the peoples of the United Nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;
>
> WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms;
>
> WHEREAS a common understanding of these rights and freedom is of the greatest importance for the full realization of this pledge;

> Now, therefore, the General Assembly proclaims this Universal Declaration of Human rights as a common standards of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.'

274. The declaration contains 29 Articles delineating various forms of rights and duties of the parties. But as far as our endeavor in this reference is concerned, few Articles are relevant to be mentioned, which are extracted hereunder:-

> 'Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race. Colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 : Everyone has the right to life, liberty and security of person.

Article 5 : No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law.

Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.'

275. In line with the above Declaration, several measures have been initiated to take forward and translate the human rights policies outlined by the Declaration. The Member Nations working together with the common purpose and agenda strived into developing institutionalized mechanism for dealing with matters of concerning human rights.

276. One such development was International Covenant on Civil and Political Rights 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 adopted by the General Assembly of the United Nations on 16th December 1966 and brought into force from 03.01.1976. In

fact, as referred to earlier these two International Covenants were the prime consideration by the Indian Parliament in enacting the Protection of Human Rights Act, 1993 as these covenants were reflected in the Statement of Objects and Reasons. The International Covenants on Civil and Political Rights, 1966 envisaged a legal mechanism for redressal of complaints/grievances relating to human rights. According to the International Covenants, each Member State had given an undertaking to carry out the mandate of the covenants and India was a signatory to the covenants. A few Articles of the International Covenant on Civil and Political Rights, 1996 are very useful reference in order to appreciate the principles on which the Human Rights Act, 1993 were edified and the ultimate passing of the Act by our Parliament. The Articles which are relevant to our purpose, are extracted hereunder:

> 'Article 2. - 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing

legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes :

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity ;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy ;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 7. - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9. - 1. Everyone has the right to liberty and security of person. No one shall be subjected to

arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court, in order that that Court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 40. - 1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the

present Covenant for the States Parties concerned ;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.'

277. From the above Articles, three distinguishing features could be noticed. Firstly, the Member State was under an obligation to submit a report on the measures they adopted within a period of one year to the Secretary General of United Nations. Secondly, that any person claiming remedy before judicial or administrative or legislative authorities, that remedy shall be enforceable, when granted. Thirdly, the Covenant also talks about enforceable right to 'compensation'. The sum and substance of the International Covenants, is that the human rights are sacrosanct and any violation is to be viewed sternly and any remedy sought as a consequence of violation of Human rights, that remedy must be enforceable. The present H.R.Act was brought into force in fulfillment of the undertaking given by our country to the International Covenants.

278. Ms.Nagasaila, learned counsel who made submissions, has

traversed through the various developments that took place on International stage in extenso, and she has drawn the attention of this Court on setting up of National Human Rights Institution by the Member States and its scope and functionality. She, in this regard, referred to the Manual on Asia Pacific Forum advancing human rights which dealt with the setting up of National Human Rights Institution (NHRI) and the working of such institution, as recorded in the Manual. According to the Manual, the first NHRI was established in the late 1970 and 1980s but ultimately, it was only after Paris Principles which came to be adopted in 1993 and subsequently endorsed by the United Nations, a benchmark was evolved with a view to set of minimum requirements for NHRIs. In fact, in the earlier part of this judgment, this Court, has, in extenso, extracted the relevant portions of the Paris Principles.

279. The principles broadly provided a normative frame work for the status, structure, mandate, compensation, power and methods and operation of the principles on domestic human rights mechanism. In fact para 3.2 of the Paris Principles, the following is stated :-

> '3.2. The Paris Principles
>
> The Paris Principles are the international minimum standards for NHRIs. They are not

aspirational – what NHRIs should be – but obligatory – what NHRIs must be, if they are to be legitimate, credible and effective in the promotion and protection of human rights.

In para 3.3.1 under the caption Legal independence, the following is extracted hereunder:

Legal independence goes to the basis on which NHRIs are established and to guarantees of independence. The Paris Principles provide that establishment by an executive instrument – for example, a presidential decree or order – is not adequate or acceptable.

A National Human rights Institution must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanishm for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence.'

280. Further, the Principles relating to the Status of National Institutions which were adopted by the United Nations General Assembly vide Resolution 48/134 dated 20.12.1993 provide as under:

'Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.'

In addition to the above, the following principles were also adopted:-

'Additional principles concerning the status of commission with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.'

281. The above Principles referred to, in the underlying concept as to how the national institution is expected to operate and function within the legal frame work of the State concerned. In fact, one of the principles as extracted above would state that the National Institution ought to see settlement through binding decision. In fact, this position was emphasized by the learned counsel, Ms.Nagasaila, while referring to other materials, as to how such international developments influenced in bringing about Human Rights Act and the scheme of the Act would be understood more clearly in the above backdrop. In all these developments by the international communities through various fora, treaties, conventions, a singular a agenda emerged and emphasized that the domestic institutions dealing with matters concerning human rights, ought to be well equipped in terms of its operational independence in all respects and availability of

enforceable remedy at the hands of the institutions.

Debates in Parliament that preceded to the making of Human Rights Act, 1993:

282. Mr.Sarathchandran, learned counsel has referred to deliberation/discussions that took place prior to the enactment, among Hon'ble Ministers of Cabinet, Hon'ble Chief Ministers and the eminent persons representing cross section of Society including jurists, lawyers, journalists, academicians, administrators, Human Rights activists etc. Particularly, the learned counsel referred to the Chief Ministers Conference on Human Rights held in September, 1992. Various portions of the deliberation of the Conference have also been extracted supra which highlighted as to how it became imperative to bring Human Rights Act taking note of various developments globally on the concept of human rights protection. The learned counsel, in fact, referred to the Report of the Standing Committee on Human Rights Bill, 1993 and he particularly relied on the Chapter relating to the Functions of the Commission and also relied on further Reports of the Standing Committee regarding 'Powers and Procedures of the Commission. Those Reports of the Standing Committee have also been extracted supra as relied on by the learned counsel. The

learned counsel, after taking a note of those reports of the discussions and discourse, submitted that the power of the Commission was in fact, intended to be restricted to only making recommendation and certainly not intended to be an order on adjudication.

283. Apart from the Standing Committee Reports, the learned counsel also relied on the debates which actually took place during passing of the Human Rights Bill and during the debates, various concerns were raised by various Members of Parliament cutting across party lines as to the power and enforceability of recommendations of the Commission. The debates and discussions in the Parliament were centered around the enforceability and the related power of the Commission. But ultimately, when the Act was passed, some of the suggestions to make the recommendations enforceable, were not accepted by the Hon'ble Minister in-charge, but on the other hand, an assurance is given that the Human Rights Commission was akin to the Finance Commission and the Government had never rejected the Finance Commission's recommendations in the past. Therefore, the assurance by the Hon'ble Minister is not a law. He summed up saying that going by the debates and discussions in the Parliament, the power and its recommendation of the Commission was clearly intended to be

unenforceable and not binding on the Government.

284. In order to bolster his submissions, the learned counsel also referred to the Protection of Human Rights Amendment Bill, 2012 which was a private Bill by the Member of Parliament and in that a suggestion was made among many amendments, that the Commission should be given more power to take penal action etc., but the amendment was not carried through. The learned counsel submitted that a similar suggestion was made even at the time of enactment of the principal Act, but ultimately, did not fructify and those suggestions were not included in the Act. Therefore, the interpretation of the Courts to the scheme of the Act cannot go beyond the intention of the framers.

Enacting the Protection of Human Rights Act, 1993:

285. The Indian State, taking cue from the contemporary developments that took place globally in the realm of human rights law and its protection, the Government of India felt obligated and compelled to bring in a specific enactment to deal with the protection of human rights by providing a specific judicial mechanism namely, National Human Rights Commission and State Human Rights Commissions.

286. The Statements of Objects and Reasons for bringing in the enactment would be an illustrative introduction to the scheme of the Act. We have dealt with the same in the judgment with reference to the development of the concept of human rights globally and the impact on India.

287. Even before the above development, India has always been in the forefront of guaranteeing fundamental human rights to its citizens and protection of the same. Human rights have been constitutionally recognized and protected under Para III of the Constitution of India. Earlier to the present enactment, the violation of fundamental rights including human rights had been dealt with through common law remedy and also through access to Constitutional Courts. Despite those remedies, a specific judicial mechanism became an order of the day in order to bring about an effective judicial forum dealing only with human rights violations particularly, in the face of growing incidents of human rights violations over a period of time.

288. As the Statement of Objects and Reasons declare that the enactment principally owes its origin to the International Covenant on Civil

and Political Rights, 1966 and the International Covenant on Social, Economic and Cultural Rights, 1966, the scheme of the Act must be interpreted and understood in the said backdrop to begin with. Our quest, therefore began with the above preliminary understanding and to further discover plausible answers to the terms of the reference, several rival contentions and submissions have to be considered with the reference to the provisions of principal Act under consideration *vis-a-vis* similar enactments like the Commission of Inquiry Act, 1952, the Commission for Protection of Child Rights Act, 2005 and the National Commission for Women (Procedure) Regulations 2005, National Commission for Schedule Castes and Schedule Tribes and also with reference to the international legal precedents, the decisions of High Courts and the Hon'ble Supreme Court on the subject matter on the basis of the comparative study, the scheme of the Act need to be interpreted, constructed and consequently to be expounded and unfolded.

The Protection of Human Rights Act, 1993 and its Provision:

289. The term 'Human Rights' is defined under Section 2(d) of the H.R. Act, which reads as under:

> '2.Definitions.-
>
> (d) '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 the Courts in India;'

290. There are two aspects of Human Rights, defined in the Act. One relating to the rights which are guaranteed by the Constitution of India and the other rights which are embodied in the International Covenants and enforceable by the Courts in India. As rightly argued by the learned SHRC counsel Mr. R.Srinivas, that the definition 'Human Rights' is nothing but an extension of what is guaranteed under Articles 14, 19, 20, 21 and 22 of Part-III of the Constitution of India. The Human Rights, as such, are in effect guaranteed by the Constitution to be enforced by a judicial mechanism created under the Act. What is the type of judicial mechanism created under the Act is to be seen hereunder:

291. In Chapter II, Section 3 of the Human Rights Act provides for '*Constitution of a National Human Rights Commission*'. The composition of the National Human Rights Commission (NHRC) is also provided in the Section, which is extracted hereunder:-

> '**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) a Chairperson who shall 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, the National Commission for the 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 (i) 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 [(except judicial functions and the power to make regulations under section 40-B) as may be delegated to him by the Commission or the Chairperson, as the case may be].

(5) The headquarters of the Commission shall be

at Delhi and the Commission may, with previous approval of the Central Government, establish offices at other places in India.'

292. Section 4 of the Act provides for '*Appointment of Chairperson and other Members'* and the Committee to appoint such persons is also mentioned. Section 4 is extracted hereunder:-

'**4. Appointment of Chairperson and other Members**.-(1) The Chairperson and [the 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 of any Member in the Committee referred to in the first proviso to sub-section.'

293. Section 5 of the Act provides for *'Resignation and removal of Chairperson and Members',* which reads as under:-

'**5. Resignation and removal of Chairperson and Members**.-(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent Court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.'

294. Likewise, *'Term of office of Chairperson and Members'* is provided under Section 6, which is extracted hereunder:

'**6. Term of office of Chairperson and Members**.-(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.'

295. More importantly, the *'Functions and Powers of the Commission'* are provided in Chapter-III comprising Sections 12 to 16. As regards the Functions of the Commission, Section 12 details about the same through various Sub clauses under the Section. Section 12, is extracted hereunder:

> '**12.Functions of the Commission**.-The Commission shall perform all or any of the following functions, namely:-
>
> (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], 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 organizations and institutions working in the field of human rights;

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

296. As far as the recommendations made under Sub Clauses (c) to (f) of Section 12 are concerned, there cannot be two opinions that the same could be only advisory in nature and not related to any particular complaint

against human rights violation. The very nature of the expressions found in the Sub Clauses can be only construed that recommendation made with reference to the Sub Clauses can be only 'recommendatory and advisory' in nature. The other Sub Clauses like (g) to (i) are to be construed to be an academic exercise for promoting and advancing the cause of human rights and its protection. The function of the Commission in relation to Sub Clause (a) (i), (ii) and (b) are to be read in in conjunction with Section 18 of the Act.

297. From the above, it is quite evident that there are three distinct nature of characters in regard to the recommendations of the Commission under Section 12 of the Act. First one, i.e. Sub Clauses (a) (i), (ii) and (b) to be read along with Section 18 of the Act, second one, Sub Clauses (e) to (f) to be construed as recommendatory or advisory and the third one, Sub Clauses (g) to (j) to be in the nature of academic exercise for advancement of human rights.

298. Section 13 is, in regard to the '*Powers relating to Inquiries*', which reads as follows:-

> '**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 (5 of 1908), and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining 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 (45 of 1860).

(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 therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), insofar 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 (45 of 1860) 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 (2 of 1974) forward the case to a Magistrate having jurisdiction to try the same and 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 (2 of 1974).

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 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 (2 of 1974).

(6) Where the Commission considers it necessary or expedient so to so, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the

complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.'

299. The above Section, in its entirety, has given the Commission wide range of powers while conducting inquiry into complaints. As per Sub Clause (4), the Commission shall be deemed to be a Civil Court for all purposes and Sub Clause (5) states that every proceedings before the Commission shall be deemed to a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code. In fact, the scope and the power of the Commission as defined under the Section, has been argued both for and against by the learned counsel. The learned Additional Solicitor General submitted that Section 13 of the Human Rights Act would not improve the status of the Commission and make it an exception as a special Commission, as Section 13 is exactly *pari materia* to Section 4 of the Commissions of Inquiry Act, 1952. The

Commission under the C.I.Act also enjoys identical power relating to the inquiries.

300. The learned Amicus Curiae who made his submissions, on the other hand emphasized the fact that while conducting an inquiry into the human rights violation, the Commission enjoys all the powers of Civil Court as provided under Sub Clauses (4) and (5) of Section 13 and every proceeding before the Commission shall be deemed to be a judicial proceedings. In fact, he refuted the submissions made by the learned Additional Solicitor General that in view of Section 13, inquiry by the Commission is not inquisitorial, but a quasi judicial adjudication. In this connection, the learned Amicus Curiae also referred to Regulation 25 (extracted supra) of State Human Rights Commission Tamil Nadu (Procedure) Regulations, 1997 providing full opportunity to persons who come under the purview of its inquiry.

301. The powers relating to inquiries as provided under Section 13 do not suffer from any restriction and as rightly submitted by the learned Amicus Curiae that the Commission not only enjoys the status of a Civil Court for all purposes, but the proceedings as a consequence of conduct of

inquiry by the Commission under the said Section is deemed to be a judicial proceeding. The contra submissions made by the learned Additional Solicitor General and others need to be evaluated with reference to the other provisions of the Act and not to be guided by what is provided for in Section 13 in isolation and compare the same with Section 4 of C.I. Act for our ultimate conclusion. During the course of its inquiry, the Commission may have to undertake investigation and the powers of investigation are provided under Section 14 of the Act.

302. Section 14 reads as hereunder:-

> '**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 utilised 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 utilised 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 submitted 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.'

303. The above provisions give wide amplitude to the Commission for the purpose of conducting any investigation pertaining to the inquiry. The arguments that availability of similar provisions in the C.I.Act would make the Human Rights Commission as yet another Commission under the C.I.Act appear to be a misplaced comparison. One or two Sections of H.R.Act, having parallels in the C.I.Act may not make the Human Rights

Commission less in status without reference to the constitution of the Commission, its composition, the stature of recommending Committee, an appointment of the Chairperson and the Members of the Commission and the actual appointment by the President of India as provided under Section 4 of the Act. The submissions have been made, in our opinion, on the peripheral understanding of the Act ignoring the fundamental structure of the Commissions which is composed of with high dignitaries appointed by a Selection Committee comprising no less dignitaries than the Hon'ble Prime Minister of India and others as detailed in Section 4 and the appointment is by warrant under the hand and seal of His Excellency the President of India. Therefore, comparison of two Commissions, which, in the opinion of this Bench, is too far fetched and due to fallacious understanding and reading of the scheme of both the Acts. The next provision deals with the status of the statements made before the Commission in the course of its inquiry.

304. Section 15 deals with 'the Statement made by persons to the Commission', which reads as under:

> '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.'

305. The learned Additional Solicitor General, in fact, emphasized the existence of similar provisions of the C.I.Act and hence, he submitted that as far as the statement made before the Commission, it has no evidentiary value at all in the eye of law. In the absence of any evidentiary value, the inquiry conducted by the Commission cannot be construed as an adjudication at all. In this connection, the learned Additional Solicitor General, referred to Sections 145 and 155 of the Indian Evidence Act, 1872 which have been extracted supra. In terms of Section 15 of the Human Rights Act, when a statement made by a person in the course of giving evidence before the Commission, the same cannot be used against him in Civil or Criminal law proceedings, which would only mean that such statements made by any person is valueless and such statements cannot be used to impeach the persons in terms of Sections 145 and 155 of the Evidence Act. Therefore, he submitted that inquiry by the Commission can only be in the realm of inquisitorial jurisdiction. On the other hand, the learned Amicus Curiae has

pointedly submitted that evidentiary value in any quasi judicial proceeding is always different from the evidence tendered before the Criminal or Civil Courts. In fact, the learned Amicus Curiae has drawn analogy to the evidence given in the departmental proceedings and the evidence tendered in Criminal Court, which cannot be compared at all. According to him, that on a matter of expediency, no strict rules of evidence will be followed in quasi judicial proceedings, but however, basic principles of evidence would always be followed.

306. This Bench finds that the submission made by the learned Amicus Curiae on this aspect, appears to be well founded. Merely because the Statements made to the Commission do not satisfy the requirements of Sections 145 and 155 of the Evidence Act, may not make the Commission's findings as less valuable or to be ignored altogether. As rightly contended by the learned Amicus Curiae, the evidentiary value of statements made before the Criminal or Civil Courts cannot be equated with the evidence tendered by persons to the Commission or quasi judicial bodies. Nevertheless, any findings/recommendations on the basis of such evidence cannot lose its value on such narrowed consideration. If the arguments of the learned Additional Solicitor General were to be accepted, then the very

recommendations of the Commission premised on its findings in furtherance of the provisions of the Sections 13 to 16 would lose its sanctity at all and the Commission would be only embarking upon a futile exercise of conducting an inquiry and coming up with a recommendation as an academic endeavor. The power and the scope of inquiry of the Commission need to be evaluated not with reference to one or two provisions of the Evidence Act or Cr.P.C., but with reference to the frame work of the Act itself. Evidentiary value with reference to Evidence Act, 1872 may not be the correct legal yardstick to discredit the value of Commission's recommendations. If such is the consideration, then the very existence of the Commission itself becomes meaningless. Therefore, we are not able to appreciate the arguments of the learned Addl.Solicitor General in this regard as we find the same are immoderate and lopsided.

307. The Commission in the course of its inquiry and investigation is also to provide opportunity of hearing to the persons likely to be prejudicially affected in Section 16, which reads as under:-.

> '**16. Persons likely to be prejudicially affected to be heard**.-If, at any stage of the inquiry, the Commission-
>
> (a) consider 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.'

308. Although, the learned Additional Advocate General submitted that both Sections 15 and 16 have limited application and do not enhance the status of the Commission, particularly, both the Sections, according to the learned Additional Advocate General, negate Sections 145 and 155 of the Evidence Act. But as far as Section 16 is concerned, arguments were advanced by the learned counsel as to how detailed opportunities are to be afforded to the persons likely to be affected by the inquiry undertaken by the Commission. An argument was also advanced that when adequate opportunity is contemplated under Section 16 of the Act, when the Commission finds that a delinquent is involved in violation of human rights Act, no further opportunity need be given to him by his/her employer under the relevant service Rules. When the delinquent is given ample opportunity to face a full fledged inquiry with opportunity extended to him to examine

and cross examine the witnesses, no further remedy is left open to the delinquent in the form of any separate disciplinary action atleast with reference to the compensation ordered by the Commission and to be recovered from him. In fact, the learned counsel, Ms. Nagasaila, has submitted that in respect of imposition of penalty, a show cause notice may have to be issued to the delinquent servant only on the aspect of proportionality of the punishment and no detailed departmental inquiry is required. In fact, the learned Judge of this Court Shri Justice K.Chandru, in his Judgment in T.Vijayakumar's case', held that providing further departmental opportunities in such matters would amount to extending 'paradise of remedies' to the delinquent Government servants.

309. Whether the departmental remedy should be extended to the delinquent or not would be a matter of discussion hereunder, but at the same time, what flows from Section 16 is that the persons likely to be affected are given adequate opportunity to participate in the inquiry process and the said provision is enacted in full compliance with the established principles of natural justice. Therefore, a delinquent who is aggrieved by the finding of the Commission, cannot legitimately come up with any complaint that his rights have been violated on the premise of not adhering to the principles of

natural justice.

310. Next we come to Chapter-IV contains most crucial provisions laying down the procedure for conducting inquiry into the complaints, steps during and after the inquiry, placing of Annual and Special Reports of the Commission before the Parliament or the State Legislature. The understanding of the provisions as contained under this chapter would be the most crucial and a profound exercise, which will ultimately form the bed-rock of our conclusion. This Chapter defines the core aspects of the scope and power of the Commission and the status of its recommendations, etc. These provisions would also define as to the nature of the proceedings while conducting inquiry and also how the inquiry culminates into preparation of report and thereupon recommendations.

311. Section 17 deals with 'Inquiry into complaints', which reads as follows:-

> '**17. Inquiry into complaints**.-The Commission while inquiring into the complaints of violations of human rights may-
>
> (i) 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.'

312. The learned Additional Solicitor General submitted that the expression 'inquiry into complaints' has given under the above Section would by no stretch of legal standards would equate to trial or adjudication. According to him, 'inquiry into complaints' would mean collecting the facts and presenting the same to the Government as recommendations.

