CHAPTER IV

THE PROTECTION OF HUMAN RIGHTS ACT, 1993 AND THE NATIONAL HUMAN RIGHTS COMMISSION

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4.1 Introduction

The United Nations Educational Scientific and Cultural Organization (UNESCO) mooted the idea of the creation of an impartial institution for the protection of human rights in the States as early as 1946. In pursuance of the resolution of the General Assembly adopted in 1966, the Economic and Social Council requested the Human Rights Commission of the United Nations to consider the question of creating a National Commission of Human Rights to perform certain functions related to the observance of the International Covenants on Human Rights. The question was taken up by the Commission in 1970 and it recommended that the question of establishment of National Commission of Human Rights in each Member State of the United Nations ought to be decided by each Government of the Member State keeping in view the traditions and institutions of each country. The Commission in 1978 again emphasized the need for the creation of a National Institution. But all these attempts, however, were fruitless.

Realising the importance of such an institution or commission, the World Conference on Human Rights in 1993 urged Governments to strengthen national structures and institutions of society, which play a role in promoting and safeguarding human rights. The Vienna Declaration and Programme of Action adopted by the World Conference prompted a number of States to establish such institutions.

4.2 Historical Background

The Western countries, America in particular, criticised India on the violation of human rights by Indian armed forces and para-military forces, especially, in the State of Jammu and Kashmir. In the early 1990’s India
felt the need for establishing a Commission as a positive response to the criticisms of the foreign Governments in the context of political unrest and violence in Punjab, Jammu and Kashmir, the North-East and Andhra Pradesh. Though it is now a well-recognised fact that terrorism is a serious violation of human rights. America, never missed the opportunity to criticize India, whenever Indian security forces sought to deal sternly with extremists and ultras. America claims to be the champion of human rights all over the world. America's practices of human rights are discriminatory. They use human rights as an instrument to harass and even coerce other States. At the same time, America criticises India and China for alleged violations of human rights. America has adopted a liberal and biased attitude regarding human rights violations in Pakistan, even though Pakistan's record in upholding human rights is not only unsatisfactory but also deplorable. America also pressurizes international financial institutions, which grant loans, not to give or grant loans or financial aid to such States. In addition to the pressure from foreign countries, there was a strong demand from the domestic front as well for the creation of a National Human Rights Commission. All these led the Government to enact a law to establish a Human Rights Commission. The Government's proposal to establish the Commission was of course sudden and without due deliberations. The President of India on September 27, 1993 promulgated an Ordinance for the creation of a National Human Rights Commission.

Justice Ranganath Misra, the former Chief Justice of India, was appointed the Chairperson of the Commission on October 12, 1993. Justice M.N. Venkatachaliah, the former Chief Justice of India assumed
office on November 26, 1996 as the Chairperson after the retirement of Justice Rangnath Mishra. Justice J.S. Verma, the former Chief Justice of India became the Chairperson on November 4, 1999 when Justice Venkatachaliah attained the age of 70 years. After the retirement of Justice J.S. Verma on January 16, 2003, the former Chief Justice of India Justice A.S. Anand was appointed the Chairperson of the Commission.


The Human Rights Commission Bill introduced in the Lok Sabha on May 14, 1992 was referred to the Standing Committee on Home Affairs of the Parliament. The President of India promulgated an Ordinance, which established a National Commission on Human Rights on September 27, 1993, owing to pressure from foreign countries as well as from the domestic front. Thereafter, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the ordinance promulgated by the President. The Bill became an Act, having received the assent of the President, or January 8, 1994 (Act 10 of 1994) and was published in the Gazette of India, Extraordinary Part II, Section I, on January 10, 1994. Thus, the Protection of Human Rights Act (No. 10 of 1994) came into force. Article 1(3) provided that the Act should be deemed to have come into force on the 28th day of September 1993. Section 1(2) states that the Act is extended to the whole of India and that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters related to any of the entries enumerated in List I or List III in the Seventh Schedule of the Constitution applicable to that State. The purpose of the enactment is laid down in the Preamble of the Act i.e., it provides for the establishment of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights.
4.3.1 Definition of Human Rights under the Act