313. One another counsel, Mr. Ganesh Kumar, who argued has submitted that the word 'inquiry' as found in Section 2 (g) of the Criminal Procedure Code, which defines inquiry. 'Inquiry' means, 'every inquiry, other than a trial conducted under this Code by a Magistrate or Court". The

learned counsel elaborated that the word 'inquiry' is found only in Sub Clause (a) of Section 12 and such inquiry is relatable to Section 18 only. He has also referred to Sub-Clauses (b) to (j) of Section 12 the Act, which do not contain the word 'Inquiry'. In fact, Mr.R.Srinivas, learned counsel for SHRC submitted that Sections 13, 16 and 17 need to be read cumulatively in order to appreciate the Commission's power, jurisdiction and its ultimate reports and recommendations under Section 18 of the Act. In fact, he submitted that the inquiry contemplated under Section 17 was not an inquiry simplicitor, because as a conjoint reading of other Sections would demonstrate that such an inquiry has an adjudicatory character. Here again, we find that giving a restrictive meaning to word 'inquiry' with reference to the Cr.P.C. provisions is incorrect, as the words 'inquiry and trial' as defined and understood in criminal parlance. As rightly submitted by Mr.R.Srinivas, learned counsel for SHRC in the interplay of various provisions, a conjoint reading alone would facilitate the purpose of the Act.

314. Under the said Chapter, Section 18 is required to be elaborately dealt with as the said Section with all its Sub Clauses is a key to find comprehensive answers to the reference before this Bench. In the opinion of this Bench, each Sub Clause under this Section is to be appreciated and

understood in order to take forward the avowed objects of H.R.Act in the realm of the protection of human rights. The functioning and the jurisdiction of the Commission would have to be understood and the enforceability of its recommendation need to be fathomed and discovered by seminal interpretive exercise, with a view to infuse more clarity and peremptory status to the Commission in the scheme of the Act. Section 18 reads as under:-

> '**18. Steps during and after inquiry**.-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 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 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.'

315. Numerous arguments were advanced as to the exact import and the ambit of Section 18. Rival submissions have been made one towards amplifying the ambit of the Section by cumulative construction of all the

Sub Clauses and in contrast, another towards the limited scope of the Section as being evident from the very expression itself, as found in all the Sub Clauses. The interpretation of almost every expression as found in Section 18 in relation to the Sub Clauses would be most germane and pivotal to the ultimate conclusion to be reached by this Bench in response to the terms of reference. Sub clause (e) of Section 18 is what ultimately falls for consideration as to the enforceability of its recommendation. The learned counsel Mr. R. Srinivas, laid great emphasis on this Sub Clause and submitted that the Sub Clause provides, for 'action taken' or 'proposed to be taken' on the recommendation of the Commission made under Sub Clause (a). No option to reject or ignore the recommendation is spelt out in the Sub Clause or anywhere in the Section. This conscious omission is more pronounced when the same is compared to Sub Clauses (2) of Sections 20 and 28 respectively. In Sections 20 and 28, Sub Clauses provide for non acceptance of the recommendation. In fact, Mr. R. Srinivas, the learned counsel had succinctly brought out the difference between the recommendation of the Commission made under Sub Clauses (c) to (f) of Section 12 and recommendation under Section 18. Section 18 is a self-contained Section and any recommendation made under that is not open to be ignored or an option is with the concerned Government to reject its

recommendation unlike Sub Clause (2) of Sections 20 and 28 which deal with the recommendation made under the relevant Sub Clauses of Section 12. In fact, earlier this Bench has referred to the submissions as to the difference in the nature of recommendation under the respective Sections.

316. Both the Sub Clauses provide for placing of Annual and Special reports to the Parliament or the Legislature concerned by the Central Government or the State Government along with the memorandum of action taken or proposed to be taken on the recommendation and the reasons for non acceptance of the recommendation, if any. On this aspect, two arguments were advanced, one by Mr.R.Srinivas, who elaborately made a subtle and succinct difference between the recommendations made under Sub Clauses (c) to (f) of Section 12 and the recommendations made under Section 18 of the Act. Mr.R.Srinivas, learned counsel in fact, greatly emphasized that Section 20(2) and 28(2) would have application only in respect of the recommendation made under Section 12, since they were more advisory in nature. In fact, he also illustrated that when the Commission makes a recommendation in the cause of its consideration under the provisions of Section 12 that all prisons must be air conditioned, those recommendations may have to be placed before the Parliament or

Legislature concerned and acceptance of those recommendations is always a policy matter of the Government. That is why, according to the learned counsel, the reasons for non-acceptance is specifically included in the Section and correspondingly, conspicuously absent in Section 18 of the Act.

317. Per contra, it was contended more particularly, by the learned Addl.Advocate General and Mr.Sarath Chandran, learned counsel that the recommendation made under Section 18 would also be part of the Annual reports. In fact, Mr.Sarath Chandran, had demonstrated by bringing to the notice of this Court about the Annual Reports submitted by the NHRC for a particular year, which in fact, extracted supra in the earlier part of this judgment.

318. The learned Addl.Advocate General submitted that the expression and language used in Section 18 are clear and unambiguous providing no scope for any construction. According to her, "expression" as found in Sub Clause (e) of Section 18, 'proposed to be taken' 'includes rejection of the recommendation. She submitted that the recommendation of the Commission under Section 18 would be part of the annual report as

contemplated under Section 20 (2) to 28 (2) of the Act and such recommendations can be laid before the Legislature or Parliament and the reason for non-acceptance of the recommendation is also to be placed before the Legislature or the Parliament.

319. The arguments advanced by the learned counsel Mr.R.Srinivas, on this aspect require to be examined as the expression "recommendation" occur in two Sections namely, Sections 12 and 18, need to be understood from the contextual reading of those principal Sections. While examining as such, the meaning of Sub-Clauses (2) of Sections 20 and 28 require to be correlated to the recommendation made under Sections 12 in order to provide greater thrust to the working of the Act. When an expression, recommendation is used in Sub Clauses (c) to (f) of Section 12 and the recommendation as contemplated therein must evoke some response from the concerned Government or authority either in the form of its acceptance or in the form of non-acceptance with reasons and the same to be placed before the Parliament or the Legislature concerned, leaving to the wisdom of the Houses to take a final call in the matter. This is because when the recommendation made in the realm of policy matters of the Central Government or the State Government concerned, the law framers are put on

notice to respond to such recommendations towards policy initiatives.

320. However, the recommendation made under Section 18 may be part of the Annual Report as contemplated in Sub Clauses (2) of Sections 20 and 28, but by very inclusion of those recommendations, the expressions 'reasons for non-acceptance" as found in the Sub Clause (2) of Sections 20 and 28 could be imported and read into as self-contained Section 18, in our opinion, would amount adding words in the Section consciously omitted by the framers. While applying the principles of interpretation, it is possible for the Constitutional Court to read down a provision, enhance or expound the meaning of words in the Act to make it workable or to prevent it from its inane function and existence. But it is certainly not open to the Courts to add words and substitute expression in order to atrophy the Act.

321. In fact, Mr.R.Srinivas, learned counsel for SHRC, has extensively made his submissions, pointing out the distinguishing features in regard to the implementable differences with reference to Sections 12 and 18 of the Act read with Sub Clauses 2 of Sectins 20 and 28. The Sub Clauses (c) to (f) of Section 12 which have been extracted supra provide for making a recommendation on the basis of generic consideration in order to

improve the standards of human rights, protection and promotion of the same. The Commission is also under obligation to create awareness of human rights literacy. By very nature of the recommendations as provided under the Sub clauses, are to be construed only as advisory or academic and not enforceable at all. Whereas, the recommendation under Section 18(e) of the Act is on a specific complaint being inquired into and a finding is rendered and consequent recommendation is made. Therefore, the word 'recommendation' as found in Sections 12 and 18 cannot be considered to have the same connotation. In fact, the word, 'recommendation' in its natural and plain construction, is to be construed to have nexus with reference to Sub Clauses (2) of Sections 20 and 28 of the Act.

322. As contemplated in Sub Clauses (2) of Sections 20 and 28 of the Act, requirement of placing the Annual and Special Reports of the Commission to be laid before the Parliament or State legislature as the case may have to be understood principally only with reference to Sub clauses (c) to (f) of Section 12 which may include inquiry report/recommendation under Section 18. Such plausible conclusion is inevitable as the expression 'recommendation' as found in Section 12 of the Act draws its meaning on the contextual construct of its company. The Annual and Special reports

contemplated under Sub clauses (2) of Sections 20 and 28 respectively are therefore, in the nature of executive being answerable to the Parliament/Legislature to declare or disclose its decisions as to the action action taken on such advisory recommendations. The recommendations under Section 12 of the Act are more in the realm of touching upon the policies of the executive in fulfilling its commitment to the promotion and advancement of human rights.

323. In contrast, the recommendation under Section 18 of the Act is of a different import as the scope and ambit of Section 18 is of a wide amplitude and self-contained provision, as canvassed by some of the learned counsel. There cannot be any doubt that Section 18 is self-contained provision and the tentacles of Section 18 and its potentiality, have not been appreciated at all by this Court in its earlier decisions. Further, more importantly the distinguishing aspects of recommendation made under Sections 12 and 18 by the Human Rights Commission were never canvassed or placed for consideration before any Court in India so far. Thanks to Mr.R.Srinivas for expounding the salient difference as key to unpuzzling the expression, 'reasons for non-acceptance' as found in Sub Clause (2) of Sections 20 and 28 of the Act.

324. In the light of the above, we do not have any legal precedents on the distinguishing features as between recommendations made under Sub Clauses (c) to (f) of Section 12 and Section 18 of the Act. The plausible exposition of the differential nature of recommendation is a pointer to understand the scheme of Act with more clarity and insight. When a general recommendation is made by the commission by exercising its power under Section 12, particularly with reference to Sub Clauses (c) to (f), the recommendation being advisory from the very nature of the provisions of Sub Clauses, it is always open for the concerned Government to provide reasons for its non-acceptance when the reports are to be submitted to the Parliament /Legislature under Section 20 (2) and 28 (2) of the Act. Such latitude is not to be found under Section 18 of the Act. The crucial expression namely 'reasons for non-acceptance of recommendation' which are in Sections 20(2) and 28(2) are conspicuously and consciously missing in Section 18 of the Act. Therefore, we are of the opinion that the reasons for non-acceptance must relate only with reference to Annual/Special reports contemplated under Sub Clauses (c) to (f) of Section 12 of the Act and not with reference to Section 18 of the Act. By conjoint reading of International Covenants and the conscious omission of expression of ‘non

acceptance' would in fact, clothe the recommendation of the Human Rights Commission made under Section 18 of the Act with some measure of casting obligation on the part of the Government or authority to accept the recommendation.

325. The learned counsel Mr.Manoj Srivatsan, who argued, has also illustrated four possible scenarios when the Commission concludes its inquiry followed by recommendations under Section 18, viz., (i) no violation of human rights was found and on such conclusion either complainant or the victim can approach the Constitutional Court for redressal. (ii) The Commission holding violation of human rights and the Constitutional Court is approached and the Court confirms the recommendations, in which case, the recommendation merges with the decision of the Constitutional Court and becomes a command. iii) The Commission holding violation in part and even in that situation, the decision of the Constitutional Court accepting such recommendation becomes a mandate to be implemented by the concerned Government or authority. iv) The Commission holding the Government guilty of violation and no one approached the Court at all, in that event, the Commission may invoke Section 18(b) of H.R.Act for enforcement of its recommendation and once again that becomes binding on the concerned Government. The learned counsel relied on a Latin maxim *Sublato*

fundamento cadit opus meaning that the foundation is removed, the structure falls and he compared the 'foundation' to the 'recommendation of the Commission'.

326. Ms. Nagasaila, learned counsel who argued, has also reiterated the point that Sub Clauses (e) and (f) of Section 18 do not provide any option for the Government to refuse as in the case of Sub Clauses (2) of Sections 20 and 28 respectively. On the same lines, Mr. B.Vijay, the learned Amicus Curiae would submit that if Sub Clauses (e) of Section 18 are closely examined, no discretion is vested with the Government to reject or modify the recommendation of the Commission. According to the learned counsel, the expression 'comments' as found in the said Section, means, the Government is under legal obligation to provide remarks as to the action to be taken by it through various aspects like payment of compensation, initiate criminal action against violators and also departmental action, if any. He also submitted that the expression 'proposed to be taken' may have to be read in conjunction and in tune with the entirety of the Section and must receive liberal construction. He also submitted that under Section 18(e), the Commission is not denuded of its jurisdiction after making recommendation, as the Government is under an obligation to

forward its comments including 'action taken' or 'proposed to be taken' within the time stipulated by the Commission.

327. While dealing with the Section 18 which appears to the the heart and soul of the Act, we need to draw our attention to the principal terms of Reference as under:

> (i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?

and answers to the above would probably and essentially cover the other remaining terms of the Reference on a substantial scale. Therefore, our endeavor is to focus singularly on this kernel of the Reference, the substratum of consideration of this Bench.

328. At the beginning of the arguments, we have traced to the origin of the dispute, which culminated into the present reference. The starting point of divergence of the judicial opinions began with the decision rendered in W.P.Nos.21604 to 21607 of 2000 in the matter of ***Rajesh Das versus Tamil Nadu State Human Rights Commission and others'*** which was

reported in 2010 (5) CTC 589. This decision was penned by Shri Justice S.Nagamuthu, before whom, an important question was raised as to,

> 'Whether the Human Rights Commissions constituted under the Protection of Human Rights Act, 1993 (hereinafter referred to 'H.R.Act') have power of adjudication in the sense of passing an order which can be enforced *propri vigore*?

329. The learned Judge, after referring to various provisions of Human rights Act and a few decisions, had come to the categorical conclusion that recommendation of the Commission under Section 18 was neither an order nor an adjudication and it remains as recommendation only and as a corollary, the learned Judge has held that the recommendation was not binding on the parties to the proceedings including the concerned Government. Consequential conclusions have been summed up in para 41 of the judgment which were already extracted in the earlier part of the judgment. Shortly, after the above judgment of the learned Judge in Rajesh Das's case, another learned single Judge, Shri Justice K.Chandru had differed and disagreed with the views expressed in Rajesh Das's case while rendering his decision in the case of ***T.Vijayakumar versus State Human Rights Commission, Tamil Nadu and others*** in W.P.(MD) No.12316 of 2010

vide his order dated 29.09.2010, and thereafter few Division Benches which have been referred to supra, had upheld the views of the learned Judge in Rajesh Das's case. Although there was no apparent conflict of views by the Division Benches referred to supra, yet the Division Bench comprising Shri Justice M.Venugopal and Shri Justice Audikesavulu has made certain observations in its order dated 25.07.2017 in W.P.No.41791 of 2006 in the matter of ***Abdul Sathar versus The Principal Secretary to Government, Home Department and others***, after having felt that there have been divergent views on the status of the 'recommendation' made by Human Rights Commission under Section 18 of H.R.Act. In pursuance of the same, the reference has landed on the lap of this Full Bench.

330. The most important underlying consideration in Rajesh Das's case by the learned judge, Shri Justice S.Nagamuthu was on the premise that the provisions of the Human rights Act, 1993 are *pari materia* to the provisions of the Commission of Inquiry Act, 1952 (C.I.Act). The learned Judge has also premised his finding on the Statement of Objects and Reasons which stated in Sub para 3 of Para 4 that 'the Commission will be a fact finding body with powers to conduct inquiry into the complaints of violation of human rights'. According to the learned Judged, when the

decision of the Human Rights Commission has been accorded the same status as that of the Commission under C.I.Act, the Human Rights Commission cannot enjoy the power of adjudication and enforce its recommendation. When the State of Objects and Reasons have clearly spelt out that the Human Rights Commission is only a fact finding body and in that capacity, it inquires into the complaints of human rights violation, it cannot be clothed with any power over than what is circumscribed by the provisions of the Act. In fact, the learned Judge has compared the provisions of C.I.Act and H.R.Act and ultimately summed up his conclusion as found in para 41 of his judgment(extracted supra).

331. The learned Judge while concluding that the report of the Human Rights Commission is only in the nature of a 'recommendation' and not an 'order or any 'adjudication', has compared similarities between certain provisions of C.I.Act and H.R.Act, like Section 4 of C.I.Act and Section 13 of H.R.Act, in regard to the Commission's power of Civil Court in the matters of summoning and enforcing the attendance of witnesses, examining them on oath, etc. He has also drawn parallel as between Section 5(2) and 13(2); 5(3) and 13(3), 5(4) and 13(4) and Section 5 (5) and 13 (5) of C.I. Act and H.R.Act respectively. Likewise, the learned Judge also

compared 5A of C.I.Act with Section 14 of H.R.Act. Finding that these provisions are *pari materia* to each other and also coupled with the fact that the Statement of objects Human Rights Act, it is stated that in Sub para 3 of Para 4 that the Commission will be 'a fact finding body', has held that the status of the Commission under Human Rights Act is no more than the Commission under the C.I.Act.

332. Apart from the comparison of similar provisions as between the two of Acts, the learned Judge has also referred to decisions of the Hon'ble Supreme Court of India and the same if perused, it could be gathered that the majority of the decisions relied on by the learned Judge were rendered by the Hon'ble Supreme Court of India in the context of Commission's power and its functioning with reference to C.I. Act, 1952. Many of the decisions referred to by the learned Judge were prior to H.R.Act, 1993 and those decisions were factually dealing with various Commissions established under the C.I. Act, 1952.

333. In fact, the learned Judge went one step further and held that Section 18(a)(i) of H.R.Act is *parri m*ateria to Section 3 of the C.I. Act and thus held that the report submitted by the Commission can only be

recommendatory. From the judgment, it is found that hardly any decision was referred to in respect of the recommendation and the status of the report of the Human Rights Commission under Human Rights Act, 1993. In fact, the learned Judge though referred and extracted the entire Section 18, but for some reasons, the learned Judge has not dealt with all the Sub Clauses of Section 18 with reference to the other provisions of the Act.

334. On the whole, the conclusion reached by the learned Judge as summed up in para 41 in his judgment, with due respect to learned Judge, in our conclusion, may not be a correct view, as the learned Judge has omitted to consider certain important aspects which escaped from his critical attention. Firstly, the comparison of the Commission under H.R.Act with that of the Commission under Commission of C.I. Act, itself appears to be misplaced. To illustrate this position, it is enough to refer two provisions of the C.I. Act, viz., Section 3 of C.I.Act, which deals with the 'appointment of the commission', which is extracted as under:

> '3. Appointment of Commission.—(1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by 2 [each House of Parliament or, as the case may be, the Legislature of the State], by notification in the Official Gazette, appoint a

Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

Provided that where any such Commission has been appointed to inquire into any matter—

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before 2 [each House of Parliament or, as the case may

be, the Legislature of the State], the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.]'

335. From the above, it could be seen that the Commission constituted under the C.I. Act, 1952 derives its power and jurisdiction from the terms of reference as notified by the Governments while the Commission is so appointed. The Commission on its appointment, has to function within the frame work assigned to it by the appointing authority. In all respects, it is a fact finding body entrusted with a particular task of conducting investigation in order to gather facts. The composition of the Commission may also vary and depend on the discretionary will of the appointing authority. In fact, the commission need not be even headed by any judicial members.

336. Further, the Commission's existence and its continued function solely dependent on the appointing authorities sweet will and pleasure. A Commission which is appointed under Section 3 could be wound up by issuing an another notification by the appointing authority/Government under Section 7 of the Act. In fact, the power is with the appointing

authority to discontinue the functioning of the Commission at any stage. The Commission under the C.I. Act owes its birth to Government orders and the same Government on the presumed policy can write its obituary as well on exercise of its power under Section 7 of the C.I.Act.

337. Section 7 of the C.I.Act, 1952 reads as under:

> '7. Commission to cease to exist when so notified.— (1) The appropriate Government may, by notification in the Official Gazette, declare that—
>
> (a) a Commission other than a Commission appointed in pursuance of a resolution passed by 4 [each House of Parliament or, as the case may be, the Legislature of the State] shall cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary;
>
> (b) a Commission appointed in pursuance of a resolution passed by each House of Parliament or, as the case may be, the Legislature of the State shall cease to exist if a resolution for the discontinuance of the Commission is passed by each House of Parliament or, as the case may be, the Legislature of the State.
>
> '(2) Every notification issued under sub-section (1) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.'

Therefore, the life of the Commission appointed under the C.I. Act is solely dependent on the appropriate Government's discretion and its functioning even during its existence is to be confined within the dictates and directives of the appointing authority. By no stretch of legal standard or implication, the Commission under the C.I. Act is said to be an independent body, much less a judicial forum. Moreover, the Commission under the C.I. Act can be appointed to conduct inquiry to any issues of public importance by the appropriate Government to collect materials and facts and to assist the Government to take policy decisions on issues which are directed to be the subject matter of the Commission's purview.

338. On the other hand, the Commission under H.R.Act, 1993 is a creature of the Statute permanently constituted with a well defined power, jurisdiction akin to any other judicial body. Unlike the Commission under C.I.Act, the Commission under H.R.Act,1993 by operation of the statutory provisions is assigned with a judicial function and not merely as a fact finding body. It is as a protector of human rights as guaranteed in the Constitution of India and invested with the power to deal with violation of human rights to initiate civil and criminal actions against violators. The Commission owes its existence to H.R.Act, 1993 as a permanent judicial

forum.

339. As a matter of elucidation, Section 18 and its Sub clauses are self-contained provisions which would materially make a world of a difference. Even a cursory glance of Section 18 of H.R.Act would demonstrate that the Human Rights Commission is not a mere fact finding body. After inquiry followed by report and recommendation, the Commission is not a helpless spectator or a mute witness. It has the power and jurisdiction to follow up with its report and recommendation under Sub Clause (e) of Section 18 unlike, the Commission constituted under the C.I. Act, 1952.

340. The Human Rights Commission is indisputably a judicial body headed by high Constitutional dignitaries as provided under Chapter II and Chapter V of the Act. Therefore, comparison of the Human Rights Commission to the Commission appointed under the the C.I.Act tantamounts to doing disservice and devaluing the human rights itself. The learned Judge unfortunately has compared a cat to the tiger more by their form than by their attributes in substance. Therefore, comparing of these two Commissions is fundamentally fallacious and the conclusion premised on

such comparison, may have to be discarded, as being wholly without substance. This Bench therefore, finds that the legal summations of the learned Judge that are found in paragraph 41 of the judgment are edified on a faulty premise by comparing H.R. Commission with that of the Commission under C.I.Act, 1952 and therefore, the same is to be held not a correct view.

341. As regards the conclusion of the learned Judge on the basis of the Statement of Objects and Reasons, wherein, it is referred the Commission as a fact finding body, Mr. R.Srinivas has relied to two decisions reported in 1997 Supp (6) SCR 282 ***(Devadoss (Dead) By Lrs. And Anr vs Veera Makali Amman Koil Athalur)*** and 1963 AIR 1356 (SC) ***(S. C. Prashar, Income-Tax Officcer vs Vasantsen Dwarkadas And Others)***. In both the decisions, the Hon'ble Supreme Court has clearly held that the Statement of Objects and Reasons may not be used to determine the true meaning at the effect of the substantive provisions of the Statute, it can at best be referred for the purpose of ascertaining the circumstances which led to the legislation. In fact, the observations of the Hon'ble Supreme Court are extracted supra in the earlier part of the judgment. The Statement of Objects and Reasons are mere guidelines as being introductory to the

statutory text. As held by the Hon'ble Supreme Court, the Objects and Reasons cannot determine the scope, the extent and the reach of the Act. The scheme of the Act needs to be understood with reference to conjoint reading of all provisions of the Act, while interpreting the Statute and such interpretation cannot be on the sole basis of the Statement of Objects and Reasons. Even on this aspect, the learned Judge appeared to have faulted for according undue emphasis to the Statement of Objects and Reasons for the purpose of interpreting the entire scheme of the Act. In a matter of purposive interpretation, Courts would have to examine every layer and limb of the text and not to be confounded on fragmentary understanding of a Statute.

342. As stated earlier, divergent opinion expressed by Shri Justice K.Chandru, in the matter of ***T.Vijayakumar versus State Human Rights Commission, Tamil Nadu and others*** in W.P.(MD) No.12316 of 2010 decided on 29.09.2010, the learned Judge disagreed with the conclusion reached in 'Rajesh Das's case by the learned Shri Justice S.Nagamuthu as summed up in para 41 of his judgment and held that a delinquent officer when was imposed with the compensation on the basis of the findings of the H.R.Commission, he had no other remedy except to obey the findings of the

H.R.Commission and compensation to be recovered from him by his employer and no further opportunity needed to be provided to the affected delinquent officer. While holding as such, the learned Judge has referred to Hon'ble Supreme Court's decision reported in ***D.K.Basu versus State of West Bengal*** reported in (1997) 1 SCC 416 wherein, the Hon'ble Supreme Court has held the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which was available in the Constitution on the lofty principle '***ubi jus ibi remedium***' (there is no wrong without a remedy). Further, the learned Judge referred to a decision rendered by a Division Bench of this Court in W.P.No.47861 of 2006 in the matter of ***T.Loganathan versus State of Human Rights Commission and others***, wherein the learned Judge was a party to the Division Bench, has held a similar view, much earlier to Rajesh Das's case.

343. The above decision of the learned Judge in ***T.Vijayakumar versus State Human Rights Commission, Tamil Nadu and others*** was though perceived as a conflicting view, however, we are of the opinion that the said decision was rendered within the narrow confines as to whether a delinquent employee affected by the Commission's report and recommendation, was to be given a further opportunity by his employer while recovering of the

compensation amount from him. The decision of the learned Judge was only in that specific context. Either in the Division Bench wherein the said Judge was a party in T.Loganathan's case nor in the T.Vijakumar's case, the scheme of H.R.Act was never under consideration. However, the fact ramains that the decision of the Division Benches referred to earlier in the judgment, which have been apparently found expressing different views, had no occasion to consider the entire scheme of the Act, as the respective learned single Judges and Division Benches had to deal with the specific issues in piecemeal relating to a particular singular aspect of the implementation of the Commission's recommendations.

344. In the absence of any authoritative consideration on various aspects of H.R.Act, 1993 holistically, this Bench may have to necessarily trudge through every piece of the provisions and weave together cohesively with a view to interpret the scheme of the Act towards serving the larger purpose of the Act. Such germinal exercise is the constitutional imperative when almost virgin answers are to be found on various questions, misgivings raised on the power, the functional/jurisdictional limitations of the Commission under H.R.Act. Being a creature of the statue, the power of the Commission and the scope of its function and the status of the

recommendation whether the same is enforceable or to remain as recommendatory, as it widely understood till date, is a matter of momentous semantic construct within the broad frame work of the Act. Such benign consideration primarily involve exercise of purposive interpretation of the statutory provisions on the basis of various legal precedents in order to infuse greater essence and spirit into the letters of the text of the Statute in tune with the avowed objects of the enactment and the intention of the framers who are responsible for bringing into existence of Protection of the Human Rights Act, 1993.

345. 'Human rights' as defined under Section 2 (d) of H.R.Act, reads as under:

> '2. Definitions:
>
> (d) '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.'

346. The Human Rights as defined above, self evidently are part of the Fundamental and Constitutional rights enshrined in the Constitution of India and also embodied in the international covenants enforceable by

Courts in India. In realization of the objectives of serving of human rights, the Commission has been constituted under Section 3 of the Human Rights Act. There is a clear and definite purpose for which the Commission has been constituted under the Act and on such constitution, the outreach of the Commission in terms of its functionality, scope and power in taking forward its inquiry report/recommendation has to be considered with reference to the other provisions of the Act.

347. According to the learned Addl.Solicitor General, Section 18 and its Sub Clauses (a) (i) provides 'payment of compensation or damages', Sub Clause (ii) is a residuary Clause. While providing for payment of compensation or damages, no specific provision has been incorporated in the Act nor any method or standard has been found in the scheme of the Act determining the damages payable. According to him, that there are enactments like Land Acquisition Act, Arbitration Act, Consumer Act, etc., which provide comprehensive procedure for determination of compensation and such provisions are conspicuously absent in H.R.Act.

348. The learned Addl.Solicitor General would refer to various provisions under Chapter II of National Human Rights Commission

(Procedure) Regulations 1997. Section 18, according to him, provides only for making recommendation and not determination and further, when the Commission itself assumes the role of the party before the Constitutional Court under Section 18 (b) of H.R. Act, the question of its recommendation binding on the Government would not arise. In fact, he would particularly refer to Sub Clause (iii) of Regulation 28 from National Human Rights (Procedure) Regulations, 1997. Sub Clause (iii) provides an option for the Government to assign the reasons for non-accepting the recommendations as under.

> '28 (iii) the reasons,if any, given for not accepting the recommendations;

349. Mr.Sarath Chandran, learned counsel has drawn reference to the reports of the National Human Rights Commission for various years, wherein, the Commission itself felt and understood its limitation being not able to enforce its recommendations in terms of the scheme of the Act. In fact, the reports of the NHRC have been in extenso extracted supra when the submissions were made by the learned counsel. By highlighting those reports, the learned counsel has submitted that the Commission in its annual reports, has clearly spelt out the limitation imposed on it by the scheme of the Act and in fact, suggestions were repeatedly made for amending the Act

to provide more power to it, but ultimately, it did not materialize in reality. Therefore, the question of reading something more in the Section by this Bench may not be permissible at all. The learned counsel, specifically added that one of the Annul Reports of the NHRC for the year 2015-2016, has clearly mentioned number of recommendations made for that year and those recommendations made under Section 18 were part of the Annual Report placed before the Legislature or Parliament. This submission was supported the learned Addl.Advocate General.

350. Mr.Ganesh Kumar, who appeared and made his submissions, has reasoned that firstly, the Act does not provide the provisions for implementation of the recommendation. Secondly it does not provide any provision for appeal against the recommendation of the Commission. Thirdly, no hierarchical form is available in the scheme of the Act, like for example, in case pertains to the Consumer Protection Act, an appeal would lie from the State Commission to National Commission. The learned counsel referred to Section 18(b) of the Act that by very provision providing a Commission to approach the High Court or the Hon'ble Supreme Court, would mean that the recommendation is not an end itself but requires another adjudication.

351. From the above submissions, our endeavour in finding answers for the Reference, hinges completely on how the essence of Section 18 is to be understood and whether Section 18 is open to any interpretation at all in order to give a greater force and purpose to the working of the Act as it meant and intended by the original framers of the Act and as defined and decided by the Courts over the last 27 years. Amendments to the Act have also taken place in the Act in the meanwhile particularly, in 2006, amendments were introduced in Section 18 and the intention of the Act as rightly argued by the learned counsel Mr.R.Srinivas, would also to be understood, drawing inspiration from the subsequent additions made in the Act. Ultimately, the recommendation of the Commission under Section 18 and its enforceability is the quintessence of the consideration as to the Commission's destined objective in implementing its recommendation/report with a clear mandate. In this regard, we have to traverse through the judgments rendered by the Courts in India in respect of H.R. Act as well as the orders rendered in respect of similar enactments. Before we proceed to analyze the judgments of the Courts in India or any judicial ruling outside India which may provide an useful guidance, we need to scan through the other provisions to have a consolidated view of the Act.

352. The next important provision of the Act is Section 30 under Chapter VI of the Act. Section 30 provides for designating the competent Court for offences arising out of violation of human rights. Section 30 reads as under:-

> '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.'

353. On this Section, notably two important arguments were advanced on either side. In fact, Mr.R.Srinivas, learned counsel for SHRC has submitted that the earliest decision of the Madras High Court in respect of the present Act was reported in CDJ 1997 MHC 793 (cited supra). The decision rendered by a Division Bench of this Court which had extensively gone into various aspects of the Act and ultimately held that the Commission has a limited power under the Act and its recommendations are

'recommendatory' alone. The extracts of the Division Bench's findings and the observations have been incorporated in extenso supra. However, Ms.Naga Saila, learned counsel clarified that the Division Bench judgment was rendered in the context of human rights as provided under Section 30 of the Act. According to the learned counsel, the Division Bench held that only the Human Rights Courts (HRC) can convict the persons involved in human rights violations and not Human Rights Commissions. She, in fact, referred to paragraph nos.98, 99 and 100 of the judgment. According to the learned counsel, when the decision was rendered by the Division Bench on 23.06.1997, the Rules/Regulations framed under the Act were not placed for consideration and in the absence of any procedure, the Division Bench felt that no definite judgment could possibly be rendered passed by the Commission. Therefore, she submitted that the decision of the Division Bench need not be taken as significant material source of precedent or guidance.

354. As referred to earlier, Mr.S.Prabhakaran, learned Senior counsel relied on a decision in C.A.No.5112 of 2012 batch, wherein, the Hon'ble Supreme Court vide its judgment dated 10.01.2019 found that many States had not designated the Judges as Human Rights Courts under Section 30 of

the Act. Therefore, the Hon'ble Supreme Court issued notice to the Chief Secretaries of the States, where Human Rights Courts have not been established in this regard. The learned Senior counsel stated that in Section 30, the expression 'may' used for designating any Court of Session as Human Rights Court which means it is only recommendatory and the same meaning to be given to Section 18 as well. As a final submission, learned Senior counsel made a fervent plea to this Full Bench to amend the Statute. We are unable to persuade ourselves to the submission made by the learned Senior Counsel for the simple reason that the expression 'may' in Section 30 of the Act need to be understood in the combined reading of the other Sub Clauses as well. The expression "may" is used specifically in order to give an option to the State Government to specify the Human Rights Court at District level or otherwise or Special Court etc. Therefore, the discretion is given to the State Government only on that aspect and the same cannot be extended to mean that the State Government can have an option to designate the Human Rights Courts or not at all in the State. Further, it could be seen that any violation of human rights is already triable normally by the Criminal Courts or the Civil Courts as the case may be. Therefore, in that consideration, expression 'may' has been used quite appropriately. This takes us to the concluding submission of learned senior counsel where he

made a fervent plea to this Full Bench to amend the Statute. We are constrained to hold that this is completely against the basic tenets of separation of powers and we are reminded of Dr.Durga Das Basu who said 'So far as the courts are concerned, the application of the doctrine (the theory of separation of powers) may involve two propositions, namely, none of the three organs of Government, Legislative Executive and Judicial, can exercise any power which properly belongs to either of the other two and that the legislature cannot delegate its powers' which is simplistic but lucid summation without compromising on profundity compared to *Montesquieu*, who had a far more complex approach to this issue in 18th century which is recorded by historians as 'Century of Philosophy' in Europe.

To put it differently, this Court cannot and will not legislate when gradual separation of judicial and legislative function emerged across 13th and 14th centuries after which a more formal sense of law making evolved with writing of preambles for statutes and keeping journals beginning with the House of Lords and House of Commons in earlier part of 16th century. Be that as it may, under the English model, even then the judges continued to sit in the legislature i.e., the House of Lords, House of Commons and were senior partners in a collaborative exercise. This is clearly not the case now in India and therefore, this fervent plea to amend the Statute cannot but

be rejected as completely untenable. Therefore, the submissions advanced by the learned Senior Counsel does not appeal to us.

355. Next we come to Section 31 which provides for appointment of Special Public Prosecutor, which reads as under:

> '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.'

356. In this Section, the State Government is under an obligation to specify a Public Prosecutor as Special Public Prosecutor for the purpose of conducting cases in Human Rights Court. Therefore, the expression 'shall' as found in the Section, is all the more reason that the submission made by the learned Senior counsel that the option is with the State Government for establishing the Human Rights Courts is incorrect. When the expression 'Public Prosecutor' shall be appointed specifically for Human Rights Courts, it presupposes establishment of Human Rights Courts under Section 30. The provisions of the Act as it could be seen, cover the entire gamut of

human rights protection and violations and the consequent remedial actions all rolled into one comprehensive legislation.

357. In the backdrop of the compact enactment, as outlined above, we need to satisfy and strengthen ourselves by drawing guidance from various decisions of the High Court and the Hon'ble Supreme Court of India touching up different aspects of the Act. Such consideration would have to include Parliamentary debates, intention of the framers, proclaimed objects behind the enactment and purposive interpretation of the scheme of the Act in transforming the objects into an appreciable realization.

358. We will now examine the relevant Case Laws laid down by various High Courts and the Hon'ble Supreme Court of India that have been referred to by the learned counsel.

Legal precedents of Indian Courts as to the status of the Commission and its recommendation vis-a-vis the concerned Government/Authority.

359. On behalf of the learned counsel, several decisions have been cited which have been rendered by various High Courts in India and the

Hon'ble Supreme Court of India. The relevant portions of the observations made by the Courts and the rulings have already been extracted when legal contentions were raised by the learned counsel. But, we strangely find that none of the judgments which has been placed for consideration before us, have dealt with the entire scheme of H.R.Act. Many of the judgments of the Courts have been rendered on consideration of limited issues that have been placed for consideration and not the interpretation of the scheme of the Act. Therefore, our essential task is to engage with the judgments and to pick up relevant threads from these judgments as value additions for the purpose of the Reference on hand. The citations relied on by the learned counsel, can be broadly divided into two categories, viz., i) 'status of the Commission, its recommendation and its enforceability' and ii) 'purposive interpretation of the provisions of the Statute and construction of provisions thereof.

360. We would first examine the case laws relating to the 'status of the Commission *vis-a-vis* its recommendation and enforceability'. The earliest decision after enactment of H.R.Act, was rendered by the Hon'ble Supreme Court of India, which is reported in '***D.K.Basu's*** case reported in ***(1997 (1) SCC 416).*** Relevant portions as found in paragraphs 51 to 54 have been extracted supra on the basis of submissions of the learned counsel for

SHRC, Mr.R.Srinivas. However, the Hon'ble Supreme Court in the said judgment, was only considering the issue pertaining to the compensation towards damages that were to be awarded to the victims of the human rights violation. The Hon'ble Supreme Court has held in that context that 'in public law sphere, such is permissible apart from regular remedies which were available under other laws'.

361. As far as Madras High Court is concerned, the Division Bench has dealt with various issues concerning the power, character and status of the Commission in its decision reported in CDJ 1997 MHC 793 (***Tamil Nadu Pazhankudi Makkal Sangam, rep. by V.P.Gunasekaran, General Secretary versus Government of T.N., rep. by the Home Secretary and others)*** and held that the recommendations of the Commission were only recommendatory. The Division Bench has held that since Human Rights Commission has no power to give a definitive judgment in respect of the offences arising from violation of human rights and principally constituted for creating awareness of human rights, its recommendation can only be recommendatory. From the entirety of the judgment, it could be seen that there was no in-depth analysis of various provisions of the Act though they were referred to in the judgment. More particularly, Section 18 which is the most pivotal of all the provisions in the Act, has not been given its due

consideration or appreciation. In fact, as correctly submitted by the learned counsel Ms.Nagasaila, the entire judgment of the Division Bench was with reference to Section 30 of the Act. More over, as submitted by her, that at the time the judgment was rendered by the Division Bench, Rules or Regulations framed under the Act were in the formative stage and were not placed for consideration before the Bench.

362. This Bench is in agreement with the above submission made by the learned counsel, stating that the decision of the Division Bench as it rendered in 1997 cannot be a source of any guidance for this Bench for the reasons, firstly, that it did not deal with the entire scheme of the Act with due appreciation as it deserved and secondly, that Section 18 was omitted to be discussed in detail by the Division Bench. Even otherwise, at the time when the decision was rendered, no legal precedents were available for the Division Bench to consider and take note of. Further, due to efflux of time, several decisions have been rendered by the Courts with reference to the Act and have been occupying the field of human rights. Moreover, the Act has been amended subsequently by introduction of certain provisions which are of course can be a relevant source of inspiration for this Court to understand the intention of the framers of the Act, by passage of time.

363. In our humble opinion, various decisions rendered by the Courts earlier to H.R.Act and in the context of the C.I.Act, 1952 may not be of a great relevance or significance for the task entrusted to us, as answers to the terms of Reference would have to be eventually culled out from the frame work of H.R.Act only. Our position on this aspect, we have indicated earlier that in all fours, the Commission under H.R.Act cannot be equated with the Commission constituted under the C.I.Act. In our opinion, except the nomenclature 'Commission' as found in both the enactments along with few similar provisions, comparison of the two Commissions is like treating chalk and cheese as the same. We therefore, proceed to deal with post 1993 precedents.

364. In a decision of the Hon'ble Supreme Court reported in (2004) 2 SCC 579 (***N.C.Dhoundial versus Union of India and others),*** the Hon'ble Supreme Court has made important observation that the Commission was a unique expert body and entrusted with the important functions of protecting the human rights. Ofcourse, the Hon'ble Supreme Court has also observed that the Commission being a creature of the Statute, has to function within its limitations. But what is the limitation within which the Commission has

to function has to be seen with reference to other provisions of the Act as well and also how the recommendations of the Commission have been interpreted by the Courts in the development of the law over the years.

365. In 2015, when an issue had come up for consideration before the Hon'ble Supreme Court as to whether the constitution of Human Rights Commission under Section 21(c) was mandatory as the word used in Section, i.e., 'may', the Court held that it was mandatory and every State Government was bound to constitute the State Human Rights Commission in their respective States. This was rendered in a decision reported in **(2015) 8 SCC 744 (*D.K.Basu versus State of West Bengal and others)'*** and the operative of the observations of the Hon'ble Supreme Court as found in paragraphs 20, 21 and 22 are extracted here under:

> '20. The upshot of the above discussion that the power of the State Governments under Section 21 to set up the State Human Rights Commissions in their respective areas/territories is not a power simplicitor but a power coupled with the duty to exercise such power especially when it is not the case of anyone of the defaulting States that there is no violation of human rights in their territorial limits. The fact that Delhi has itself reported the second largest number of cases involving human rights cases would belie any such

claim even if it were made. So also, it is not the case of the North-Eastern States where such Commissions have not been set up that there are no violations of human rights in those States. The fact that most if not all the States are affected by ethnic and other violence and extremist activities calling for curbs affecting the people living in those areas resulting, at times, in the violation of their rights cannot be disputed. Such occurrence of violence and the state of affairs prevailing in most of the States cannot support the contention that no such Commissions are required in those States as there are no human rights violations of any kind whatsoever.

'21. There is another angle from which the matter may be viewed. It touches the right of the affected citizens to 'access justice' and the denial of such access by reason of non-setting up of the Commissions. In **Imtiyaz Ahmad v. State of U.P** (2012 (2) SCC 688) this Court has declared that access to justice is a fundamental right guaranteed under **Article 21 of the Constitution.** This Court observed: (**SCC p. 699**, paras 25-26)

> '25. … A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.

> 26. It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable [see United Nations Development Programme, Access to Justice — Practice Note (2004)].'

'22. Human rights violations in the States that are far removed from NHRC Headquarters in Delhi itself make access to justice for victims from those States is an illusion. While theoretically it is possible that those affected by violation of human rights can approach NHRC by addressing a complaint to NHRC for redressal, it does not necessarily mean that such access to justice for redressal of human rights violation is convenient for the victims from the States unless the States have set up their own Commissions that would look into such complaints and grant relief. We need to remember that access to justice so much depends upon the ability of the victim to pursue his or her grievance before the forum competent to grant relief. The North-Eastern parts of the country are mostly inhabited by the tribals. Such regions cannot be deprived of the beneficial provisions of the Act simply because the States are small and the setting up of Commissions in those States would mean financial burden for the exchequer. Even otherwise there is no real basis for the

> contention that financial constraints prevent these States from setting up their own Commissions. At any rate, the provisions of Section 21(6) clearly provide for two or more State Governments setting up Commissions with a common Chairperson or Member. Such appointments may be possible with the consent of Chairperson or Member concerned but it is nobody's case that any attempt had in that direction been made but the same had failed on account of the persons concerned not agreeing to take up the responsibility vis-à-vis the other State. Even NHRC had in its Annual Report (1996-1997) suggested that if financial constraint was really one of the reasons for not setting up of the Commission in the North-Eastern regions, the State Governments could consider setting up such Commissions by resorting to Section 21(6), which permits two States having the same Chairperson or Members thereby considerably reducing the expenses on the establishment of such Commissions.'

366. When the Hon'ble Supreme Court *inter alia* held that it was mandatory for the State Governments to establish the Human Rights Commission on the noble principle of providing access to justice to the affected citizens, the effect of such ruling would only mean that human rights violations need to be addressed by a judicial forum for providing a remedial action. The Court emphasized the basic and fundamental right of a

citizen namely, to have 'access to justice'.

367. The Hon'ble Supreme Court, in yet another decision, referred to by Mr.R.Srinivas in W.P.(Crl.) No.129 of 2012, dated 14.07.2017, in the matter of ***Extra Judl.Exec.Victim Families Assn.and another versus Union of India and others,*** has in fact, ruled that all State Governments shall abide by NHRC recommendations and also importantly observed that if the people of the country are deprived of human rights or cannot have them enforced, democracy itself would be in peril. These observations made in paragraph 46, are once again extracted hereunder:

> '46. We expect all State Governments to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time. If the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.'

368. The crucial statement made by the Hon'ble Supreme Court of India, with reference to the enforcement of human rights through H.R.Commission demonstrates the role of the H.R.Commission and its important place in the democratic governance.