Section 2(d) of the Act defines human rights as 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. The above definition, however, limits the scope of the functioning of the National Human Rights Commission. India, therefore, ratified the two Covenants — International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. But the Covenants are not directly enforceable as law before the Indian courts. The definition of human rights under the Protection of Human Rights Act 1993 limits human rights strictly to the fundamental rights embodied in part III of the Constitution, which are enforceable by the courts in India. A pertinent question naturally arises here: why was the Commission established for the protection of fundamental rights when they are being constitutionally guaranteed and are enforceable by the courts? It appears that the main purpose of the enactment was to provide a better protection of human rights.

4.4 National Human Rights Commission (N.H.R.C.)

Chapter II of the Act deals with the constitution of the National Human Rights Commission (N.H.R.C.). Section 3 of the Act lays down that the Central Government shall constitute a body known as the National Human Rights Commission.

N.H.R.C. is an eight-member body. The Commission consists of:

a) A Chairperson who has 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.

Besides these, the Commission shall include:

e) The Chairperson of National Commission for Minorities
f) The Chairperson of the National Commission for the Scheduled Castes and Scheduled Tribes

g) The Chairperson of the National Commission for Women

The Act also makes provision for a Secretary General who shall be the Chief Executive Officer of the Commission, who shall exercise such powers and discharge such functions of the Commission as are delegated to him. As pointed out by the Supreme Court in *Paramajit Kaur v. State of Punjab,* the Chairperson of the Commission in his capacity as a judge of the High Court and then as a judge of the Supreme Court and also as Chief Justice of India, and so also the two other members of the Commission who have held high judicial offices as Chief Justice of High Courts, have throughout their tenure, considered, expounded and enforced the fundamental rights and are, in their own way, experts in the field.

The headquarters of the National Human Rights Commission (N.H.R.C.) is located at Delhi. The Commission may, however, with the previous sanction of the Central Government establish offices at other places in India.

4.4.1 Appointment of Chairperson and other Members

The President appoints the Chairperson and other members of the Commission after obtaining the recommendations of the Committee consisting of:
a) **Prime Minister - Chairperson**
b) **Speaker of the House of People - Member**
c) **Minister in charge of 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 Chairperson of the Council of States - Member**

### 4.4.2 Term of Office of the Members

The person appointed as Chairperson and the members shall hold the office for a term of five years from the date of their appointment or until he or she attains the age of seventy years\(^5\) whichever is earlier. The Chairperson and the members shall hold office for a period of five years from the date on which they enter upon their office. They are eligible for reappointment for another term.

### 4.4.3 Removal of a Member of the Commission

The Chairperson or any other member of the Commission may be removed from his office by an order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on enquiry, reported that the Chairperson or such other member ought on any such ground to be removed. But despite this provision, the President may by an order remove from office the Chairperson or any other member if the Chairperson or such other person is:\(^6\)

a) adjudged an insolvent or
b) engaged during his term of office in paid employment outside the duties of his office or
c) unfit to continue in office by reason of infirmity of mind or body or
of unsound mind and stands so declared by a competent court.

e) convicted and sentenced to imprisonment for an offence which in the opinion of the president involves moral turpitude.

4.4.4 **Powers and Functions**

The functions of the Commission are as follows:

1) The Commission shall inquire suo motu or on a petition presented to it by a victim or any person on his behalf into complaints of (a) violation of human rights or abatement thereof or (b) negligence in the prevention of such violation by a public servant.

2) The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

3) The Commission shall 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.

4) The Commission shall 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 will recommend measures for their effective implementation.

5) The Commission shall review the factors, including acts of terrorism that inhibit exercise of one's human rights as well as the safeguards currently in force and make appropriate recommendations.

6) The Commission shall study the treaties and other international instruments on human rights and make recommendations for their effective implementation.

7) The Commission will undertake and promote research in the field of human rights.
8) The Commission shall spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means.