369. Mr.R.Srinivas, learned counsel referred to two decisions of the Allahabad High Court, viz., i) in the matter of ***State of U.P. and others versus National Human Rights Commission*** in C.M.W.P.No.7878 of 2014 dated 09.12.2014, the Allahabad High Court held in paragraphs 9 and 10 which have been extracted supra, that the recommendations of the Commission can be enforced by approaching the Supreme Court or the High Court, in case of non-acceptance; ii) in the matter of ***State of U.P. versus National Human Rights Commission*** in W.P.(C).No.7890 of 2014 dated 01.02.2019, the Allahabad High Court referred to Sections 12 to 18 of the Act and held as under in paragraphs 15 and 16:

> '15. These provisions emphasize three aspects. First, the enactment of the Protection of Human Rights Act, 1993 is an intrinsic part of the enforcement of the fundamental right to life and personal liberty under Article 21 of the Constitution. Equally, by enacting the legislation, Parliament has evinced an intention to enact legislation in compliance with India's obligations under the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations. Secondly, the Commission is a high powered body which has been vested with exhaustive powers to order an investigation, conduct enquiries and for which it is vested with all the powers of a civil court. Clauses (a) to (f) of Section 18 are not evidently an exhaustive

enumeration of the powers of the Commission since the use of the expression 'and in particular' would indicate that the powers which are enumerated are illustrative in nature. The Commission follows a procedure which is governed by Section 17 for the purpose of making inquiries upon which it has to take steps in conformity with Section 18.

'16. The basic question is whether the use of the expression 'recommend' in Section 18(a) cannot be treated by the State Government or by an authority as merely an opinion or a suggestion which can be ignored with impunity. In our view, to place such a construction on the expression 'recommend' would dilute the efficacy of the Commission and defeat the statutory object underlying the constitution of such a body. An authority or a government which is aggrieved by the order of the Commission is entitled to challenge the order. Since no appeal is provided by the Act against an order of the Commission, the power of judicial review is available when an order of the Commission is questioned. Having regard to the importance of the rule of law which is but a manifestation of the guarantee of fair treatment under Article 14 and of the basic principles of equality, it would not be possible to accept the construction that the State Government can ignore the recommendations of the Commission under Section 18 at its discretion or in its wisdom. That the Commission is not merely a body which is to render opinions which will have no

sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeal is provided by the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right, is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected.'

370. The High Court of Allahabad has ruled that the recommendation of the Commission is binding on the State Government and it has to be complied with. The High Court has also held that the recommendation under Section 18 cannot be treated by the Government or authority as mere opinion or suggestion which can be ignored with impunity. The Court has held that such enforceability was very much evident from the provision of Sub Clause (b) of Section 18.

371. The High Court has correctly premised its ruling that the high power body vested with the exhaustive power to enforce the constitutional protection to the life and liberty and to hold its recommendation is not binding, the functioning of the Commission would be rendered nugatory. The Court has also taken into consideration the country's commitment to the international obligation.

372. One other decision relied on by the learned counsel, which has laid down the same principle, is ***State of Kerala Versus Human Rights Commission*** reported in MANU/KE/2288/2014 in W.A.No.527 of 2014, dated 14.10.2014, wherein, the High Court of Kerala has made an important observation in paragraph 14 which is once again extracted hereunder:

'14. When the Commission has specific power

> under Sec.18(a)(i) that it may recommend to the concerned Government or authority to make payment of compensation or damages, we cannot accept the submission of the learned Government Pleader that the Commission under Sect.18(a)(i) cannot direct payment of compensation. When the Commission recommends to the concerned Government or Authority to make payment of compensation or damages, it is with the intend to make payment by the said authority. The use of the word 'recommend' in Sec.18(a)(i) does not take away the effectiveness or competency of the order for issuing direction for payment of compensation. We thus do not accept the submission that there is lack of jurisdiction for the Commission in directing payment of compensation.'

373. The Kerala High Court has held that a recommendation made by the Commission under Section 18(a)(i) of the Act, does not take away the effectiveness or competency of the order. This observation was made when it was argued on behalf of the Government that the Commission cannot direct payment of compensation. In effect, the Kerala High Court held that recommendation for payment of compensation was binding on the Government.

374. Ms.Nagasaila, learned counsel relied on a decision of the

Madhya Pradesh High Court reported in 2014 SCC OnLine MP 7536 ***(M.P.Human Rights Commission versus State of M.P. and others)*** wherein, the High Court has clearly ruled that the recommendation of the H.R.Commission was binding on the State Government and it has to be implemented. The observation as found in paragraph 3 read as under:

> '3. The mute question is whether the recommendation made by the Human Rights Commission will prevail over any independent enquiry conducted by the respondent-State or not. The law in this respect is well settled. This Court on number of occasion while interpreting the provisions of the said Act has held that the recommendation made by the Human Rights Commission are binding on the State and are to be implemented, in case the same are not called in question before any appropriate Court by the aggrieved person or who was going to be affected by the said recommendation. Nothing has been pointed out by the respondent that such a recommendation made by the Human Rights Commission were called in question anywhere or were subjected to the judicial review by this Court and, therefore it has to be held that the said recommendations are binding on the State. This aspect has been considered by this Court in the case of *M.P. Human Rights Commission* v.*State of M.P.*[2011 (3) M.P.L.J. 168] and in W.P. No. 28038/2003 & W.P. No. 1039/2006. In view of this, the stand taken by the respondents cannot be accepted.

375. One other decision relied on by Ms.Nagasaila is with reference to Gauhati High Court reported in 2007 (2) GLT 199 (***Manipur Human Rights Commission versus State of Manipur and others).*** The observations of the High Court in relevant paragraphs of the judgment have already been extracted supra. In the above ruling, the High Court has held that jurisdiction of Constitutional Court is pre-eminently a public law remedy which is available to enforce authorities to perform their public functions with reference particularly to Section 18 of the Act. The High Court in the said decision, has also held that the affected party can approach the Constitutional Court for issue of Mandamus, compelling the Government to discharge their duty contemplated in Section 18 of the Act. According to the High Court once the recommendation is made, a public duty is cast upon the Government to implement the same. Ms.Nagasaila, therefore, submitted that the Courts have now started interpreting the provisions of the Act more liberally on consideration of larger importance of human rights protection and its violation.

376. Another decision relied upon by the learned counsel rendered by the same High Court reported in ***M.P.Human Rights Commission versus***

State of M.P. And others reported in 2011 (3) M.P.L.J. 168 in response to the petition filed by SHRC, the Court has made certain important observations in few paragraphs which have been extracted supra. The crux of the ruling of the High Court in the case is that in a conflict between the general enactment and the special enactment, it was held that the Human Rights Act being a special enactment, will have an over riding effect on the general provisions of the Service Rules.

377. In contrast, there are various other decisions relied upon by the learned counsel highlighting the limited scope of the status and the jurisdiction of the H.R.Commission as envisaged in the Act. According to the learned Addl.Advocate General, the Hon'ble Supreme Court, in a decision reported in (2004) 2 SCC 579 (***N.C.Dhoundial versus Union of India and others)*** has made certain observations in paragraphs 13 to 15 (extracted supra), holding that the Commission has no unlimited jurisdiction and being a creature of the Statute, is bound by its provisions. It cannot function in derogation of the statutory limitations. We find that the judgment was rendered more in the context of Section 36 which provide a period of limitation for entertaining a complaint. But the Hon'ble Supreme Court, in the same judgment observed that 'the Commission which is a unique expert body is no doubt entrusted with the important function'.

378. The Division Bench of Andhra Pradesh in a decision reported in 2014 SCC OnLine AP 87 **(*Southern Power Distribution Company for Andhra Pradesh Ltd.Tirupathi versus A.P.State Human Rights Commission, Hyderabad, rep. By its Secretary and another),*** has held that the Commission has no power to give mandate or direction and that neither the Government nor the authority is bound to take action as per the recommendation of the Commission. This judgment was in fact, relied on by the learned counsel, Mr.Sarath Chandran at the time of his arguments.

379. The above decision of the Andrha Padesh High Court was rendered without any discussion on the scheme of the Act. The learned Bench has merely extracted Sections 17 and 18 of the Act and summarily concluded as above. In fact, that case was in relation to whether the Commission could grant money decree or not. Therefore, reliance placed by the learned counsel in support of his contention, is to be rejected.

380. The learned counsel relied on a decision of the Calcutta High Court reported in 2015 SCC OnLine Cal 631 (***Ambikesh Mahapatra and another versus The State of West Bengal and others)*** and he referred to

paragraphs 24 to 28 wherein, the High Court has held that the Commission has no power of enforcement of its recommendation. A well considered observation of the learned Judge is extracted hereunder:

> '24. Bearing in mind the factual narrative and the elaborate erudite arguments advanced by learned advocates for the parties, three major points emerge for decision, that is,
>
> (i) whether a recommendation of a Human Rights Commission based on its finding of human rights violation, can be enforced by issuing a writ of or in the nature of Mandamus? If not, is any course open to a writ Court to provide relief to the victims of human rights violation?
>
> (ii) assuming the answer to the first point to be favourable to the petitioners, whether the WBHRC was justified in returning a finding that the petitioners' human rights were violated and that the State Government ought to compensate them, and whether the State Government could seek not to implement the recommendation of the WBHRC under cover of what it termed as 'protective custody'?
>
> (iii) whether the recommendation for initiation of departmental proceedings against R-5 and R-4 stands vitiated for any reason whatsoever?
>
> '25. I begin with a caveat. The aspect as to whether the cartoon in question and circulation thereof did amount to commission of any offence need not detain me for a second since the petitioners are accused of having breached the law and their conduct is under scrutiny of the concerned magistrate on the anvil of the penal laws. I, thus, owe a duty to guard against expressing any opinion that could remotely influence the mind of such magistrate when he deals with the matter before him. It is thus cautioned that neither any observation nor any finding contained in this judgment shall have an influencing effect on the magistrate, who shall endeavour to decide the matter before him on his own understanding of the facts and the applicable law.

'26. To answer the first point, section 18 of the 1993 Act has to be read carefully. Section 18 empowers the Human Rights Commissions to take various steps during and after completion of inquiries. Should an inquiry disclose commission of violation of human rights or negligence in the prevention of human rights by a public servant, the Commission has the authority in terms of clause (a) to recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action the Commission may deem fit against the concerned person or persons. However, clause (e) leaves it to the discretion of the concerned Government or authority the action to be taken on the inquiry report, once it is forwarded to it. The recommendation contemplated under clause (a) of section 18 is thus in the nature of an advice of the Commission and has no binding effect. This has been the main defence of the respondents. To my mind, not too frequently has this question emerged before the Courts for decision. I presume, by and large, the recommendations of the Commissions are accepted by the concerned Government or authority and instances are scarce where the writ Court had to be approached for reaping the fruits of a recommendation of the Commission. To an extent, a hitherto unexplored question has arisen for decision.

'27. It has to be remembered that although the 1993 Act strives to protect human rights, the Human Rights Commissions have no power to enforce its own recommendations. However, having regard to the scheme of the 1993 Act, any recommendation that a Commission makes after conducting a fact finding inquiry and satisfying itself of violation of human rights of an individual by a public servant has to be seriously considered and given the respect it deserves, coming as it does from a statutory body comprising of experts in the field, and not simply ignored for no better reason than that it has no binding effect. Save and except for very cogent reasons, the recommendation ought to be gracefully accepted by the concerned Government or authority. In a case of the present nature where the recommendation has not been accepted, it is not the end of the road for the victim. My

understanding of the relevant law is that a writ petition would indeed be maintainable seeking relief for compensation and direction for initiation of departmental proceedings against the delinquent public servant found responsible for violation of human rights, either based on the inquiry report of the Commission or the materials collected by it in course of inquiry/investigation. The writ Court may in such a case entertain the claim and examine for itself as to whether the Commission after maintaining the procedural safeguards and upon proper and reasonable appreciation of the evidence before it, was justified in holding the concerned public servant guilty of human rights violation, and whether and to what extent compensatory relief is called for. If required, for satisfaction of its conscience, there is no legal bar precluding the writ Court to even take recourse to re-appreciation of evidence. After all, such re-appreciation would be necessitated because of the refusal of the concerned Government or authority in agreeing to implement the recommendation. Should re-appreciation of the evidence require returning of findings somewhat inconsistent with or even contrary to what have been found by the Commission, there is no reason as to why the writ Court should not feel free to return the same. If the defence of the concerned Government or authority appears to be sound and worthy of being accepted, enforcement of such recommendation may not be insisted upon resulting in dismissal of the writ petition. On the contrary, the writ Court must not be slow to react if the reasons for not accepting the recommendation are found to be frivolous and disagreement is not only an arbitrary exercise but also a ruse to avoid an uncomfortable situation. The frivolity of the reasons for disagreement cannot be allowed to override well-considered, well-written and well-meaning reports/recommendations of the Commission. If indeed the concerned Government or authority is conceded to have a final say in the matter and the report/recommendation is to remain only on paper and shelved only for gathering dust, much of the exercise undertaken by the Commission would be an act of futility rather than of utility for the victims of

> human rights violation. It requires no reiteration that the lofty ideals of providing succour to victims of human rights violation ought to be steadfastly pursued and any hole providing an escape route must be immediately plugged, or else the Statute is likely to be reduced to a mere dead letter. The concerned Government or authority cannot be allowed a free run despite proved violation of human rights by a delinquent public servant because of absence of teeth in the concerned legislation. If someone has been wronged, his grievance must be redressed.'
>
> '28. The first point is, therefore, answered as follows: A petition under Article 226 of the Constitution for a writ of or in the nature of Mandamus, on the premise that a recommendation of the Human Rights Commission against a public servant for proved violation of human rights at his instance is binding on the concerned Government or authority, may not be maintainable for enforcing such recommendation, but that would not detract from the writ Court's power to entertain a writ petition, examine the Commission's report and if it is found free from any legal infirmity and the recommendation based thereon is found to be justified, and the response of the concerned Government or authority is found to be frivolous and unsound, to pass such order as the interest of justice in the given circumstances would demand to ameliorate the suffering of the victim of human rights violation. The writ Court may also pass similar such order on the basis of its own appreciation of the materials before the Commission and/or before itself.'

381. We understand and appreciate the learned Judge, ostensibly out of helplessness, has made a fervent statement and an impassioned appeal in the last portion of the decision extracted above. But what the learned Judge unfortunately missed out is, in our opinion that his finding was on the basis

literal interpretation of Section 18 and reading of the same, as it conveyed ordinarily. The learned Judge though touched the right chord in the judgment, but the observations have merely manifested as his wish. His well intentioned wish could have been transformed into reality, if only he had imaginatively appreciated the shortcomings and taken recourse to purposive interpretation and proper construction of the Act.

382. Mr.Sarath Chandran, referred to a decision reported in 2002(5) CTC 122 ***(A.Soundarajan and 8 Others Vs. The Government of Tamil Nadu, rep. by its Secretary, Public (Law & Order) Department, Chennai and two Others),*** In this decision, a learned Judge has made certain observations in paragraphs 9 to 13 (extracted supra) and held that the recommendation of the Commission is not binding on any party. The finding of the learned Judge was fundamentally flawed for the reason that he compared inquiry by the Comission as that of the Revenue Divisional Authority's inquiry which taken place behind the back of the petitioners, without adverting to Section 16 and also Regulation 25 of State Human Rights Commission, Tamil Nadu (Procedure) Regulations, 1997 which provide a regular opportunity of being heard, to produce evidence and also given opportunity to cross-examine the witnesses. In our opinion, such

impropmtu conclusion by the learned Judge is bereft of complete understanding of the Act at all and therefore, cannot be a pursuasive source.

383. One another decision relied on by the same counsel rendered by the Hon'ble Supreme Court reported in (1996) (6) SCC 606 (***All Indian Overseas Bank SC and ST Employees Welfare Association and others versus Union of India and others)*** with reference to the similar enactment created under Article 338 of the Constitution of India, namely, National Commission for Schedule Castes. The Hon'ble Supreme Court has made certain observations that conferring the power of Civil Court on the Commission is limited to the purpose of investigation and inquiry and by virtue of the power, the Commission cannot be converted to a civil Court. It was contended that the H.R.Commission which is also clothed with such power cannot enjoy more status than that of the National Commission for Schedule Castes. According to him, a Division Bench of this Court has clearly observed in a decision reported in (2007) 7 MLJ 1067 (***T.Loganathan versus State Human Rights Commission, Tamil Nadu, rep. by its Chairman, Chennai and another)*** in para 16, holding that the State will consider making the necessary amendments in the Act so as to provide necessary power to execute the orders of the SHRC. The

observation of the Division Bench is extracted as under:

> '16. In the light of the above, the grievance projected by the writ petitioner has no substance and the writ petition is liable to be dismissed. However, there will be no order as to costs. As the writ petition is dismissed, there is no impediment for the State Government in implementing the order of the SHRC. As the writ petitioner is under the services of the State, we direct the Government to implement the orders of the SHRC and recover the amount from the writ petitioner and pay the same to the husband of the second respondent within a period of eight weeks from the date of receipt of a copy of this order. The State will also consider making the necessary amendments in the Act so as to provide necessary power to execute the orders of the SHRC. A copy of this order will also be marked to the Secretary, Home Department, Government of Tamil Nadu, for further actions and compliance of our order. Consequently, connected Miscellaneous Petition will also stand dismissed.'

384. As far as the above Hon'ble Supreme Court's decision is concerned, it was rendered in the specific context of another Commission (National Commission for Schedule Castes) and the recommendation of that Commission through having constitutional backing, yet those recommendations cannot be compared to the recommendations of the

H.R.Commission under Section 18 of the Act. Section 18 confers unique powers to the Commission to take forward its recommendations to its logical end. Section 18 is indisputably, a self-contained Section which makes the Commission constitutionally different on a comprehensive reading and understanding of the entire Act. As far as the observation of the Division Bench in para 16 above, with due respect to the Bench, it appeared to be a limited consideration of a particular lis before them and hence, it need not be taken as final conclusion on the enforceability of the recommendation of the Commission.

385. One of the earlier decisions of the Hon'ble Supreme Court was relied on by Mr.Sarath Chandran, learned counsel reported in (1996) 1 SCC 742 **(*National Human Rights Commission versus State of Arunachal Pradesh and another)*.** According to the learned counsel, in that case, NHRC was the petitioner itself. The Commission had to approach the Hon'ble Supreme Court in case of large scale human rights violation as it clearly understood its limitation in passing any directive against the violators of human rights. On the same lines, the learned counsel also relied on a decision of the Hon'ble Supreme Court of India, reported in (2004) 8 SCC 610 (***National Human Rights Commissioner versus State of Gujarat***

and others), wherein, the NHRC had approached the Hon'ble Supreme Court for quantifying the compensation to the victims of Gujarat riots.

386. We are of the view that the above instances cited by the learned counsel are extreme examples. In extraordinary and monstrous situations which do not arise on a day to day basis for providing speedy, effective and extraordinary remedies, approaching Constitutional Courts, is not uncommon. Such instances have happened quite often even outside the realm of any statutory enactment. Therefore, such exceptional instances, may not be considered as a benchmark for our understanding the scope and the scheme of H.R.Act.

387. In all the judgments referred to above, we could discover and follow the multifaceted understanding of the Act by Courts, but in our view, legal perspectives emerged from such understanding has been on the basis of fragmentary consideration of one or two issues that had come up for adjudication before the Courts. Although these judgments do provide relevant and necessary inputs for our purpose and we have been greatly enriched intellectually in discerning the profound competing views cohesively, nevertheless we are of the opinion that with due respect to the

Courts which have rendered judgments on the subject matter, may not be a complete source in themselves or atleast enabling us to clinch appropriate answers in our quest for resolving the blurred and the uncertain status of the H.R.Commission.

388. In the circumstances, it is the bounden duty of this Bench to reach out and to explore beyond the precedential perimeters and to embark upon permissible and purposive interpretation of the scheme of the Act in tune with the legal principles laid down by the Courts on interpretation and construction. This Court being the ultimate arbiter of the interpretation of the laws and enactments, such power of interpretation has to necessarily transform into purposive and meaningful exercise more in providing impetus to the Statute than to abridge or curtail its reach and purpose. Liberal construction and interpretation, in our opinion, is a constitutional mandate in the realm of public law relating to the protection of the fundamental rights of the citizens. As part of the judicial discourse, the interpretation of every provision of the Act on its contextual setting is a legal mandate to be undertaken by the Constitutional Court in order to give relevant thrust to the provisions of the Act and its application on the ground. The learned counsel appearing on both sides referred to several decisions as

to how the Courts have interpreted and constructed various provisions of different Statutes.

389. We would traverse through the decisions relied on by the learned counsel as under:

One of the earliest judgments of the Hon'ble Supreme Court of India on the law of interpretation was referred to, which is reported in AIR 1957 SC 23 (***Shamrao Vishnu Perulekar versus District Shamrao Parulekar).*** The said decision was relied on by the learned counsel Mr.R.Srinivas. In the said decision, the Hon'ble Supreme Court has held that expressions used have different meaning even within the same Act, in different context. In this case, the Hon'ble Supreme Court took guidance from Maxwell's Interpretation of Statute, which clarified that the same would may be used in different senses in the same Statute and even in the same section. Another decision of the Hon'ble Supreme Court was also relied on by the same learned counsel reported in (1984) 2 SCC 534 (***Gramophone Company of India Ltd. versus Birendra Bahadur Pandey and others)***. Our attention has been drawn to paragraph nos.27 to 29 (extracted supra). According to the learned counsel, the above decision as well as the former one laid down the principle of construction and interpretation of the words in the

contextual settings. In the above case, the Hon'ble Supreme Court has dealt with interpretation of the word 'import' found in Copyright Act and Customs Act and held the word 'import' cannot hear the same meaning. We are aware that ultimately, it boils down to the simple appreciation as to the purpose of the Section in which, the particular word or expression is found.

390. The learned counsel for SHRC has also referred to yet another decision of the Hon'ble Supreme Court reported in (2003) 7 SCC 629 (***Balram Kumawat versus Union of India and others)***. He has drawn reference to paragraph nos.20 to 27 which are extracted hereunder:

> '20. Contextual reading is a well-known proposition of interpretation of Statute. The clauses of a Statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole Statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature.
>
> '21. In State of West Bengal vs. Union of India (AIR 1963 SC 1241 at p.1265), the learned Chief Justice stated the law thus:
>
> > 'The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs'.

'22. The said principle has been reiterated in R.S. Raghunath vs. State of Karnataka and another (AIR 1992 SC 81 at p.89.

'23. Furthermore, even in relation to a penal Statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal Jurisprudence does not say so.

'24. G.P. Singh in his celebrated treatise 'Principles of Statutory Interpretation' distinguished between strict construction of penal Statutes which deals with crimes of aggravated nature vis-a-vis the nature of the activities of the accused which can be checked under the ordinary criminal law stating:

> 'In Joint Commercial Tax Officer, Madras v. YMA, Madras, Shah, J., observed : 'In a criminal trial of a quasi-criminal proceeding, the court is entitled to consider the substance of the transaction and determine the liability of the offender. But in a taxing Statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability'. With great respect the distinction drawn by Shah, J., does not exist in law. Even in construing and apply criminal Statutes any reasoning based on the substance of the transaction is discarded.
>
> But the application of the rule does not permit the court in restraining comprehensive language used by the legislature, the wide meaning of which is in accord with the object of the Statute. The principles was neatly formulated by Lord Justice, James who speaking for the Privy Council stated: 'No doubt all penal Statutes are to be construed strictly, that is to

say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notice that there has been a slip; that there has been a casus omissus; that the thing is so clearly within the mischief that it must have been included if though of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal Statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment'. The above formulation has been cited with approval by the House of Lords and the Supreme Court. In the last-mentioned case, SUBBARO, J., referring to the Prevention of Corruption Act, 1947, observed : 'The Act has brought in to purify public administration. When the Legislature used comprehensive terminology - to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the Statute is in accord with the words used there'. Similarly, the Supreme Court has deprecated a narrow and pedantic construction of the Prevention of Food Adulteration Act, 1954 likely to leave loopholes for the adulteration to escape. And on the same principle the court has disapproved of a narrow construction of section 135 of the Customs Act, 1962, Section 489A of the Penal Code, Section 12(2) of the Foreign Exchange Regulation Act,1947, section 630(1)(b) of the Companies Act, 1956, section 52A of the Copy Right Act, 1957, and section 138 of the Negotiable Instruments Act, 1881. So, language permitting a penal Statute may also be construed to avoid a lacuna and to suppress the mischief and advance the remedy in the light of the rule in Heydon's case. Further, a commonsense approach for solving a question of applicability of a penal enactment is not ruled out by

the rule of strict construction. In State of Andhra Pradesh vs. Bathu Prakasa Rao, rice and broken rice were distinguished by applying the commonsense test that at least 50% must be broken in order to constitute what could pass off as marketable 'broken rice' and any grain less than 3/4th of the whole length is to be taken as broken.

The rule of strict construction does not also prevent the court in interpreting a Statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the Statute. Thus psychiatric injury caused by silent telephone calls was held to amount to 'assault' and 'bodily harm' under sections 20 and 47 of the Offence Against the Person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury'.

(See also Lalita Jalan and Anr. vs. Bombay Gas Co. Ltd. and others reported in 2003(4) SCALE 52).

'25. A Statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. vs. State of Assam (AIR 1990 SC 123), this Court stated the law thus: (SCC p.754, paras 118-120)

'118. The courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'. It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness.This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning

and purpose which the legislature intended for it. The Manchester Ship Canal Co. vs. Manchester Racecourse Co. (1900) 2 Ch 352, Farwell J., said (pp. 360-61)

> 'Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty.'

119. In Fawcett Properties Ltd. vs. Buckingham Country Council (1960) 3 All ER 503) Lord Denning approving the dictum of Farwell, J. said:

> 'But when a Statute has some meaning, even though it is obscure, or several meanings, even thought it is little to choose between them, the courts have to say what meaning the Statute to bear rather than reject it as a nullity'.

120. It is, therefore, the court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a Statute unworkable. In Whitney vs. Inland Revenue Commissioners (1926 AC 37) Lord Dunedin said:

'A Statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.'

26. The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. (See Salmon vs. Duncombe (1886) 11 AC 627 at 634). Reducing the legislation futility shall be avoided and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder

construction for the purpose of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that the Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. (See BBC Enterprises vs. Hi-Tech Xtravision Ltd. (1990) 2 All ER 118 at 122-3)

27. In Mohan Kumar Singhania and others vs. Union of India and others (AIR 1992 SC 1), the law is stated thus:

'We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice to say that while interpreting a Statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole Statute or series of Statutes/rules/regulations relating to the subject matter. Added to this, in construing a Statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said Statute and that every Statute is to be interpreted

> without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.'

391. In the above decision, the Hon'ble Supreme Court has held that the rule of strict construction does not also prevent the court in interpreting a Statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the Statute. There was also an observation in the judgment, that Statute must be a workable instrument. Another significant passage of the judgment was that the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a Statute unworkable. The Hon'ble Supreme Court has quoted from the observations of the English Courts and various other decisions of the Indian Courts. The Hon'ble Supreme Court has also held that in the interpretative exercise, the Court should not resort to narrow and pedantic, literal and lexicon construction, but interpretation must be in tune with the spirit of the enactment. However, it cautioned that in the process, may not cause violence to the language inconsistent to its explicit provisions incorporated in the Act. Such exercise, is to be done in the back drop of the dominant

purpose and underlining intendment behind the making of the said Statute.

392. In 2004, the Hon'ble Supreme Court has rendered an another judgment reported in (2004) 6 SCC 531 (***ANZ Grindlays Bank Ltd. and others versus Directorate of Enforcement and others),*** wherein, our Court's attention was drawn to para no.4 (extracted supra). The Hon'ble Supreme Court, in this decision, has held that the principles of interpretation of a Statute must be adopted to make the Statute workable keeping in view of the doctrine of ***ut res magis valeat quam pereat,*** means ***it is better for a thing to have effect than to be made void***. One more decision of the Hon'ble Supreme Court was referred to by the learned counsel, reported in (2005) 3 SCC 551 (***Pratap Singh versus State of Jharkhand and another)*** and the attention of this Court was drawn to para 64 which is extracted hereunder:

> '64. The Juvenile Justice Act specially refers to international law. The relevant provisions of the Rules are incorporated therein. The international treatises, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treatises. A right to a speedy trial is not a new right. It is embedded in our Constitution in terms of Articles 14 and 21 thereof. The international treaties recognize the same. It is now trite that any violation of human rights would be looked

> down upon. Some provisions of the international law although may not be a part of our municipal law but the courts are not hesitant in referring thereto so as to find new rights in the context of the Constitution. Constitution of India and other ongoing Statutes have been read consistently with the rules of international law. Constitution is a source of, and not an exercise of, legislative power. The principles of International Law whenever applicable operate as a statutory implication but the Legislature in the instant case held itself bound thereby and, thus, did not legislate in disregard of the constitutional provisions or the international law as also in the context of Articles 20 and 21 of the Constitution of India. The law has to be understood, therefore, in accordance with the international law. Part III of our Constitution protects substantive as well as procedural rights. Implications which arise therefrom must effectively be protected by the judiciary. A contextual meaning to the Statute is required to be assigned having regard to the Constitutional as well as International Law operating in the field. [See Liverpool & London S.P. & I Association Ltd. vs M.V. Sea Success I & Another (2004) 9 SCC 512].'

393. The Hon'ble Supreme Court, while interpreting the provisions of the Juvenile Justice Act, has held that such interpretation must be in-line with the principles of the International law and its statutory implication and

also the statutory provisions need to be understood in terms of Part-III of the Constitution. The above important observation of the Hon'ble Supreme Court, in our opinion, would have crusading impact on our interpretative exercise.

394. The learned counsel Ms.Naga Saila, relied on a decision of the Hon'ble Supreme Court reported in (1985) 4 SCC 71 (***Workmen of American Express International Banking Corporation versus management of American Express International Banking Corporation)*** and this Court's attention was drawn to para no.4 of the judgment (extracted supra). The Hon'ble Supreme Court, in that order, after taking cue from the English Courts' observation had an occasion to state as under:

> 'Semantic luxuries are misplaced in the interpretation of 'bread and butter' Statutes. Welfare Statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is, not to make inroads by making etymological excursions'.'

As we have observed earlier, our purpose is not a docile, dull and inanimate understanding of the lexicon variation or etymological construction. Both may not help us for the reason that the words and expressions must be

correlated to the spirit of the enactment, to make the Act worthy of its existence.

395. On the other side, the learned Addl.Advocate General relied on a Constitutional Bench decision reported in AIR 1952 SC 123 (***Kathi Raning Rawat versus State of Saurashtra)*** wherein, this Court's attention is drawn to para no.34 (extracted supra). According to the learned Addl.Advocate General, an interpretative exercise must be in conformity with the legislative policy and should be in accordance with the objective indicated in the Statute. She also relied on a decision of an English Court, 1857 Halsbury's Law in the matter of ***John Grey versus William Pearson and others*** and drawn reference to certain observations made by the English Court (extracted supra). This decision is not appropriate as the same was with reference to interpretation of the words in a Will. This is what has now come to stay as 'Armchair Rule', which is intended to be an aid to interpret a testament by stepping into the shoes of a testator, who is in the evening of his/her life. It is our considered view that this Armchair Rule has no application whatsoever qua interpretation of public law, which we are now concerned with in this legal drill which is a jurisprudential journey as mentioned in our prefatory note. It is our further considered view that an

attempt to use this Armchair Rule as a tool to interpret a statute in public law domain would tantamount to attempting to fit a square peg in a round hole in this jurisprudential journey. Therefore, we have no hesitation in holding that this *John Grey* English case law and the case on hand are like chalk and cheese. To put it differently, it would tantamount to comparing apples and oranges which is forbidden in an interpretative exercise and therefore, we reject this submission of learned Additional Advocate General as untenable. She also relied on a Latin maxim '***mens' & 'Sententia legis***' means, intention and presumption that the Legislature did not make a mistake. According to her, the role of the Courts is to carry out the obvious intent of the Legislature in the matter of construction of a Statute. She further relied on an English decision of King's Bench dated 10.07.1933 in the matter of ***The Assam Railways & Trading Co.Ltd., versus The Commissioner of Inland Revenue,*** wherein, a particular passage was referred to namely,

> '....The intention of the Legislature must be ascertained from the words of the Statute with such extraneous assistance as is legitimate. ...'

396. The learned Addl.Advocate General further referred to English decision in the case of ***Seaford Court Estates Ld. Versus Asher,*** dated 2nd

May, 1949 and the relevant observation of the English Court is extracted supra. She particularly, emphasized the famous quote from salient observations of the English Court as under:

> 'A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.'

She therefore, submitted that the job of this Bench is to iron out the creasess and not to alter or expand the material itself. Apart from the English decision, she also relied on a decision of the Hon'ble Supreme Court reported in 2015 (9) SCC 209 (***Petroleum and Natural Gas Regulatory Board versus Indraprastha Gas Limited and others),*** and our attention is drawn to paragraph nos. 29, 37 to 39 of the judgment which are extracted hereunder:

> '29. Mr. Datar, learned senior counsel would submit that when the Board is established under a Statute and has the power to regulate solely because there is no mention of entity that owns its own pipeline, it is in apposite to say that the Board cannot determine the price and indicate the cost incurred in this regard in the bill given to the consumer. It is his further submission that the consumer has a right to know. Learned senior counsel would go to the extent of saying that it is a casus omissus and, therefore, the court must adopt the principle of purposive interpretation and it can do so filling up the gap to have the necessitous fruitful

interpretation. Mr. Salve and Mr. Tripathi, per contra, would submit that the legislature has deliberately not done it and, in any case, the Court should not read such a concept into it. Ms. Pinky Anand, learned ASG relying on the affidavit filed by the Union of India, would submit that the legislature has not given the said power to the Board. It is seemly to state that even if a stand is taken by the Union of India, in respect of an interpretation of a statutory provision, that does not mean that the same is the correct interpretation because it is well settled in law that no one can speak on behalf of the legislature. It is the court which is the final interpreter.

'30 to 36. ....

'37. We have referred to the aforesaid passage as the Constitutional Bench has given emphasis on primary purpose of construction of Statute to ascertain the intention of the legislature, harmonious construction of the various provisions of the CrPC and for ensuring that the interpretation does not lead to any absurdity. That apart, the Court has also categorically observed that it is not a case where it can be said that legislature has kept a lacuna which the Court is trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. In the case at hand, in the schematic context of the Act and upon reading the legislative intention and applying the principle of harmonious construction, we do not perceive inclusion of the entities which are not 'common carriers' or 'contract carriers' would be permissible. They have deliberately not been included under Section 11 of the Act by the legislature and the said non-inclusion does not lead to any absurdity and, therefore, there is no necessity to think of any adventure.

38. We must take note of certain situations where the Court in order to reconcile the relevant provision has supplied words and the exercise has been done to advance the remedy intended by the Statute. In Surjit Singh Kalra v. Union of India[20], a three-Judge Bench perceiving the anomaly, held:-

> 'True it is not permissible to read words in a Statute which are not there, but 'where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or

> adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words' (Craies Statute Law, 7th edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar[21] where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the Statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the Statute. (See: Sirajul Haq Khan v. Sunni Central Board of Waqf).'
>
> 39.We have referred to the aforesaid authority as Mr Datar has respectfully urged that omission in Section 11 is accidental. The test that has been laid down in *Surjit Singh Kalra* [(1991) 2 SCC 87] and other decisions of this Court, we are afraid, do not really support the submission of Mr Datar. By no stretch of imagination, we can conceive that non-conferment of power on the Board, in particular regard, is accidental. The legislative intention is absolutely clear and simple and, in fact, does not call for adoption of any other construction to confer any meaning to the existing words. Thus, the said submission leaves us unimpressed.'

397. According to her, the principle outlined in the above decision is to emphasize the fact that the interpretation must be in conformity with the intention of the Legislature. But we find on the other hand that the Hon'ble Supreme Court laid emphasis in the judgment that it is possible to supplant words and to reconcile the provision to advance the remedy intended by the Statute. The Hon'ble Supreme Court has also observed that there must be

harmonious construction of variouis provisions to make it meaningfull. An attempt must be made to reconcile the relevant provisions as to advance the remedy intended by the Statute.

398. Mr.Ganesh Kumar, learned counsel relied on a decision reported in (2005) 2 SCC 271 (***Nathi Devi versus Radha Devi Gupta)*** referring to paragraph nos.13 and 14 (extracted supra). According to the learned counsel that while exercising the interpretative function, each and every word used by the Legislature must be given effect to by discovering the true legislative intent. The learned counsel also referred to an another decision reported in (2011) 11 SCC 334 (***Grid Corporation of Orissa Limited and others versus Eastern Metals and Ferro Alloys and others),*** particularly para 25 (extracted supra). He emphasized the well settled principle namely 'the golden rule of interpretation is that the words of a Statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more construction, it is necessary to adopt purposive interpretative construction. According to the learned counsel, the language of the present Act does not suffer from any ambiguity at all leaving any scope for this Court to venture into any interpretation, as that would be a redundant exercise. The learned counsel,

counselled the Court to follow the golden rule of interpretation.

399. The learned counsel for SHRC, Mr.R.Srinivas, while giving a reply to the submissions made by the counsel, who supported that the Commission's power is limited and its recommendations are only recommendatory in nature, has drawn the attention of this Court to the latter decisions of the Hon'ble Supreme Court of India as to the law of interpretation and the rule of construction. The learned counsel, particularly, referred to three decisions, which are in our opinion, are quite relevant and contextual to the thinking of the present times. The decisions are,

i) '(2017) 15 SCC 133 (***Eera through Dr.Manjula Krippendore versus State (NCT of Delhi) and another)*** wherein, relevant observation as found in Paragraph nos.64 and 65, is extracted hereunder:

> '64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any

absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to herein above encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the 'colour', 'content' and the 'context of Statutes' and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

'65. I have perceived the approach in *Hindustan Lever Ltd.* [*Hindustan Lever Ltd.* v. *Ashok Vishnu Kate*, (1995) 6 SCC 326 : 1995 SCC (L&S) 1385] and *Deepak Mahajan* [*Directorate of Enforcement* v. *Deepak Mahajan*, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] , *Pratap Singh* [*Pratap Singh* v. *State of*

Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742] and many others. I have also analysed where the Court has declined to follow the said approach as in *R.M.D. Chamarbaugwalla* [*R.M.D. Chamarbaugwalla* v. *Union of India*, AIR 1957 SC 628] and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the Statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the Statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the Statute. If the meaning is intelligible, the said principle has no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires.'

400. The above observation of the Hon'ble Supreme Court has profoundly highlighted that how the Courts should release itself from the pedantic approach to interpretation and adopt interpretation to serve the soul of the legislative intent. At the same time, the Court has also cautioned that in doing so, personal predilections of a Judge might not to be allowed to creep into the exercise.

ii) (2018) 9 SCC 1 (***Commissioner of Customs (Import), Mumbai versus Dilip Kumar and Company and others)*** and our attention is drawn to paragraph nos.16 and 18 (extracted supra). In the above decision, the Hon'ble Supreme Court, has in fact, referred to its own decision reported in (2001) 7 SCC 358 ***(District Mining Officer v. Tisco [District Mining Officer v. Tisco)*** which held that a Statute is an edict of the legislature and to be construed according to the intent. Taking cue from the statement, the Hon'ble Supreme Court in its decision laid down well accepted principle of rule of construction and interpretation that if the words in the Statute are plain and unambiguous it becomes necessary to expound those words in their natural and ordinary sense. According to the Hon'ble Supreme Court, the words used declare the intention of the legislature. However, the Hon'ble Supreme Court has also held that if the plain construction leads to anomaly

and absurdity, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view of the legislative purpose. The Hon'ble Supreme Court, in fact, has delineated a fine balance between the legislative intent and the power of the Court's interpretation in order to make the Statute workable as well, ofcourse, within certain boundaries.

iii) (2018) 2 SCC 674 (***Macquarie Bank Limited versus Shilpi Cable Technologies Limited***), wherein, this Court's attention is drawn to paragraph nos. 27 to 30 (extracted supra). In this case, the Hon'ble Supreme Court, according to the learned counsel, has dealt with the concept of creative interpretation in order to understand the ultimate scheme of the Act, creative interpretation is the emerging modern trend and such interpretation is within the Lakshmana Rekha of the judiciary. The above decision, of course, reiterated the settled principle that the Courts should not overstep its limit and supplant anything new which is not found in the Statute itself. At the same time, the Court's action should be within its permissible limit and if it indulges in fair construction of the statutory provision and purposive interpretation moving away from a mechanical incantation of strict construction.

401. The principles of interpretation and the rule of construction as

laid down by the Hon'ble Supreme Court are all in black and white. The legal precedents on that issues are sacrosanct and no departure could be made, but at the same time, we could see that permissible latitude is found in all these judgments that the interpretation of a scheme of Act can be unertaken in order to inject purpose and meaning to the Act within the contours of the legislative intent as expressed in the language of the text.

402. As rightly emphasized by the leaned counsel that a fair amount of creativity is required in modern times to take forward the legislative intent, after all, the legislative intent is in furtherance of larger public purpose and interest and to serve such purpose, the Court being the final interpreter of the Statute, has a momentous role in constructing and interpreting the deep sense of purpose and direction. The dominant purpose and the intent is the fulcrum of the consideration of this Bench while interpreting the provisions of the Statute and as held by the Hon'ble Supreme Court. The Courts cannot approach the subject of rule of construction and interpretation with ossified mind, but with a vibrant thinking in order to make the Statute workable in every sense in the contextual settings of the modern times and expectations.

403. The reliance placed by the learned counsel on the decisions as to the limited application of rule of construction and interpretation when the Statute does not suffer from any ambiguity is a settled legal principle against which, no Court could have any difference of opinion. But while undertaking such exercise without doing any palpable harm to the intent or to the language of the Act, it is always possible for the Constitutional Courts to embark upon correctional exercise towards plugging the holes in the text to strengthen it for its effective functional presence to measure up to the expectation of the people at large. The intendment apart, this Bench has to necessarily take into consideration a larger public purpose and interest which the Legislature or Parliament seek to represent in our democratic polity. The rule of interpretation and the law of construction would have to enliven the words and expressions of the Statute to attain its purposeful workability and its active relevance to the times. When the Act was conceived and enacted, the framers possibly would not have foreseen the pitfalls and shortcomings of the Act in its practicable application and implementation. In such scenario, the Constitutional Courts need to rise up to the occasion and to provide certain dynamics to the working of the Statute, so that the Act does not become a dead letter and inept in addressing the avowed pr otection of human rights as intended and professed by the

State.

404. Ms.Naga Saila, in her reply, has referred to a decision of the Hon'ble Supreme Court reported in (2009) 7 SCC 1 (***N.Kannadasan versus Ajoy Khose and others)*** wherein, she referred to paragraph nos.51, , 62, 63 and 66. She emphasized the principle that in the domain of public law, the Act must receive liberal construction. The Hon'ble Supreme Court, in the above decision has held that in a given case, in order to give a complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted as well**.** The above referred to paragraphs are extracted hereunder:

> '51. In our constitutional scheme, the judge made law becomes a part of the Constitution. It has been so held in M. Nagaraj and Others v. Union of India and Others [(2006) 8 SCC 212] in the following terms:
>
> > '...The Constitution, according to the respondents, is not merely what it says. It is what the last interpretation of the relevant provision of the Constitution given by the Supreme Court which prevails as a law. The interpretation placed on the Constitution by the Court becomes part of the Constitution and, therefore, it is open to amendment under Article 368. An interpretation placed by the Court on any provision of the Constitution gets inbuilt in the provisions interpreted. Such articles are capable of amendment under Article 368.'
>
> 52. to 53. ....
> 54. A case of this nature is a matter of moment.

It concerns public interest. Public information about independence and impartiality of a judiciary would be in question. The duty of all organs of the State is that the public trust and confidence in the judiciary may not go in vain. Construction of a Statute would not necessarily depend upon application of any known formalism. It must be done having regard to the text and context thereof. For the aforementioned purpose, it is necessary to take into consideration the statutory scheme and the purpose and object it seeks to achieve.

55. A construction of a Statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a Statute can be read down (although sparingly and rarely).

56. In 'Carew and Company Ltd. v. Union of India [(1975) 2 SCC 791], Krishna Iyer, J. opined:

> '21. The law is not 'a brooding omnipotence in the sky' but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice Frankfurter used words of practical wisdom when he observed4:

'There is no surer way to misread a document than to read it literally."