9) The Commission shall encourage the efforts of non-governmental organisations and institutions working in the field of human rights.

10) The Commission may perform any other function it may consider necessary for the promotion of human rights.

11) 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 shall not be deferred till the submission of the annual report. The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively 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.

12) The Commission shall perform functions pursuant to the directions issued by the Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution. The Supreme Court in Paramjit Kaur v. State of Punjab stated, "the Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted." In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any condition. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment of law, and thus acts *sui generis*.
The Commission while inquiring into complaints shall have all the powers of a civil court trying a suit under the Code of Civil Procedure of 1908, and 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. The Commission has the power to request any person 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 requested 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. The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised 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 from there.

The Commission may, after completing the inquiry recommend to the appropriate Government or authority to take action against the person concerned where the inquiry discloses the violation of human rights. It may also recommend the appropriate Government or authority to grant necessary 'interim relief' to the victim or to his family members. The Commission may approach the Supreme Court or the High Court concerned to pass such directions, orders or writs as that court may deem necessary. The Commission provides a copy of the inquiry report to the petitioner or his representative. It shall also send a copy of its
inquiry report together with its recommendations to the Government concerned or authority that shall, within a month, forward to the Commission its comments on the report, including the action taken or proposed to be taken. The Commission shall publish its inquiry report together with the comments of the Government or authority concerned, if any, and the action taken or proposed to be taken by the appropriate authority on the recommendations of the Commission.

The Commission in accordance with the power conferred on it by sub-section (2) of Section 10 of the Act made the regulations, which are called National Human Rights Commission (Procedure) Regulations, 1994. These Regulations came into force with effect from March 1, 1994. Regulation No. 8 dealing with procedure for making complaints was substituted by N.H.R.C. (Procedure) Amendment Regulations, 1996.12

4.5 Procedure for Dealing with Complaints

Regulation 8 of the National Human Rights Commission (Procedure) Regulations, 199413 lays down the following procedure for dealing with complaints of alleged violation of 'human rights':

1. All complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a bench of two members constituted for the purpose not later than two weeks of receipt thereof. Ordinarily complaints of the following nature are not entertainable by the Commission:

   a) in regard to events which happened more than one year before the making of complaints.

   b) with regard to matters which are sub-judice

   c) which are vague, anonymous or pseudonymous

   d) which are of frivolous nature; or

   e) those which are outside the purview of the Commission
2. No fee is chargeable on complaints.

3. Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of the complaints, the Commission shall, however, entertain complaints in any language included in the Eighth Schedule of the Constitution. It shall be open to the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

4. The Commission may, in its discretion, accept telegraphic complaints and complaints conveyed through fax.

5. The Commission shall have the power to dismiss a complaint in limine.

6. Upon admission of a complaint, the Chairperson/Commission shall direct whether the matter could be set down for inquiry by it or should be investigated into.

7. On every complaint on which the Chairperson/Commission takes a decision to either hold an inquiry or investigation, the Secretariat shall call for report/comments from the Government/authority concerned giving the latter a reasonable time therefore.

8. On receipt of the comments of the authority concerned, a detailed note on the merits of the case shall be prepared for consideration of the Commission.

9. The directions and recommendations of the Commission shall be communicated to the Government/authority concerned and the petitioner as provided in Section 18 and 19 of the Act.

10. 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 appropriate 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 the complaint and leading of evidence 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.

11. Where investigation is undertaken by the team of the Commission or by any other person under its discretion, the report shall be submitted within a week of its completion or such further time as the Commission allows. The Commission may, in its discretion, direct further investigation in a given case if it is of the opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to properly dispose the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may direct inquiry to be carried by it and receive evidence in course of such inquiry.

12. The Commission or any of its members when requested by the Chairperson may undertake visits for an on-the-spot study and where such study is undertaken by one or more members, a report thereon shall be furnished to the Commission as early as possible.

4.5.1 Steps After Inquiry

After the inquiry under the Act is complete the Commission may take any of the following steps.14

1. Where the enquiry 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 Government or the
authority concerned the initiation of proceedings for prosecution or such actions the Commission deems fit against the person or persons concerned.

2. Approach the Supreme Court or the High Court concerned for such direction, order or writs as that court might deem necessary.

3. Recommend to the Government or the authority concerned 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 enquiry report together with its recommendations to Government or the authority concerned and the Government authority concerned 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.

6. The Commission shall publish its enquiry report together with the comments of the Government or the authority concerned, if any, and the action taken or proposed to be taken by the Government or the authority concerned on the recommendations of the Commission.

Regulation 11 of the National Human Rights Commission (Procedure) Regulations, 1994 further provides that report of follow-up action shall be submitted to the Commission at every subsequent sitting indicating therein the present stage of action on each item on which the Commission has taken a decision in any of its earlier meeting, except the items on which no further action is called for.
4.5.1 Procedure with Respect to Armed Forces

Section 19 of Protection of Human Rights Act, 1993 provides:

1. Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of armed forces, the Commission shall adopt the following procedures, namely:
   a. it may, either on its own motion or on receipt of a petition, seek a report from the Central Government
   b. after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

2. The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

3. The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

4. The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representatives.

It is stated that the members of the armed forces and the para-military forces cannot be regarded as persons above the law. They should come under the purview of the N.H.R.C. as they have, in the past, committed a number of acts, which amount to serious violations of human rights. Excesses of the army or the para-military forces in Kashmir and North East are likely to be curbed if the N.H.R.C. starts taking up cases against them on the complaint of the families of victims. Lack of jurisdiction over military and para-military forces has been pointed out in International forums as a serious infirmity affecting the credibility
of the N.H.R.C. This has led the N.H.R.C. to recommend to the Government for the exclusion of para-military forces from the meaning of the word 'armed forces'. However, the Government have not yet accepted the recommendations.

4.6 State Human Rights Commissions (S.H.R.C's)

The Protection of Human Rights Act under Chapter V also provides for the setting up of State Human Rights Commission\(^\text{15}\) in States consisting of a Chairperson who has been a Chief Justice of a High Court, one member who is, or has been, a Judge of a High Court, one member who is, or has been, a District Judge in that State and two members to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights. The Governor shall appoint the Chairperson and other members of the Commission.

The State Commission is empowered to perform all those functions, which have been entrusted to the National Human Rights Commission. However, paragraph C of Section 29 excludes the study of treaties and other International Instruments on human rights from the purview of S.H.R.C. The study of such treaties and the eligibility to make recommendations for their effective implementation are the exclusive domain of the N.H.R.C. The State Commission may inquire into violations of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule of the Constitution.\(^\text{16}\) Section 36(1) of the Act, however, states that the State Human Rights Commission shall not enquire into any matter which is pending before a National Commission or any other statutory Commission duly constituted under any law in force.
The Commission is required to submit its annual report to the State Government and it may submit at any time special reports on any matter, which in its opinion is of such urgency or importance that it cannot be deferred till the submission of the annual report. The State Government shall submit these reports before each House of State Legislature with a memorandum of action taken or/and the reasons for non-acceptance of the recommendations, if any.17

The States having their own S.H.R.Cs are Jammu and Kashmir, Himachal Pradesh, Punjab, Rajasthan, Madhya Pradesh, Chhattisgarh, Maharashtra, Kerala, Tamil Nadu, West Bengal, Assam and Manipur. Uttar Pradesh, from where the N.H.R.C. receives maximum number of complaints of human rights violations every year, set up a S.H.R.C. in October 2002. Similarly, Orissa and Bihar Governments have also issued Notifications for constituting S.H.R.Cs in their respective States. It is to be noted that certain State Governments have informed the N.H.R.C. of their difficulty in establishing the Commissions because of financial constraints or due to the non-availability of retired Chief Justice or Justices of the High Court whose presence is essential to the proper composition of the five member Commission envisaged under the provisions of Section 21(2) of the Protection of Human Rights Act of 1993.