57. Yet Again in K.P. Varghese v. Income Tax Officer, Ernakulam and Another [(1981) 4 SCC 173], the strict literal reading of a Statute was avoided as by reason thereof several vital considerations, which must always be borne in mind, would be ignored, stating: (SCC p.180, para 5)

> '5...The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical

formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be 'drafted with divine prescience and perfect clarity'. We can do no better than repeat the famous words of Judge Learned Hand when he laid:

> '... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a Statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that Statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.'
>
> '... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create.'

In the aforementioned case, therefore, some words were read into and the plain and natural construction was not given.

58. In *Bhudan Singh* v. *Nabi Bux* [(1969) 2 SCC 481] this Court held: (SCC p. 485, para 9)

> '*9*. … The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on *Statutory*

> *Constructions* that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the Statute, was not the one intended by the lawmakers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.'

59. This Court in *Atma Ram Mittal* v. *Ishwar Singh Punia* [(1988) 4 SCC 284] held: (SCC p. 289, para 9)

> *'9*. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or *the spirit and reason of the law*. See *Commentaries on the Laws of England* (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59).'

> '60. & 61. ... ...

> '62. In *Union of India* v. *Ranbaxy Laboratories Ltd.* [(2008) 7 SCC 502 : (2008) 3 SCC (Cri) 123] this Court held that the principles of purposive construction may be employed for making an exemption notification a workable one.

> '63. We may notice that in *R. (Quintavalle)* v. *Secy. of State for Health* [(2003) 2 AC 687 : (2003) 2

WLR 692 : (2003) 2 All ER 113 : 2003 UKHL 13 (HL)] , the House of Lords stated the law as under: (WLR pp. 697 & 702, paras 8 & 21)'

> *'8*. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the Statute. Every Statute other than a pure consolidating Statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the Statute as a whole, and the Statute as a whole should be read in the historical context of the situation which led to its enactment.'
>
> *21*. … The pendulum has swung towards purposive methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a classic early statement of the purposive approach by Lord Blackburn in *River Wear Commrs.* v. *William Adamson* [(1877) 2 AC 743 (HL)] , AC at p. 763. In any event,

> nowadays the shift towards purposive interpretation is not in doubt.'
>
> '64. to 65. ....'
>
> '66. Eligibility of a Judge of a High Court should not be construed in a pedantic manner. It in the context of a large number of decisions of this Court including *S.P. Gupta* [1981 Supp SCC 87] must also be held to include suitability of a person concerned. For the aforementioned purpose, the principles of purposive interpretation are required to be resorted to.'

405. In our view, there cannot be a greater or more profound expression of the power of interpretation of the Constitutional Court in the realm of the public law. The words of great minds expressed therein are not meant to be cherished in our intellectual cud chewing and mulling on our philosophical arm chair past time, but to be translated into edifying a fortress for the protection of the human rights.

406. The learned counsel, Ms.Naga Saila has referred to paragraphs 620, 621, 630, 633, 647, 647.1 and 647.2 from a decision of the Hon'ble Supreme Court reported in (2016) 5 SCC 1 (***Supreme Court Advocates-on-Record Association and another versus Union of India),*** particularly paragraph 647.2, which reads as under:

> '647.2. The CAD or Parliamentary debates ought not to be relied upon to interpret the provisions of the Constitution or the Statute if there is no ambiguity in

> the language used. These provisions ought to be interpreted independently – or at least, if reference is made to the CAD or Parliamentary debates, the Court should not be unduly influenced by the speeches made. Confirmation of the interpretation may be sought from the CAD or the Parliamentary debates but not vice versa.'

407. In that decision, the Hon'ble Supreme Court has held that the Parliamentary debates can be relied on when the interpretation of the Courts are to be supported by such debates and not *vice versa.* We need to recall that an assurance was meted out in the Parliament on behalf of the Treasury Bench at the time of passing of the Act, the intention of the framers was not to reject or ignore the recommendations of the Commission as a matter of healthy convention.

International Legal Precedents:

408. Ms.Naga Saila, learned counsel referred to the Constitution of the Republic of South Africa, 1996. In that Constitution, she particularly referred to Chapter 9-State Institutions supporting Constitutional Democracy. Among the institutions which are established under this Chapter-9, she relied on the Institutions of 'Public Protector' and 'South

African Human Rights Commission' as far as establishing of Human Rights Commission and its function has been defined in the Constitution of Republic of South Africa. The function and power of the Commission as per the Constitution, have been extracted supra. According to the Functions of the South African Human Rights Commission, in para 2, it is stated as under:

> '2. The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power -
>
> a. to investigate and to report on the observance of human rights;
>
> b. to take steps to secure appropriate redress where human rights have been violated;
>
> c. to carry out research; and
>
> d. to educate.'

409. From among the functions and powers exercisable by the Commission, one cannot escape from taking notice of the specific role assigned to the Human Rights Commission to take steps in order to secure proper redressal where human rights were violated. In fact, in the context of history of South Africa at that point of time, it was everybody's knowledge that the country was going through the period of obnoxious Aparthied practiced by the White Minority, where there was a widespread and large scale oppression of the people in the country on the basis of their

colour and complexion. When the Country was freed from the Apartheid regime, the role of Human Rights Commission assumed great historical significance in face of large scale violation of human rights against majority of the population. In fact, paragraphs 3 and 4 in relating to the Functions of South African Human Rights Commission, read as under:

> '3. Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
>
> '4. The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.'

The importance of Human Rights has been recognized and sufficient power is therefore, vested in the Commission to deal with the human rights violations.

410. The learned counsel, Ms.Naga Saila, referred to a decision of the Constitution Court of South Africa as to the power enjoyed by the Institution of Public Protector established under the very same Constitution. She has in fact, referred to several paragraphs containing important observations of the Constitutional Court (extracted supra).

411. Ultimately, the Constitution Court of South Africa held that though the Institution of Public Protector may not enjoy the same status of a judicial officer and remedial action taken by the Public Protector may justifiably in law be disregarded, but the Court eventually held that such conclusion was worrisome but also at odds with the rule of law. The Constitutional Court has finally held that the National Assembly of South Africa was duty bound to hold the President accountable by facilitating and ensuring compliance with the decision of the Public Protector. In fact, the Constitutional Court went on to hold that there was everything wrong with the National Assembly stepping into the shoes of Public Protector by passing a resolution that purported effectively to nullify the findings made and remedial action taken by the Public Protector and replacing them with its own findings and 'remedial action'. According to the Constitutional Court, the rule of law is dead against such action and it is another way of taking the law into one's hands and thus constitutes self-help. Before coming to the ultimate conclusion, the Court has observed in para 56 of the judgment, which is extracted as under:

> '56. If compliance with remedial action taken were optional, then very few culprits, if any at all, would allow it to have any effect. And if it were, by

> design, never to have a binding effect, then it is incomprehensible just how the Public Protector could ever be effective in what she does and be able to contribute to the strengthening of our constitutional democracy. The purpose of the office of the Public Protector is therefore to help uproot prejudice, impropriety, abuse of power and corruption in State affairs, all spheres of government and State-controlled institutions. The Public Protector is a critical and indeed indispensable factor in the facilitation of good governance and keeping our constitutional democracy strong and vibrant.'

412. In the same decision, relevant observation from another decision of the Supreme Court of Appeal is extracted as under:

> 'The Public Protector cannot realise the constitutional purpose of her office if other organs of State may second-guess her findings and ignore her recommendations. Section 182(1)(c) must accordingly be taken to mean what it says. The Public Protector may take remedial action herself. She may determine the remedy and direct the implementation. It follows that the language, history and purpose of section 182(1)(c) make it clear that the Constitution intends for the Public Protector to have the power to provide an effective remedy for State misconduct, which includes the power to determine the remedy and direct its implementation.'

413. The above observations of the Constitution Court of South Africa are to be compared to a situation where the acceptance of the recommendations of the Human Rights Commission is left it to the convenience of the Government or authority to accept and not to accept. In effect, the usurpers of human rights are given the right to accept the blame or to disown for serving their own ends. Such a legal predicament in the most important sphere of human rights laws would be antithesis to the rule of law and doing violence to the remedy seekers.

414. Mr.Sarath Chandran, learned counsel in the course of his arguments, referred to the Principles relating to the 'Status of National Institutions, Competence and Responsibilities'. Constitution of such Institutions was in pursuance of a resolution of General Assembly of United Nations in 1994. According to the learned counsel, the principles which are extracted supra, would empower only to make recommendations on advisory basis and according to him, globally such institutions have been intentionally designed to have only restricted power of making recommendations.

415. This Bench is in not agreement with the sweeping statement for

the simple reason that the learned counsel referred to Additional Paris Principles concerning the Status of Commissions with quasi-jurisdictional competence', (extracted supra) wherein, one of the principles adopted is, '*seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality'*. The above principle clearly demonstrated that the Commission through binding decisions, can settle the human rights complaints and violations. In fact, as per the preamble to the Constitution of the National Institutions, it is stated that a national institution shall be vested with competence to promote and protect human rights. When the Institutions are to be vested with the competence and to pass binding decisions, the arguments advanced on behalf of the learned counsel, appears to be mis-placed and we are not persuaded to toe his line of thinking on this aspect.

Comparison of Human Rights Act with other similar enactments:

416. Mr.Sarath Chandran, learned counsel referred to similar enactments, viz., i) Commissions for Protection of Child Rights Act, 2005; ii) National Commission for Women Act, 1990; and iii) National Commission for SC & ST established under Article 338 of the Constitution

of India.

i) **Commission for Protection of Child Rights Act, 2005**:

Section 15 provides Steps after completion of inquiry and it deals with Annual and Special Reports of the Commission. It was argued by the learned counsel that similar provisions have been incorporated as that of Section 18 of H.R.Act. Like Section 18(b) of H.R.Act, the Commission can approach the Hon'ble Supreme Court or High Court. In sub Section (2) of Section 15, the expressions are also identical on that aspect. Like Sections 20(2) and 28(2), Section 16 deals with submission of Annual and Special Reports. With reference to the said enactment, the Hon'ble Supreme Court in recent decision reported in '2020 SCC OnLine SC 27 (***National Commission for Protection of Child Rights and others versus Dr.Rajesh Kumar and others),*** has held that enquiry contemplated in the said Act is only gathering of information and more in the nature of investigation or inquisition. Section 15 which empowers the Commission to make recommendation to the concerned Government is held to be a recommendatory power by the Hon'ble Supreme Court. The observation of the Supreme Court as found in para 16 of the judgment has already been extracted supra.

ii) National Commission for Women Act, 1990:

417. The National Commission for Women (Procedure) Regulations 2005, similar provisions have been referred to under Regulations 16 and 17, particularly Section 17 is exactly the same as that of Section 18 of H.R.Act. It was argued that the H.R.Commission enjoys the same status as that of the other Commissions constituted under the above Act or Regulation and therefore, the Hon'ble Supreme Court has held that power to make recommendation is only recommendatory. According to him, therefore, there was no scope for reading more to the limited power enjoyed by the Commission.

iii) <u>National Commission for SC & ST</u>:

418. In fact, learned Counsel Mr.Sarath Chandran has also drawn analogy on scope and power of the Human Rights Commission with that of the National Commission for SC and ST established under Article 338 of the Constitution of India. The National Commission for Schedule Castes and the National Commission for Schedule Tribes enjoy the power pari materia to the Commission established under H.R.Act. The Hon'ble Spreme Court dealt with the power of National Commission for Schedule Castes Act, in a case reported in (1996) (6) SCC 606 (***All Indian Overseas Bank SC and ST Employees Welfare Association and others versus Union of***

India and others) (relevant paragraph nos.3, 5, 6 & 10 are extracted supra), and held that merely because the Commission has power of Civil Court, such power do not confer the Commission into a Civil Court The power of Civil Court is only to fine, conduct enquiry within the frame work of the Act and nothing more as to what the Supreme Court ultimately held.

419. In fact, refuting the submissions made by the learned counsel, Ms.Naga Saila has contended that none of the enactments which are similar in nature, substantially has a provision like Section 18(e) of H.R.Act. As far as Section 18(e) is concerned, the concerned Government or authority is under a legal obligation to forward its comments including action taken or proposed to be taken within the time stipulated. Such mandate is not provided in other enactments. Moreover, she also submitted that the other provisions of H.R.Act need to be conjunctively read in order to distinguish between the Commission established under H.R.Act with that of the Commission under other enactments.

420. We have taken note of similarities in certain provisions of the enactments like Commissions for protection of Child Rights Act, 2005, National Commisison for Women Act,1990 and its Regulations, National

Commission for Schedule Castes and National Commission for Schedule Tribes established under Article 338 of the Constitution of India.

421. Various other Commissions are entrusted with the task of dealing with particular category or class of victims, viz., either a child, a woman or a member of SC or ST, whereas, the Protection of Human Rights is a overarching concept covering the entire humanity across the spectrum including child, woman, member of SC and ST and all human beings regardless of their class, creed, colour, nationality, language or religion etc. Therefore, the comparison of the H.R.Commission established under H.R.Act with the Commissions constituted for other purposes, merely because certain provisions appear to be similar may not be a proper analysis. The most crucial and paramount difference is the composition of the Commission. In all other Commissions, the selection and method of appointment is simple and the Members appointed in those Commissions cannot be compared to the H.R.Commission which Commission by virtue of its very composition, stands on an exalted judicial footing. In this regard, the Bench has dealt with relevant provisions of the Act to highlight the incomparable status of the occupants of the H.R.Commission.

422. Mr.R.Srinivas, learned counsel for SHRC referred to amendments which have been introduced into H.R.Act in 2006. According to him, Sub Clauses (i) to (iii) to Section 18(a) were introduced in 2006. An argument was advanced by him that the subsequent amendments could also be a source of guidance to appreciate the scheme of the Act. According to the learned counsel, the intention of the Parliament, by vesting the Commission with more power as a consequence to 2016 amendment, was revealed. In this connection, the learned counsel has referred to a decision of the Hon'ble Supreme Court reported in (2011) 14 SCC 1 (***Om Prakash versus Union of India)***, particularly, paragraph 40 (extracted supra). The learned counsel submitted that subsequent amendment was a demonstration of thinking of the Legislature. We cannot have any quarrel with the submissions made by the learned counsel in this regard. When the scheme of the Act is to be understood in the present context, in the process of such understanding, the amendments that have been introduced in the Act, have also to be taken into consideration while interpreting the framework of the Act. As far as 2006 amendments are concerned, as emphasized by the learned counsel, the amendments to Section 18 are quite significant and material for our purpose. The amendments have added among Sub Clause (iii) of Section 18(a) empowering the Commission to take further action as it

may think fit. The framers while amending the provisions, have obviously taken note of the functional limitation of the Commission over the years and to remedy the shortcoming, additional power has been vested in the Commission.

423. On this aspect, Mr.Sarath Chandran, learned counsel has submitted that one private Member moved a Bill in the Parliament to provide more power to the Commission as at that time, it was felt that the Commission's recommendation was not binding on the Government. However, the private Member's Bill suggesting suitable amendments fell through and did not become a law. We are conscious of the said development and in fact, the same was also referred to in earlier part of the judgment. However, what is more important for this Bench is to have a comprehensive understanding of the collective wisdom of the Parliament and not the aim of a private Member of the Parliament. When subsequent amendments were brought about in 2006, it was a positive nature of amendments making the Commission pro-active. When such amendments have been introduced on taking note of the working of the Act from 1993 till 2006, certainly, the framers had intended to make the Commission a self-contained judicial forum with sufficient power for its effectual functioning.

424. At the risk of repetition that after having in extenso, referred to several decisions of the Hon'ble Supreme Court and various High Courts, one factor could be conclusively established is that none of the judgments has taken into account the entire provisions of the Act, starting from the 'definition of human rights', 'constitution of Commission' 'functions and powers of the Commission, 'procedure laid down for conducting inquiry into complaints', 'human rights Courts', etc. Moreover, the distinguishing features of recommendations by the H.R.Commission, one under Section 12 and the other under Section 18 of the Act, have also been not part of the judicial discourse undertaken by the Courts earlier. In such view of the matter, it is the constitutional duty of this Bench to penetrate through all the provisions contained in the Act so that the ultimate answers to the Reference would be on the basis of the comprehensive understanding of the Act in its entirety.

425. The definition of 'human rights' as given under Sub Clause (d) of Section 2 which has already been referred to, the rights are relatable to what is provided in the Indian Constitution and defined as fundamental rights and which are embodied in the International Covenants and

enforceable in India. The definition provides a key to the understanding of the Act, its purpose, scope and enforceability. By the very definition of 'human rights', H.R.Act becomes a statutory extension of the constitutional rights. In that view of the matter, the interpretation of H.R.Act is not be confined within the statutory boundaries as it perceived, but the rights which are to be protected under the Act require to be examined and appreciated from the Constitutional perspective as well.

426. From that perspective stand point, the Constitution of the Commission as provided under the Act needs to be looked into. We have earlier referred to Chapter II and V which provide for 'constitution of the National Human Rights Commission and State Human Rights Commissions respectively and the composition of the same. State Human Rights Commission constituted under Chapter V of the Act comprising a Chair Person who has been the Chief Justice of a High Court and one Member who is or has been a Judge of a High Court or District Court in the State with the minimum of seven years as District Judge and one Member to be appointed from among the persons having knowledge of all practical experience in the matter relating to the human rights. Likewise, Chapter-II deals with constitution of National Human Rights Commission to be headed by the former Chief Justice of the Supreme Court as Chairperson, one Member who is or has been a Judge of

the Supreme Court, another Member who is or has been the Chief Justice of a High Court and the Member Experts of human rights. The composition of these Commissions itself is self-evident to describe the Commission unmistakably a full-fledged judicial body. Despite its unique composition, the Commissions are not be recognized as Judicial bodies because they are nomenclatured as Commissions and functions as statutory creature under the enactment.

427. When high former constitutional dignitaries heading the Commissions and those Commissions are to be treated merely as 'fact finding bodies' and whose task is only to conduct inquiry and make recommendations without the power of enforceability on the face of it, is preposterous and opposed to all cannons of our discernment. Besides the appointment of Chair Person of the NHRC and SHRC and its Members is on the basis of the recommendations of the Committee as provided under Sections 4 and 22 of the Act. As far as the NHRC is concerned, the Chairperson and its Members shall be appointed by a Committee, comprising the Prime Minister, Speaker of the House of the People, Minister-in-charge of the Ministry of Home Affairs, Leader of the Opposition of House of the People, Leader of the Opposition in the Council

of States and Deputy Chairman of the Council of States. As far as State Human Rights Commission is concerned, the appointment of the Chairperson and its Members is on the basis of the recommendations of a Committee consisting of the Hon'ble Chief Minister, Speaker of the Legislative Assembly, Minister-in-charge of the Department of Home in the State, Leader of the Opposition in the Legislative Assembly.

428. There are two significant factors emerge from these provisions of the Act. Firstly, the Commissions are presided by high Constitutional functionaries appointed for particular tenure by the Hon'ble President of India on the basis of the recommendations of high power Committee. Secondly, their appointments are on the basis of recommendations of high power Committee headed by the Hon'ble Prime Minister and the Hon'ble Chief Minister as the case may be and other Hon'ble Constitutional dignitaries. This particular procedure of appointment of the Members of the Commission is not followed in other similar Commissions, viz., Commission for Protection of Child Rights Act, National Commission for Women Rights Act, 1990, National Commissions for Schedule Casts and Schedule Tribes, and National Commission for Backward Classes, etc.

429. Thus, the framers of the Act, have attached great importance to the status of the Commission by appointing the most experienced judicial minds of the Hon'ble Supreme Court or High Court and the selection is scrutinized by a Committee headed by no less than the authority than the Hon'ble Prime Minister and other high Constitutional functionaries. Therefore, a clear and himalayan distinction has been made in the matter of appointment of the Chairperson and Members of the H.R.Commission. In that sense, the Commission under H.R.Act is jurisdictionally and functionally different from the Commission established under other similar enactments. We have not come across any judgment or any arguments touching up these factors as to how the composition of the Committee which is entrusted with the important task of making recommendation towards appointment of the Commission's Chairperson and Members and also its composition that would be a singular paramount distinction to accord the H.R.Commission an exalted position with a clear legal mandate. If the Commissions are to be assigned the role of a mere fact finding bodies and ordained to function with limited jurisdiction of conducting only inquiry, high power (highest) Committee which is entrusted with the task of making recommendation for appointment of Chairperson and Members of the Commission is not required at all. Therefore, there is some thing more to be

read as to the power and jurisdiction of the Commission from this point of view also.

430. The recommendations of the Commission can be under two provisions of the Act, namely, Sections 12 and 18. The recommendations to be made under Sub Clauses (c) to (f) are no doubt advisory or recommendatory at best. The recommendations under the above provisions being generic and suggestive with regard to state of affairs of the public administration in relation to human rights, such recommendations *per se* are to be construed as recommendatory only. As rightly contended by the learned counsel for SHRC, Mr.R.Srinivas, those recommendations are to be part of the Annual or Special Reports to be placed before the House of Parliament or State Legislature under Sub Clauses (2) of Sections 20 and 28 as the case may be.

431. The Commission in the course of its inquiry, is clothed with all the powers relating to the inquiries as seen from Section 13 of the Act. The Commission is deemed to be a Civil Court and the proceeding shall also deemed to be a judicial proceeding within the meaning of relevant provisions of the Civil Procedure Code, Indian Penal Code, Criminal Procedure Code, etc. The Commission is vested with the power of the Civil

Court under Section 13 of the Act. Therefore, the Commission enjoys as a whole the status of a Civil Court while conducting inquiries into the complaints. In fact, there are references to Courts rulings that because the Commission exercises the power of the Civil Court, it does not become as Court as such, as the Commission is incapable of rendering judgments within the frame work of the Act. We are of the view that such interpretation of Section 13 falls from a narrow perspective and also such interpretation is without proper understanding of the other Sections, particularly Section 18 of the Act. When Section 13 provided a judicial character to the proceedings in complete sense giving constricted meaning to such power enjoyed by the Commission, in our opinion, amounted to split understanding of the Act, ignoring conjunctive and holistic consideration.