The N.H.R.C. in its 1998-99 report has recommended that the State level Commissions be established as early as possible, where they do not yet exist. It is indeed desirable that every State should set up S.H.R.C. in view of the fact that the issue of promotion and protection of human rights of people in a civilized society is a matter of prime concern because in spite of various Constitutional and legal safeguards and
institutional mechanism for upholding the fundamental rights of the people such rights are often violated. The Chairperson of the National Human Rights Commission has written to all Chief Ministers in respect of this matter and reminded them frequently of the necessity of constituting the S.H.R.C. The National Human Rights Commission in its 1999-2000 report has observed that it is disappointed with the slow pace with which State Governments are acting to constitute S.H.R.Cs. The Commission has also noted that not all the State Human Rights Commissions, that have been established, are being appropriately supported through the provision of adequate financial and manpower resources. Greater political will is, therefore, required at the State level, combined with encouragement from the Central Government and the major political parties to proceed conclusively in this direction. If State Human Rights Commission is established in the States and their work is co-ordinated with that of the N.H.R.C. much confusion and duplication could be averted.

4.7 Human Rights Courts in Districts

Chapter VI of the Act comprising Sections 30 and 31 makes the provisions relating to the creation of Human Rights Courts in each District. 18

The setting up of Human Rights Courts in every District of the country for the speedy trial of offences arising out of violation of human rights is a novel provision of the Act. Section 30 of the Act provides for the setting up of Human Rights Courts by the State Governments, with the concurrence of the Chief Justice of the High Court by Notification, specifying for each District a Court of Sessions to be a Human Rights Court. For every Human Rights Court, the State Government in accordance
with Section 31 of the Act shall appoint a Public Prosecutor or an advocate who has been in practice as an advocate for not less than seven years for the purpose of conducting cases in the Humans Rights Courts. Such a person shall be called a 'Special Public Prosecutor'.

It is, however, to be noted that it is not mandatory for the States to create Human Rights Courts in each and every District as Section 30 of the Act expressively uses the expression the State Government 'may set up the Courts'. However, in order to provide speedy trial of offences arising out of violations of human rights, it is desirable that States particularly where human rights violations take place in large numbers should establish such courts. In the past such courts were Notified in the States of Andhra Pradesh, Assam, Sikkim, Tamil Nadu and Uttar Pradesh. Tamil Nadu and Assam have constituted Human Rights Courts in Chennai and Guwahati respectively. In Uttar Pradesh, the Governor notified Human Rights Courts with the concurrence of the Chief Justice of the High Court of Allahabad. The court has been lying dormant since 1995 due to the non-appointment of Special Public Prosecutors. Section 30 of the Protection of Human Rights Act of 1993 does not lay down the jurisdiction and procedures to be followed by such courts.\(^\text{19}\)

The National Human Rights Commission in its 1998-99 reports has drawn attention to the ambiguity regarding the precise nature of offences that could be tried by these courts. It has recognized that substantive amendments to Section 30 of the Act are necessary to enable the courts to execute a speedy trial of the offences arising out of the violations of human rights. These courts cannot serve any fruitful purpose until a comprehensive legislation is passed to that effect.
4.8 **Recommendations of the Commission (N.H.R.C.)**

By the end of December 2000, the Commission submitted seven reports to the Government along with a number of recommendations suggesting steps to make the functioning of the Commission more effective for the promotion and protection of human rights. Some of the recommendations are:

1. The Commission recommended amendments to the Protection of Human Rights Act, 1993 to ensure more autonomy to the Commission so that it can grant relief to the victims or to their family members.


3. The Commission recommended for making reforms and educating the Police. It recommended that serious action be taken on the second report of the Police Reforms Commission, 1979 including those that suggest the insulation of the investigative function of the Police from political pressure.