432. We have already discussed in detail with reference to Sections 14 to 16. The rival submissions were advanced as to the scope of the Sections and in fact, on the side of the contention that the Commission enjoys only a limited power and jurisdiction because of the fact that the statement made before the Commission cannot be used as evidence before any Court of law and therefore, the Commission cannot said to be a judicial body and consequently, its recommendation cannot be a binding order. Such

interpretation is premised on a faulty understanding that by reason of non-admissibility of evidence tendered before the Commission, before the Courts of law, one cannot conclude that the Commission's recommendation is not binding on the Government. For that matter, any evidence tendered outside the frame work of Cr.P.C. or C.P.C. may not be admissible in a Court of law, though the principles of law of evidence are normally adopted and followed. But that does not mean that the finding based on such evidence becomes invalid in law.

433. The provisions as contained in Sections 13 to 17 would cumulatively showcase that the inquiry undertaken by the Commission is a full-fledged investigation and trial. In fact, Regulations 20 to 25 which are framed under the Act, viz., State Human Rights Tamil Nadu (Procedure) Regulations, 1997 provide an elaborate procedure for conducting inquiry including grant of adequate opportunity of personal hearing and also opportunity of cross examining the witnesses. The Regulations and the Act put together, would clearly demonstrate that the Commission in the course of its inquiry undertakes a full-fledged trial before coming up with a finding and makes its recommendation under Section 18 of the Act.

434. As reiterated over and again, Section 18 is the kernel and quintessence of the entire Act. Making and unmaking of a Statute lies on the purposive understanding of the enactment. If the normative standard of principle is the underlying consideration, it may invariably lead to the beaten path and eventually may hit the road block. If the principle of seminal, exploratory and creative understanding is the underscoring effort, then it would fruitfully result in interpretation and construction aimed at providing manifest thrust to the latent intent and the spirit of the Act. In order to achieve the purpose, we cannot allow the Act to remain standstill, divorced from the progressive times. In that contextual understanding, every section of the Act must be reasonably and permissively accorded expansive meaning to infuse vibrancy in the letter of the enactment. While doing so, the most important Section in the Act is Section 18 which is the very soul of the Act and every limb of Section 18 needs to be examined, comprehending the purpose, status and the nature of recommendations of the Commission. Section 18 provides a procedure to be followed during or after inquiry. As far as 'during inquiries' concerned, Sub Clause (c) comes into play which reads as under:

> '18 (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'.

435. The Commission, when it is satisfied even during the course of the inquiry, is empowered and recommend for grant of immediate interim relief to the victim. When the Commission is vested with the power of making recommendations for grant of immediate relief, such provision would have to be construed on a natural corollary construct that the recommendation granting immediate relief is binding on the concerned Government for payment of interim relief as recommended by the Commission. The word ‘immediate’ used in the provision would have to be understood as ‘immediate compliance’. The attributes of the word 'immediate' as per the Dictionaries, is 'done at once' 'instant', 'right now'. If the recommendations of the Commission are treated to be only ‘recommendatory’ and the implementation of the same ought to depend upon the discretionary response of the concerned Government or Authority, such expression would be stripped off its natural meaning and loses its relevance in the context. Therefore, the word 'immediate' in the provision defines the recommendation of the Commission as to its binding nature. The only option for the Government is to move the appropriate legal forum against the immediate relief granted by the Commission.

436. Likewise, when the Commission finds that there was commission of violation of human rights in terms of Sub Clause (a)(i) & (ii), it can recommend for making payment of compensation or damages or to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit. The word 'recommendation' in the context of these provisions, ought not to be given its ordinary or literal sense of the meaning. Merely because the framers used the word 'recommendation', the binding decision of the Commission cannot be whittled down to mere recommendation as it understood in common parlance. When the recommendation as contemplated under Section 18 is made, after following the elaborate procedure laid down in terms of the other provisions of the Act, namely, Sections 13 to 17, such recommendation assumes the character of adjudicatory order which shall be binding on the concerned Government or Authority.

437. We further refer to Sub Clause (e) and (f) of Section 18 which make the Commission a judicial forum of different ilk unlike the other Commissions constituted under similar enactments.

Sub Clause (e) of Section 18 is reproduced again hereunder:

> '18 (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.'

438. The above provision contemplates two steps to be followed, viz., i) by the Commission itself and ii) by the concerned Government or Authority. The Commission is under obligation to forward its report along with the recommendation and the concerned Government or Authority is correspondingly under an obligation to forward its comments on the report as to what action taken or proposed to be taken thereon, to the Commission. Thereafter, the Commission shall publish the inquiry report as provided under Sub Clause (f) which reads as under:

> '(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.'

439. There have been two submissions made on this subject,

particularly with reference to Sub Clause (e), one side it was argued that 'action taken' or 'proposed to be taken' leads no scope for non-acceptance of the recommendation by the Government drawing strength from Sub Clauses (2) of Sections 20 and 28 wherein, there is a specific expression contained in the Sub Clauses 'reasons for non-acceptance'. The submissions made in this context expounding the subtle distinction in the considered opinion of this Bench, lend vitality and invigoration in our run up to our final leg of this exploratory exercise on the judicial landscape coming to the most fundamentals of all rights inhere in every human being.

440. Contrarily, on the other side, it was argued that the action proposed to be taken would also include rejection of the recommendation. We are unable to persuade ourselves to this specious argument for the simple reason that when the expression 'action followed by 'proposed to be taken', such expression need to be given positive construction as rightly argued by the learned Amicus Curie before this Bench. Such conclusion, in fact, is fortified by the omission of the expressions 'reasons for non-acceptance' in Section 18 but incorporated in Sub Clause (2) of Sections 20 and 28 of the Act.

441. From a thorough reading of the above Sub Clauses and with reference to other provisions of the Section, one cannot but come to an inexorable conclusion that the concerned Government or Authority is legally bound to either inform the Commission within the stipulated time, 'the action taken' or 'proposed to be taken' on the recommendation of the Commission. For illustration, the concerned Government may offer its comments to the Report as to the action taken in implementation of the recommendation or may inform the Commission that it proposed to challenge the Commission's recommendation before the competent Court. On such action taken or proposed to be taken being revealed to the Commission, Sub Clause (f) is pressed into service, namely, publication of the inquiry report together with the comments. But the Section mandatorily leave no scope for the third option i.e. informing the Commission of 'non-acceptance of the recommendation'.

442. Unlike the other Commissions, H.R.Commission retained its lien over its report and recommendation as stated in Sub Clause (e) of Section 18. The concerned Government or Authority is bound to revert to the Commission with its comments and if the framers had intended to make the recommendations of the Commission as only recommendatory in nature,

without enforceable consequence, the provisions would have been drafted more clearly and lucidly, giving expression to the intendment of the framers. The expression 'reasons for non-acceptance' could have been simply made part of Section 18 also. The deliberate and conscious omission was in fact the expression of the legislative intent to classify the recommendation as (i) complaint specific, when the Commission goes through the rigmarole of inquiry, investigation and trial and (ii) not related to complaint specific, but related to the policy matter of the Government on human rights. Therefore, any constricted sense of understanding of Section 18(e) or comparison to Sub Clauses (2) of Sections 20 and 28 would be self defeating and make the Commission a lame duck judicial body.

443. We are also conscious of the learned debates that took place in the Houses of the Parliament at the time of passing of the Act and various debates have also been referred to and extracted supra in this judgment. However, we are of the considered view that the debates that preceded the enactment of the Act in the Parliament can only be taken as one of the sources of understanding of the objects of the Act, but mere debates alone cannot be an encompassing source for our interpretation and construction of the Act.

444. It was rightly submitted by the learned counsel, Ms.Naga Saila that the debates in the Parliament can be drawn as a supporting material only to bolster the ultimate interpretation of the Statute by the Courts. In this regard, it is relevant to refer that in one of the debates, relating to the present enactment an assurance was meted out by the Hon'ble Home Minister, assuring the Members of the Parliament that the recommendations of the Commission were like recommendations of the Finance Commission and the Government had never failed to implement the recommendations of the Finance Commission. Therefore, the intention of the framers was to make the recommendation binding implicitly. In the circumstances, it is for the Constitutional Court to remedy the unintentional shortcomings in the Act and to ensure that the Act is not rendered otiose in its purpose and implementation.

445. Interpretative exercise is the sole prerogative of Constitutional Court in discharge of such exercise, several factors are to be taken into consideration and one such factor is a debate that have taken place in the Parliament. Even otherwise, when the Debates take place in the Parliament, niceties and nuances of law may not attract the attention of the learned

Members of the Parliament. Further, when the Act was conceived by the framers, the debates around the enactment could have been only on the letters of law as it framed and expressed in the form of the Act. But when the Act is put into practice and in the process of implementation, when certain unintended lacunae and pitfalls noticed, the Constitutional Court cannot come up with a barren, naïve and inane construction of the Act and allow the avowed objects of the Act to remain in the text of the Statute, undermining the purpose for which, the Act was brought into existence. Interpretation and construction are necessary tools to tweak a Statute to make it more purposive and meaningful to achieve its full potentiality.

446. It is common knowledge that a newly designed manufactured auto-mobile out in the market and when certain cracks noticed in its performance, deficiencies are rectified to make the design fool proof to achieve the purpose of its production. In the process, the design of the automobile is not changed, as the success of the manufacturing skill lies in the design and its features. Likewise, our job is not to change the design or fabric of the Act or transplant but to remove the infirmities in implementation of the Act, when any legislation comes up for judicial diagnosis, maladies are identified and remedies are administered. By such

exercise no offence is meant to the legislative intent or the exercise could be construed as arrogation of power beyond the Constitutional limits.

447. As to the enforceability of the recommendations of the Commission on its own, we find no provision in the Act and to that extent, the enforceability power of the recommendation is provided to the Commission through the provisions of Section 18(b) of the Act. We have already referred to the learned Division Bench of Allahabad High Court, reported in MANU/UP/3212/2014 (Civil Misc.W.P.No.7878 of 2014, dated 09.12.2014 (***State of U.P. And others versus National Human Rights Commission, New Delhi and Others)*** which held that the Commission can approach the Supreme Court or the High Court to enforce its recommendation. It is true that the Act does not contain any specific chapter or provisions for enforcing its own recommendations unlike in certain other enactments referred like Arbitration Act and Consumer Protection Act, etc. But the present Act, in the absence of inbuilt provisions enabling the Commission to enforce its recommendation directly, has been provided with specific provision in Section 18(b) by conferring the status of *locus standi* to the Commission to enforce its recommendation through constitutional route.

448. As stated earlier, we are of the opinion that the interpretation of the Act must relate to enforcing of the constitutional rights as guaranteed under Part III of the Constitution. Examining H.R.Act through the lens of the Constitution, which is enacted for protecting human rights is to be interpreted in order to provide thrust to the to the rights guaranteed in the Constitution relating to life, liberty, equality, dignity, etc. In that perspective, the Act being extended arm of the Constitution in the sphere of the human rights and the Commission created by the Act as a Protector of human rights, the remedial action of the Commission must be capable of attaining its fruition. To recall the words of South Africa Constitution Court in one of its judgments, 'an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced.' We are therefore, of the view that enforceable remedial action through Commission is in fulfillment of constitutional mandate and not mere addressing the complaints for ideational purpose.

449. The Act named as ‘Protection of Human Rights Act’ and the judicial mechanism created by the Act characterizes, the H.R.Commission as ‘Protector’. In fact, the ruling of the South African Constitution Court which

has been earlier referred to supra in this judgment held that the rule of law is dead against the authority taking law in its own hands constituting self help. The effect of the ruling of the Constitution Court of South Africa is that the remedies recommended by the Public Protector cannot be replaced by the powers with their own remedial action if any.

450. Likewise, the Commission which has been assigned a constitutional role with statutory backing, its recommendations are not liable to be slighted or ignored. If the recommendations are open to be ignored or the concerned Government in its discretion, can refuse to accept the recommendation and provide reasons for non-acceptance of the recommendation, the remedial action contemplated in the Act would be a empty promise and a mirage, betraying its core purpose. It is needless to mention that any act done by the agents/officials of the Government in violation of the human rights, is purported to be at the behest of the Government. In that view, the Government either directly or vicariously liable for the transgressions of its officials/agents. The violation of human rights is too serious sacrosanct a matter to be left to the Government's discretion towards redressal of the grievances of the victims.

451. We further refer to the subsequent and relevant amendments that have taken place in the Act. In 2006, important amendments have been introduced in the Act, particularly, in Section 18 (a), Sub Clauses (i) to (iii) have been introduced which read as under:

> '18 (a). …..
> (i) to make payment of compensation or damages to the complainant 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;

452. The above provisions without any iota of doubt, are ample proof that the Commission was clothed with additional powers during and after inquiry. Firstly, it can recommend for payment of compensation to the complainant or to the victim. Secondly, it can initiate proceedings for prosecution against the persons concerned and thirdly, to take further action as it may think fit. These amended provisions reinforce the fact that the Commission has been clothed with additional powers. In its decision reported in (2011) 14 SCC 1 (***Om Prakash versus Union of India)***, the Honble Supreme Court has held that subsequent amendments can be taken

into consideration to appreciate the thinking of the Legislature. When the Commission is endowed with the jurisdiction of recommending payment of compensation or damages, initiating proceedings for prosecution and also to take further action as it may think fit, all that powers which are exercisable by the Commission are not meant to be a vain or fruitless exercise. When the expression 'action' used in Sub Clause (iii), the natural meaning of the same is something more than what means as a recommendation simplicitor. The word 'action' in Section 18 is akin to the Government or Authority taking action in discharge of its duties. It denotes command and observance. It is defined in Lexicon as 'a thing done: Deed'. In Merriam-Webster Dictionary, one of the meanings of 'action' is defined as 'the initiating of a proceeding in a court of justice by which one demands or enforces one's right'. Therefore, the expression 'action' in the provision is to be understood that recommendation to be made by the Commission either 'during' or 'after' inquiry has an actionable force and is binding on the Government. The only way to avoid implementation of the Commission's recommendation by the concerned Government or Authority is to approach the competent Court seeking judicial review by challenging the recommendations.

453. The submissions relating to the Annual Reports of NHRC that NHRC itself has understood its limited jurisdiction and power and not having the power of enforcement, our answer is that any creature of a Statute is not empowered to interpret the very scheme of the Act which gave its birth. Further, it is up to the Constitutional Court to interpret the provisions of the Act after taking note of the various decisions rendered on the subject matter and also on the basis of the principles laid down on the law of construction and interpretation and provide the Commission more meaningful and purposeful existence within the frame work of the Act. Interpretation is an artistic tool by which the true sense of any form of words is amplified to be in tune with the context, construction is a process of conclusion that leaps beyond the bland words of the text for achieving its purposeful existence. Therefore, the caged understanding of the Commission of its power and scope of inquiry and its recommendation may not be the basis of our critical understanding and we cannot simply endorse the conclusion and views of NHRC.

454. As an interned judicial forum, the Commission may not realise the extent of powers, it can exact from the provisions of the Act, but we as a Constitutional Court can expand its vistas by our interpretation of the

scheme of the Act. NHRC or SHRC has to necessarily function within the apparent provisions of the Act and it cannot overreach its statutory limitation as perceived by it being a creature of the Statute. Any statutory creature has to mandatorily fall in line with the limited confines of the letter of the Act. Whereas, the role of the Constitutional Court is to bridge the gulfs in the working of the Act and make it effectual and potent. In that process, semantic innovation and construction can be resorted to, to infuse completeness and amplitude to the Act *vis-à-vis* Commission and its recommendations.

455. It is needless to emphasize that in public law remedy, all the provisions of the Act are to receive broad and liberal construction. In our expedition towards innovative interpretation, mere etymological or lexicon understanding of the expressions within the limited contours of the Act as it perceived would only lead to statutory dead end and would hit *cul-de-sac.* If we veer around the so-called limited contours of the Act as it perceived, the purpose and the objects behind the enactment would be lost. When certain unintended shortcomings are impeding the effective functioning of the Commission under the Act, as a Constitutional Court, our paramount duty is to save the Act and the Commission functioning under it, from continuing as

a toothless and fossilized institutionalized mechanism. This is certainly not to mean that the Court can transgress beyond what is explicitly envisaged in the Act.

456. We have referred to several decisions of the Hon'ble Supreme Court on the aspect of interpretation of the Statute and its provisions. In one of the decisions cited, namely, (2004) 6 SCC 531 (***ANZ Grindlays Bank Ltd. and others versus Directorate of Enforcement and others)',*** wherein, the Hon'ble Supreme Court has held that the interpretation of a Statute must be adopted keeping in view the doctrine of *ut res magis valeat quam pereat,* meaning '*it is better for a thing to have an effect than to be made void*'. It is disconcerting to note that the high powered H.R.Commission when it makes recommendation after a judicial inquiry following all the principles of law and natural justice, yet its recommendation is not adjudicatory as held by some Courts, is because of incomplete understanding of the entire scheme of the Act. As stated earlier, all the decisions rendered on the power and jurisdiction of H.R.Commission have had no occasion to dissecting every part and anatomy of the Act, and therefore, we find the conclusion reached by the Courts so far is incohesive, insipid and fall short of a wholesome precedent.

457. In a decision reported in (2005) 3 SCC 551 (***Pratap Singh versus State of Jharkhand and another),*** the Hon'ble Supreme Court, while interpreting the provisions of the Juvenile Justice Act has held that the interpretation must be in line with the principles of international law and also the provisions need to be understood in terms of Part III of the Constitution. Very profoundly, the Hon'ble Supreme Court has held in a decision reported in (1985) 4 SCC 71 (***Workmen of American Express International Banking Corporation versus management of American Express International Banking Corporation)',*** that- 'where legislation is designed to give relief against certain kinds of mischief, the Court is, not to make inroads by making etymological excursions'. In fact, we have earlier held that the opinion of NHRC is confined to such etymological understanding, but as Constitutional Court, our understanding goes beyond the sedate etymological construction. In fact, the English Court decisions have been cited on behalf of the State represented by the learned Addl.Advocate General, observed that- '*the intention of the Legislature must be ascertained from the words of the Statute with such extraneous assistance as is legitimate*' and also the observation in another decision that- '*a Judge can iron out the creases if he comes across ruck in the texture of*

the Statute'. Our exercise as already indicated, is not to change the material, but to fine tune the texture of the Act to carry forward the objects of the Act in line with the principles of international law and also with reference to paramount constitutional obligation of guaranteeing and protecting the human rights as provided under Chapter III of the Constitution.

458. In fact, arguments have been advanced emphasizing that when the words in the Statute are plain and unambiguous, it is mandatory to expound those words in the natural and ordinary sense. We have no problem with that arguments. While holding as such, the Hon'ble Supreme Court has also held that '*if the plain language resulted in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view of the Legislative purpose'*. In a decision reported in (2009) 7 SCC 1 (***N.Kannadasan versus Ajoy Khose and others)',*** the Hon'ble Supreme Court held that- '*in order to give a complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a Statute can be read down to make it effective as to its purpose.'*

459. Moreover, the arguments that when words in the Statute are

unambiguous, it must be understood by literal, plain and ordinary sense of the meaning, and no latitude is permitted, in our opinion, these arguments are run of the mill submissions divorced from the contextual nature of the task assigned to us when we are considering the most sacrosanct of all rights, namely, 'human rights' which rights inhere to every human being as being natural rights fundamental to his existence and such rights are to be preserved and protected and enforced. The Commission which was conceived by the Parliament as a Protector of such rights must not be hamstrung by pedestrian construction of the scheme of the Statute. Great Freedom Fighter and Statesman, Nelson Mandela said, '*to deny the people of their human rights is to challenge their very humanity*'. The natural rights inherited by every human as being metamorphosed into human rights in the modern world in an established legal system in countries where the rule of law govern the polity. Even though we have efficient legal system in place and Constitutional Courts have been established and well entrenched in our Constitutional frame work and democratic governance, the constitutional activism has been expanding progressively by passage of time to stay relevant as a sentinnel and watchdog in protecting the basic structure of the Constitution which includes fundamental rights of the citizens. When a specific legal mechanism is created with a professed purpose under the Act

to carry out the mandate of the Constitution, that legal mechanism cannot be allowed to be an institution with a theoretical power of making recommendations only. It is said that '*law without justice is a wound without cure'* and it is also said that '*justice without force is, powerless'*.

460. The legal principles as evolved over the years can be summed up in a nutshell, that the words and the expressions used in a Statute which do not suffer from any ambiguity and the words and expressed are lucid and clear, the Courts can interpret those words and expressions with no other meaning than the words to receive the meaning as understood in common parlance (ordinary sense). But interpretation of the provisions of the Statute is permissible only when there are glaring ambiguities in the expressions or the words are unclear of expressive intent of the framers.

461. The words and expressions as used in the Act are required some times, to be understood and interpreted not because they suffer from ambiguities or lack of clarity, but because these ordinary expressions may not effectively transform the true ideas and policies as intended by the framers of the Constitution when an Act is put into practical implementation. The word ambiguity itself has a limited meaning, in the

sense, that the word or expression suffering from ambiguity if the same is capable of denoting more than one meaning. Likewise, unclear usage of words may also necessarily invite mandatory interpretation into the contextual settings of the Act. However, in our opinion, words and expressions of the provisions of the Act are to be given different shades of meaning in the ultimate implementation of the Act shedding its ordinary meaning, to provide legal wherewithal to make the legislation workable. In such view of the matter, lack of clarity or ambiguity is not with reference to the plain words and expressions, in the lexicon sense but with reference to the spirit of the enactment and its destined purpose.

462. Protection of Human Rights is not to be pigeon-holed, into a statutory cage and the Commission in the role of the protector of the rights is to be relegated to a subservient position to the executive. The fundamental rights which are guaranteed in the Constitution of India, are the human rights defined under the Act. Therefore, any interpretation of the statutory provision tantamount to interpretation of the fundamental rights as well, as guaranteed by the Constitution of India. When a Commission is constituted for securing the fundamental rights of the citizens, such Commission being a Protector of the human rights, cannot function with emasculated enforceable

power. The human rights, as it universally understood, are inherent in every human being, such rights are non-negotiable and inalienable. The recent history witnessed several developments towards evolving advancement of human rights, globally. The natural rights have finally taken a legal shape by Universal Declaration on human rights on 10th December, 1948 by the United Nations General Assembly. In the Declaration, the rights are encapsulated and the Nation States which are committed to the Declaration, are bound to provide domestic institutions for remedial action for human rights violations and protection of it.

463. As could be seen that after the II World war, the comity of Nations has placed human rights as the most paramount of all rights to be protected and nurtured. In fact, we have referred to some of the Articles of Universal Declaration on human rights and the international treaties. Even those Articles and the treaty provisions are read together, there cannot be two opinions about mandate of every Nation State to set up judicial mechanism for protection of human rights and providing remedies for any transgressions of human rights. The remedies must be enforceable as defined in Section 2(d) of the Act.