4. Custodial crimes are particularly heinous and revolting as they reflect betrayal of trust by a public servant against defenceless persons. The Commission recommended that the Indian Prison Act of 1894 should be revised. The Commission has prepared a new 'All India Jail Manual' for making reforms in the prison system. The Commission in its 1999-2000 report recommended that in order to bring about qualitative improvement in prison administration officers of proven integrity and competence should be selected.
5. The Commission expressed the view that to make people aware of their human rights there is the need for an effective movement which unfortunately is not in force, in spite of the existence of a large number of N.G.Os.

6. The Commission stated that one of its priorities relating to human rights is to improve the status of the Scheduled Castes and Scheduled Tribes and of the minorities. The Commission opined that the nation requires a vast programme of social regeneration to deal with ancient societal wrongs.

7. The Commission suggested that the dialogue between policy makers, the security forces, and human rights proponents be sustained. This can contribute greatly to clarity of thought and action in dealing with insurgency and terrorism.

8. The Commission recommended that the para-military forces and the Army make it a point to report directly to the Commission any instance of death or rape occurring while a person is in their custody.

9. The Commission recommended that the right to education be enforced if the nation is to prove its seriousness in the efforts to end child labour.

10. It suggested that both the Doordarshan and the All India Radio should increase their involvement in enhancing human rights awareness.

11. The Commission recommended a further step aimed at increasing awareness of human rights in the country like the inclusion of questions relating to such rights in the general knowledge paper of the Civil Services Examinations. The Commission pointed out that this would lead to a greater sensitization on human rights issues and give impetus to the nation's attempts at fostering a culture of human rights among aspiring civil servants of the country.
12. The Commission in its 1998-1999 and 1999-2000 reports recommended the early setting-up of State Human Rights commissions. It has repeatedly approached the States, which have not yet set up S.H.R.Cs to take action to set up institutions at an early date.

13. The Commission in its 1998-1999 report recommended that a time-bound programme be embarked upon for the speedy clearance of criminal cases in the courts through the High Courts of the respective States which alone have exclusive control over the subordinate judiciary.

14. The Commission in its 1999-2000 report recommended that the reports of the Commission be promptly placed before Parliament and be allowed to be released to the public.

15. The Commission in its 1999-2000 report recommended that the Government of India should undertake comprehensive steps to root out untouchability by implementing the provisions of the Protection of Civil Rights Act, 1976 and the Prevention of Atrocities against Scheduled Castes and Scheduled Tribes Act, 1989 more vigorously than hitherto.

16. The Commission in its 1999-2000 report recommended the improvement of certain aspects of the administration of criminal justice in India.

4.9 An Evaluation of N.H.R.C.

The National Human Rights Commission has earned considerable prestige and reputation by its suo motu action. In fact its very first action related to the Bijbehara Incident 22 (in Jammu and Kashmir) in which there were press reports of death of about 60 civilians as a result of firing by the security forces. In the first meeting of the Commission held on
November 1, 1993, it issued suo motu notice to the Government of India seeking a report on the incident. Upon investigation, it recommended disciplinary proceedings against 14 members of the security force, prosecution after a magisterial enquiry, payment of compensation and review of the circumstances and conditions of deployment of security forces. Another development is the use of N.H.R.C. by the Supreme Court of India as an investigative arm of the Court. On a public interest complaint regarding the cremation by the Punjab Police of several dead bodies as they were "unclaimed" in the past few years, the Supreme Court described the issue as "a flagrant violation of human rights on a mass scale" and asked the Commission to launch a thorough probe to "determine all the issues raised by the petitioner including the question of compensation."23

The Commission has also handled some cases on alleged custodial deaths in such an effective manner that it has inspired the confidence of the people. For example, with regard to the case of the alleged custodial death of Madan Lal in Delhi,24 the Commission took cognizance of this case suo motu and appointed Sri. R.C. Chopra, a member of higher judicial service to investigate the matter. The report dated March 11, 1994 submitted by Mr. Chopra inferred that Sri. Madan Lal had died as a result of physical assault while he was in custody in a Police Station, for which an Assistant Sub Inspector and three Constables were held prima facie responsible. The Commission accepted this report and recommended to the Government of Delhi, to take departmental action against the Assistant Sub Inspector and pay an interim compensation of Rs. 59,000/- to the dependent of the deceased person. On 30th May 1994, the Government of Delhi conveyed its acceptance of the recommendations of the Commission.
The following table suggests that there has been a rapid rise in the number of complaints received by the Commission.²⁵

Table 4.1  
Number of Complaints Received by the Commission

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>Number of complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1993-1994</td>
<td>496</td>
</tr>
<tr>
<td>2.</td>
<td>1994-1995</td>
<td>6,987</td>
</tr>
<tr>
<td>3.</td>
<td>1995-1996</td>
<td>10,195</td>
</tr>
<tr>
<td>4.</td>
<td>1996-1997</td>
<td>20,514</td>
</tr>
<tr>
<td>5.</td>
<td>1997-1998</td>
<td>36,791</td>
</tr>
<tr>
<td>6.</td>
<td>1998-1999</td>
<td>40,724</td>
</tr>
<tr>
<td>7.</td>
<td>1999-2000</td>
<td>50,634</td>
</tr>
<tr>
<td>8.</td>
<td>2000-2001</td>
<td>71,555</td>
</tr>
<tr>
<td>9.</td>
<td>2001-2002</td>
<td>69,083</td>
</tr>
<tr>
<td>10.</td>
<td>2002-2003</td>
<td>68,779</td>
</tr>
</tbody>
</table>

Torture is pervasive and a daily routine in every one of India's 28 States, irrespective of whether the arrests are made by the Police or the para-military forces or the army. Thousands have died because of torture during the last decade. Torture is also wide spread in areas where the Government faces armed opposition – Jammu and Kashmir, Punjab, Assam and the North-Eastern States and the regions of Central India where the Naxal groups are active. Rape is a common form of torture. The Police abuse women to carry out a proxy war against what their men folk stand for.
At the end of the 1970s, the Police in Bihar, faced with a steep rise in armed robbery carried out by gangs of young men, decided to blind suspects as a deterrent to offenders. Over 30 men and boys were deliberately blinded with thick needles and acid between October 1979 and November 1980. The youngest victim was a 16-year-old boy (Bhagalpur Blinding case).\textsuperscript{26} Dalits and Adivasis are frequently tortured for political reasons, to deter them from or punish them for involvement in organised resistance against economic exploitation. Often Adivasi and Dalit villages have been raided and their inhabitants tortured and raped by Police acting in collusion with local ruling groups, such as landlords. Such abuses are common in Bihar, Uttar Pradesh and Jharkhand.

In May 1988, Police raped 23 women from Majhua village in Purnea District in Bihar during a raid on the village reportedly instigated by a local contractor as part of an attempt to intimidate villagers who had refused to work for less than the minimum wage. The fully armed Police reportedly responded to any resistance with violence. The rape victims included an “Eighty” year-old woman and a baby girl aged “One.”\textsuperscript{27}

In Jammu and Kashmir, rape is practised as part of a systematic attempt to humiliate and intimidate the local population during the counter-insurgency operations. In May 1996 Mubina Gani, a teenage bride who was held up due to a roadblock, was raped by the Border Security Force Jawans. The bride was on her way from the marriage ceremony to her husband’s home. Her aunt who was seven months pregnant was also raped. The victims reported that soldiers had fired at them without giving any warning about the road block, killing one man and wounding several others before raping the two women.\textsuperscript{28}
The questions that arise here is: Is the torture legal? Can confessions be extracted by torture and produced before a court of law as evidence? Are the courts of law going to accept such confessions as evidence of guilt? In this context T.N Dhar remarks:

Article 20 (3) of the Constitution, Sections 330 and 331 of the Indian Penal Code and Section 29 of the Indian Police Act of 1881 clearly forbid torture. Rule 3 of the Police Code of Conduct lays down that “the Police should not usurp the functions of judiciary and sit in judgement on cases, nor should they avenge individuals and punish the accused.” Section 101 of the Indian Evidence Act clearly stipulates that the arrested person has the right to have the benefit of the presumption of innocence till his guilt is proved. Several Supreme Court judgements have upheld the spirit of the Act. The rape of a woman in Police custody now carries enhanced punishment of ten years imprisonment under Section 376 of the Indian Penal Code. In case of death in Police custody a magisterial enquiry has been made mandatory under Section 176 of the Code of Criminal procedure.29