464. When we find that when there is blurring line between the intention of the framers and the effective implementation of the provisions of the Act, the role of the Courts is to see that the line is straightened out with clarity. When we undertake the interpretation of the provisions of the Act, which is a singular prerogative of the Constitutional Court, more particularly, with reference to human rights laws, our interpretation of the Statute would mean interpretation of fundamental rights of the citizens. One of the founding Fathers of the USA, Alexander Hamilton, has profoundly observed as under:

> 'The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the Statute, the intention of the people to the intention of their agents.'

465. The intention expressed by the framers of the Statute has to be viewed through the sublime Constitutional vistas, beyond the frontiers and

the frailties of the Act. The constitution of the Commission is intended to act as bull-work against violation of human rights on one hand and the other as Protector of human rights guaranteed by the Constitution. Therefore, on the benign consideration of the Statute being interwoven with the fundamental rights guaranteed by the Constitution, the interpretation and construction of the Act, is to achieve the constitutional goal and aim in upholding the fundamental rights.

466. A former President of United States of 18th Century and also a Statesman, Mr.Andrew Jackson observed as under:

> 'All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.'

467. The independent judiciary is of course contemplated in the Constitutional scheme and we are here as a Constitutional Court, nonetheless when a judicial mechanism is created under the Act for securing the fundamental rights of the citizens, such mechanism must be interpreted to mean to be an independent judicial body and its decisions/recommendation cannot be left to the discretionary acceptance or

non-acceptance of the concerned Government or authority. If the Human Rights Commission is to be accorded a reduced status of a fact finding body, one does not need the Commission to be headed by former Chief Justice of Supreme Court or High Court as the case may be. If there are any provisions/regulations which are not in tune with the scheme of the Act, they are to be declared as incompatible and such provisions have no application in interpretation of the Act.

468. The Regulations referred to by the learned Addl.Advocate General and also learned Amicus Curaie regarding the procedure to be followed with reference to Regulation 23 of the State Human Rights Commission Tamil Nadu (Procedure) Regulations 1997 and 28 of the National Human Rights (Procedure) Regulations, 1997 wherein, it is explicitly stated 'steps after calling for comments' providing a contingency of reasons for non-acceptance of the recommendations, in our humble opinion, the expressions contained in the Regulations cannot be pitchforked into the Principal Act in the teeth of Court finding that there is a conscious omission of such expressions in Section 18 of the Act. The Regulations framed under the Act may be part of the statutory scheme, nevertheless, the words in the Regulations cannot supplant the provisions of the Act nor it can

abridge or alter the meaning of the provisions of the Act.

469. The task entrusted, impells us to go beyond the mundane understanding of the statutory text, with a cardinal purpose to plug the holes in the Act in its practical implementation to save the enactment from being enfeebled into a below par performer. In the dynamic process of our search, we are under constitutional obligation to traverse beyond the statutory prescription in order to make the human rights institution (Commission) a viable and an effective judicial body. The following words of Abraham Lincoln are true to every piece of legislation when it comes to its implementation.

> 'No organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate nor any document of reasonable length contain express provisions for all possible questions.'

Therefore, our constitutional mandate is to ensure that there are no pitfalls in the percolation of the benefit as intended by the framers to the ultimate beneficiaries, namely, citizens of this country.

470. Human Rights Commission created to address the exalted human

rights concerns is not a show-piece to the world as a token of conformity to the commitment of India to the Universal Declaration of Human Rights and International treaties, viz., International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights. 1966. The institution's reach and the functional efficacy must be real to carry its constitutional obligation to the hilt.

471. '*Judges must beware of hard constructions and strained inferences, for there is no worse torture than that of laws'* said by Francis Becon. Our efforts have been directed to make the Act effectual and result yielding, keeping in mind the spirit of the enactment while interpreting the laws. Mr.Eral Warren, a Former Chief Justice of United States, said '*it is a spirit and not the form of law that keeps justice alive.*' True to the above, our task as a Constitutional Court, we have a sovereign duty to interpret the laws as part of the legitimate exercise in consonance with the evolving jurisdiction, principles of progressive times. In doing so, we have to necessarily move away from the normative etymological exercise unbound by Dictionary definitions. Our task is not to restate what Dictionary already defined, but our task is much greater, i.e. profound understanding of the words in the contextual legal settings. The interpretation has two sides, one,

'denote' and another 'connote' and what provision denotes does not require any legal dexterity in attributing a literal meaning to the word. But what the expression connotes is the guiding constitutional principle to interpret the Act with the purpose oriented construction and judging.

472. Lord Denning, a popular English Jurist of yester years, in one of his lectures, has outlined the importance of the judicial mission to prevent abuse of personal freedom of citizens by the State as under:

> 'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But, if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not, just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence. This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead

to a totalitarian state. None such must ever be allowed in this country.'

473. The above caution would not mean that the Court could do violence to the text of the Act, nor could it re-legislate, encroaching upon the power of the Parliament. However, it is constitutional prerogative of the Courts to ensure that the public law remedy provided in the Act sub-serves its purpose and function and make the Act workable, true to its spirit. If such interpretation is not forthcoming, then the high powered Human Rights Commission established under the Act would be denuded of its judicial character, notwithstanding the Commission being manned by former Chief Justice of India, Supreme Court Judges, Chief Justice of High Court, etc. it could not have been the true intention of the framers to have the Commission packed with high judicial dignitaries, but rendering the functioning of the Commission a powerless, inchoate institution worth only on the text of the Statute. In that sense, the expressions used, particularly in Section 18, namely, the recommendation would have to receive contextual interpretation. In our considered view the word 'recommendation' appears in the Act under Section 18 is to be considered as euphemism for the expression 'order'. An embellished expression drafted into the Act more in tune with the word 'Commission' as it understood in common parlance, but

may not be intended to reduce the functional status of the Commission as a toothless Tiger.

474. If the recommendations of the Commission are to be construed as recommendatory only and open to acceptance or non-acceptance by the Government or authority, the Commission loses its independence despite being high judicial body and is subordinated to the Executive. We may recall the words of a French Judge and Political Philosopher Montesquieu, way back in 18th Century,

> 'if the legislative and executive authorities are one institution, there will be no freedom. There won't be freedom anyway if the judiciary body is not separated from the legislative and executive authorities.'

475. The idea of enacting the Protection of Human Rights Act is to solemnly address the issue of protection of human rights as well as its abusement by the representatives or the agent of the State. When the institutional mechanism has been created under the Act with retired high constitutional dignitaries at the helm, it would be a travesty of justice if such institution is to function within the dominant power of the executive and legislature in the matter of implementation of its recommendations. Unlike

the other Commissions, certain quasi judicial bodies, H.R.Commission does not become *functus officio* after the recommendations have been made. In the Scheme of the Act, it has got a right to hold on the recommendation and approach the Constitutional Court for its execution. True that there may not be any explicit provision in the Act for execution of its recommendation, however, merely by the absence of executing power would nevertheless render the recommendation of the Commission as not binding and as not an adjudicatory order.

476. There are two limbs of consideration on this aspect. One is binding nature of the recommendation and another is the execution of the recommendation. In fact, as could be explicitly seen in the Sub Clauses of Section 18 of the Act, the Commission can initiate proceedings for prosecution which is on the criminal side and on non-criminal side, the Commission can award compensation or damages and can also approach either the Supreme Court or the High Court concerned for any directions/orders/writs under Section 18(b) of the Act. The Commission is clothed with the additional power to take such further action as it may think fit after insertion of Sub Clause (iii) to Section 18. These provisions give a carte blanche to the Commission to either approach the Constitutional Court

to facilitate issuing of orders, directions or writs or on its own it can take any action as it thinks fit. Therefore, the power of the Commission has witnessed enhancement of its status by the subsequent amendments to hold that the recommendation of the Commission cannot be construed as a suggestion or opinion, which can be ignored, slighted or rejected. If we were accept the position as canvassed by the learned Addl.Solicitor Genereal, Addl.Advocate General and other learned counsel on their side, we are only reminded of profound words of the Architect of our Constitution, Dr.Ambedkar, '*lost rights are never regained by appeals to the conscience of the usurpers*'.

477. We may not be elected Judges through Universal suffrage, nay we are nominated by operation of the Constitutional provisions to preside over Constitutional Court. Our partnership with Executive and Legislature ordains us with shared responsibility in safeguarding, protection and promotion of Human Rights. In discharge of the sublime responsibility, the role of the Constitutional Court assumes sovereign coloration and the interpretation of the Statute lies at its portals. The Act which has been conceived and designed as a Protector of Human Rights, has to necessarily include enforcer of Human Rights as well. Protection of Human Rights

without enforcement would only amount to empty proclamation, as promise without a guarantee.

478. Textualism may lead to conservative construct, divorced from the broader contextual meaning. Protection of and guaranteeing the Constitutional rights and liberties are the aim of the Statute and therefore, interpretation of the Act on the principle of strict and literal constructism would be self-defeating. On the other hand, a progressive interpretation could lead to the intended and desired results. Parliamentary wisdom and intention is to be translated into legal reality. Therefore, the power of interpretation is limited or circumscribed only to the extent that the same is repugnant to the legislative intent. At the same time, the legislative intent has to be understood on the broader spectrum of Constitutional policies which are the bed-rock guiding our democratic polity. In that context, one of the most important Constitutional emanations is the constitution of Human Rights Commission under the Act and recommendation of the Commission is only a means to enforce the policies. The power of enforceability is very integral to the scheme of the Act.

479. Therefore, if the Commission finds that there is violation of

human rights against the concerned Government or Authority, the Commission cannot be placed in a position of hand-maid of the executive and the Government can ignore it. In fact, it is submitted that the majority of the recommendations have been accepted and statistics have also been made available before this Bench. However, when we decide on the larger issue of whether the Commission's recommendation is an adjudicatory order and that it is binding or its recommendations are only recommendatory simplicitor, the decision cannot be on the basis of law of averages.

480. We also recall the words of the former Chief Justice of the United States of America, Earl Warren said that '*the success of any legal system is measured by its fidelity to the universal ideal of justice.*' Needless to mention here that the idea of rendering justice in the realm of human rights laws is originated from the Universal Declaration of human rights and international treaties which have been subsequently embodied in our Constitution. Therefore, the legal system/mechanism in place in the sphere of human rights laws, namely, the Commission must be held that its recommendations are binding on the concerned Government or Authority and the only option which may open to the concerned Government or Authority is to approach the competent Court assailing the

recommendations. But no discretion is available with the concerned Government or Authority to ignore or to reject the recommendation.

481. In regard to allied issues as to whether the delinquent/Government employee to be given opportunity under the relevant service Rules/Regulations, we are of the view that the issues need to be divided into two aspects. In case of compensation/damages being ordered by the Commission, if it is recoverable from the delinquent, the concerned Government or authority is under obligation to call for the remarks or explanation from the delinquent concerned before proceeding to recover the compensation/damages recommended by the Commission. This procedure may have to be followed as a compliance to the rudimentary of principles of natural justice that any action visiting the delinquent with civil consequences, he/she is to be provided with a basic opportunity of explaining his/her conduct.

482. Although the provisions in the Act provide for an opportunity being extended to the delinquent official, yet an opportunity that has been contemplated in the Act is from the point of view of the Commission versus the concerned Government or authority in conducting inquiry into the

complaint of human rights violation. Any such finding or recommendation of inquiry, may not be implemented directly without even affording an opportunity to the delinquent under the relevant service Regulations. This is not to say that the concerned Government has to conduct any departmental inquiry while implementing the recommendations of the Commission against the delinquent official, that show cause notice is a minimum requirement which in our opinion, is to be complied with.

483. The other aspect of the issue is when the concerned Government or authority takes a decision to impose major penalty on finding a serious violation of rights indulged in by the delinquent official in discharge of his/her duties. In such cases, we are of the view that the finding of the Commission may be used as the basis for initiating departmental proceedings, but it is not necessary to go through the entire rigmarole of major penalty proceedings contemplated in the service Rules. When a Commission headed by no less than a person, Chief Justice retired from a High Court as far as the SHRC is concerned, or for that matter, a retired Chief Justice of the Hon'ble Supreme Court as far as NHRC is concerned, its finding cannot be ignored as the same is binding, as held by us.

484. At the same time, in order to provide an opportunity to the delinquent to prove the extent of his/her culpability in the violation, on the issue of proportionality of punishment, an inquiry may be conducted. This is to take care of the interest of the delinquent employee who may have adequate defence explaining his/her conduct as against his employer and he/she may convince the Government for a reprieve.

485. As far as the finding/recommendation of the Commission is concerned, such finding/recommendation is entirely based on two dimensional approach on the alleged violation of human rights. The criteria and the objective factors which would weigh the consideration before the Commission would be materially different when the Commission render finding against the delinquent official. One facet is award of compensation or damages and the other facet is to facilitate initiation of criminal action against the delinquent officer.

486. On the other hand, in a departmental proceedings, various other administrative instructions and parameters would come up for consideration when a finding to be rendered by an Inquiry Officer. Further, the proportionality of punishment is a very import legal principle that has been

adopted in service jurisprudence and to deal with same, an inquiry is required to be undertaken departmentally. As laid down by our Court, when administrative action is questioned and assailed before the Constitutional Courts, such action would have to be tested among other, Wednsebury Principles. The scope of the Commission testing the validity of the action of the official (public servant) is only confined with reference to human rights violation, whereas any action by the employer is resulting in inflicting the major penalty on their servants, a different legal requirements may have to be followed.

487. In the above circumstances, two situations could be envisaged, viz., i) when the delinquent employee is to be imposed with minor penalty or to be fastened with liability towards damages or compensation recommended by the Commission, in which case, no inquiry is necessary at all. In fact, even in any service regulation for imposition of minor penalty, no formal inquiry is contemplated except a show cause notice and ii) as regards imposition of major penalty, the delinquent employee ought to be given a reasonable opportunity which, in our opinion, should go beyond mere issuing show cause notice, in order to find out the nature of involvement and extent of culpability of the employee concerned to arrive at

quantum of punishment to be imposed on him/her. This is necessary for the reason that the Commission's inquiry and departmental inquiry operate on different perspectives and from different stand points. As far as Commission of Inquiry is concerned, it is Commission *vis-a-vis* the concerned Government, but as regards the departmental inquiry, it is delinquent *vis-a-vis* employer. Therefore, for implementation of major penalty, such requirement may have to be adhered to.

488. In fact, in such of the cases, whether recommendations of the Commission to be implemented and major penalty proceedings to be initiated in that regard, we suggest that suitable amendments may be introduced under the relevant service Rules/Regulations by both the State Government as well as Central Government towards implementation of the recommendations of the Commission for imposing major and minor penalties including recovery of compensation or damages from the delinquent concerned.

489. Before we give our summation, we place on record our appreciation to all the learned counsel and Party-in-person, who appeared and assisted this Court for this mammoth and momentous task of finding

answers to the terms of the Reference. In particular, we appreciate the meticulous homework, articulate and painstaking submissions made by Mr.R.Srinivas, ably assisted by Mr.Arun Anbumani, learned counsel for SHRC, Mr.B.Vijay, Amicus Curiae, Ms.Naga Saila and Mr.Sarath Chandran, learned counsel for enriching this Bench to gain insight into the relevant and important case laws, Conventions, Treaties and other related materials. Their scholarship collectively has contributed to our conclusion and without their varying degrees of perspectives, we would not have been able to discover our pioneering and plausible answers to the Reference.

490. In the conspectus of the above discourse, the following is our summation to the terms of the Reference:

> (i) Whether the decision made by the State Human Rights Commission under Section 18 of the Protection of Human Rights Act, 1993, is only a recommendation and not an adjudicated order capable of immediate enforcement, or otherwise?

Ans: The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the

H.R.Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act.

> (ii) Whether the State has any discretion to avoid implementation of the decision made by the State Human Rights Commission and if so, under what circumstances?

Ans: As our answer is in the affirmative in respect of the first point

of Reference, the same holds good for this point of Reference as well. We having held that the recommendation is binding, the State has no discretion to avoid implementation of the recommendation and in case the State is aggrieved, it can only resort to legal remedy seeking judicial review of the recommendation of the Commission.

> (iii) Whether the State Human Rights Commission, while exercising powers under sub-clauses (ii) and (iii) of clause (a) of Section 18 of the Protection of Human Rights Act, 1993, could straight away issue orders for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause (i) of clause (a) of Section 18 of that enactment, from the Officers of the State who have been found to be responsible for causing such violation?

Ans: Yes, as we have held that the recommendation of the Commission under Section 18 is binding and enforceable, the Commission can order recovery of the compensation from the State and payable to the victims of the violation of human rights under Sub Clause (a)(i) of Section 18 of the Act and the State in turn could recover the compensation paid, from the Officers of the State who have been found to be responsible for causing

human rights violation. However, we clarify that before effecting recovery from the Officer of the State, the Officer concerned shall be issued with a show cause notice seeking his explanation only on the aspect of quantum of compensation recoverable from him and not on the aspect whether he was responsible for causing human rights violation.

> '(iv) Whether initiation of appropriate disciplinary proceedings against the Officers of the State under the relevant service rules, if it is so empowered, is the only permissible mode for recovery of the compensation amount directed to be paid by the State to the victims of violation of human rights under sub-clause(i) of clause(a) of Section 18 of the Protection of Human Rights Act, 1993, from the Officers of the State who have been found to be responsible for causing such violation?'

Ans: As far as the initiation of disciplinary proceedings under the relevant Service Rules is concerned, for recovery of compensation, mere show cause notice is sufficient in regard to the quantum of compensation recommended and to be recovered from the Officers/employees of the concerned Government. However, in regard to imposition of penalty as a consequence of a delinquent official being found guilty of the violation, a limited

departmental enquiry may be conducted only to ascertain the extent of culpability of the Official concerned in causing violation in order to formulate an opinion of the punishing Authority as to the proportionality of the punishment to be imposed on the official concerned. This procedure may be followed only in cases where the disciplinary authority/punishing authority comes to the conclusion on the basis of the inquiry proceedings and the recommendations of the Commission that the delinquent official is required to be visited with any of the major penalties enumerated in the relevant Service Regulations.

As far as imposition of minor penalty is concerned, a mere show cause notice is fair enough, as the existing Service Rules of all services specifically contemplate only show cause notice in any minor penalty proceedings.

> (v) Whether Officers of the State who have been found to be responsible by the State Human Rights Commission for causing violation of human rights under Section 18 of the Protection of Human Rights Act, 1993, are entitled to impeach such orders passed by the Commission in proceedings under Article 226 of the Constitution and if so, at what stage and to which extent?

Ans: As we have held that the recommendation of the Commission under Section 18 of the Act is binding and enforceable, the Officers/employees of the State who have been found responsible for causing violation of human rights by the Commission, are entitled to assail such orders passed by the Commission by taking recourse to remedies of judicial review provided under the Constitution of India. It is open to the aggrieved officers/employees to approach the competent Court to challenge the findings as well as recommendations of the Commission.

491. As a corollary to the above conclusion, since the recommendation of the H.R.Commission is held to be binding, an officer/employee concerned can resort to appropriate legal remedy at any stage qua complaint or inquiry by the Commission but only on substantial legal grounds.

492. Before we part with this Reference, we are constrained to express our considered opinion that despite all the provisions in the Act, covering wide spectrum of human rights concerns in consonance with the Rule of Law governing our polity, in the absence of an inbuilt and integral provision within the explicit frame work of the Statute, a perception has

been gaining ground in the corridors of the implementing authorities that the recommendation of the H.R.Commission lacks legal sanctity and hence can be trifled with. Such perception and point of view on the part of the implementing authority may not augur well towards addressing the complaints of human rights violation in the country where the written Constitution reigns supreme and is placed at the altar of our governance.

493. Although the history after the introduction of the Act, reveals that by and large the recommendations of the Commission have been implemented, any discretion to the implementing authorities to either accept or not accept the recommendation would only lead to avoidable delay, forcing the Commission to invoke Section 18(b) of the Act.

494. In a constitutional democracy, there is always a possibility of change of Governments, policy makers and so are the policies. The policies are always in a state of fluidity depending on expectations resulting in shifts and changes of perspective framework of the policy makers. In such circumstances, at the time of enactment of the Act, an assurance given on behalf of the Treasury Bench by the Hon'ble Minister concerned that recommendation of the H.R.Commission would be accorded due respect as

in the case of recommendation of the Finance Commission and the Government in the past had never declined to accept the recommendation of the Finance Commission as matter of healthy convention.

495. The history of politics and governance has been witnessing constant change through evolution of different policies and as a consequence of such change any convention observed in the past has its breaking point in tune with the time. Therefore, the Act which was introduced providing a public law remedy, cannot be operated on the basis of the assurance of the Hon'ble Minister concerned, unless the assurance is transformed into a letter of law for all the time to be followed.

496. The avowed intention of the policy frames at that point of time was clear but at the same time, following any convention after all is a only a matter of choice at the end of the day. If in this context, we are of the considered opinion that the intention of the framers may be given a statutory sanction within the Act itself to make the Act a complete code in itself instead of invoking the jurisdiction of the Constitutional Court for execution of the recommendation.

497. We earnestly trust and hope that the Parliament in its collective wisdom would bring necessary amendments in the Act to provide wherewithal to the Commission for direct execution of the recommendation. By such initiation, the learned Parliament would be according befitting status to the Commission steered by the high constitutional dignitaries of the highest legal order.

498. In the said circumstances, we hereby suggest to the policy makers to make suitable amendment/s in the Act providing for an internal/self-contained mechanism qua Human Rights Commission for enforcing its recommendations under Section 18 of the Act. By such amendment/s, the Act would become complete in all fours, leaving no room for procrastination in offering remedial action promptly.

499. Now we part this case with trust and hope that our suggestion finds codified Statutory expression in the realm of Human Rights Laws in the days to come.

500. The terms of the Reference are answered accordingly.

501. All the individual Writ Petitions are to be posted before the Honble Benches concerned for disposal on the respective merits of the Writ Petitions, after taking note of our answers to the Reference.

(S.V.N.,J.) (V.P.N.,J.) (M.S.,J.)
-02-2021

Suk/Dn
Index: Yes/No
Internet: Yes/No

S.VAIDYANATHAN, J.
V.PARTHIBAN, J.
and
M.SUNDAR, J.

suk/dn

Pre-Delivery Order in
W.P.Nos.41791 of 2006 etc. batch

-02-2021