The N.H.R.C has made enquiries into thousands of complaints of the violations of human rights. It has also investigated a number of serious cases of human rights violations and has made a number of recommendations suggesting measures to be taken to curb the human rights violations. But the Commission has been least effective in protecting human rights. It is contended that the Commission has ‘no teeth’ and it can take no action directly. It is so because the Commission is simply an investigating body. The Commission, having made an enquiry into a particular case can only recommend punitive measures and the Government may or may not accept its recommendations.
Its recommendations are sent to the appropriate authorities for action to be taken against the person who has violated the human rights or it may recommend to the Government or to the appropriate authorities to provide interim relief to the victim. The Commission (N.H.R.C.) does not have powers of prosecution. It does not provide any remedy other than what has already been provided under the Constitution by way of fundamental rights. The only benefit the victim gets is that after the investigations by the Commission if it is established that a violation of human rights has taken place, it can only recommend to the courts to initiate proceedings. The courts are more likely to look seriously at cases sent by the Commission in comparison to the victim or activists approaching it directly.

The enquiry made by the Commission is not always impartial in view of the fact that it is not equipped with an independent investigative agency. The investigative wing of the Commission is not at all effective. Yet another point to be noted here is the narrow definition of human rights given under the Act. It limits human rights to only the rights relating to "life, liberty, equality and dignity of the individual guaranteed by the Constitution." This definitely limits the scope of the Commission to ensure the observance of human rights.

In order to remove its deficiencies and to make it a more effective instrument for the protection and promotion of human rights in the country, the N.H.R.C has set up an Advisory Committee headed by the former Chief Justice of India, A.M. Ahamadi to suggest revision of the Protection of Human Rights Act, 1993. The seven member Committee submitted its report on October 19, 1999 with its recommendations for the financial autonomy of the National and State Human Rights Commissions,
the creation of the State Human Rights Commissions in the States and
the change in the composition of the N.H.R.C with two judicial and three
non-judicial members of whom one should be a woman. The Committee
also recommended a change of the definition of the armed forces to bring
the human rights violations by para-military personnel under the purview
of N.H.R.C.\textsuperscript{31}

\textbf{4.10 Conclusion}

Even though the Commission can neither render decisions like
a regular court nor can its decisions be enforced like judgements,
nevertheless the National Human Rights Commission cannot be branded
as a weak or 'Impotent Body'. Headed by a former Chief Justice of India
and consisting of Judges of the Supreme Court and chief justices of High
Courts, it commands great respect. The N.H.R.C. is a statutory body and
derives its power and authority from an Act of the Indian Parliament. Its
work in the field of prevention of custodial deaths, rape and torture has
been quite praiseworthy: N.H.R.C's direction to all District Magistrates
and Superintendents of Police to report to the Commission all incidents of
custodial deaths or rape within twenty four hours has made salutary
impacts in preventing such incidents. If the denial of human rights were
analysed, one would find a combination of political, economic, social,
psychological and moral factors responsible for the same to a large
extent. These factors along with many other deep-rooted customs and
superstitions may be regarded as the fundamental causes for the denial
of human rights.
References and Notes

1 United Nations General Assembly Resolution, 2200(c) XXI, December 16, 1966.

2 Protection of Human Rights Act 1993 (Act 10, 1994), Section 3(2).

3 A.I.R. 1999 S.C. 340-344

4 Human Rights Act, Section 4 (a-f).

5 Human Rights Act, Section 6(1).

6 Human Rights Act, Section 5(2).

7 Human Rights Act, Section 12 (a-j).


10 Human Rights Act, Section 13(3).

11 Human Rights Act, Section 18(2) & (3).

12 Published in Gazette of India (Extraordinary) Part II, section I, November 11, 1996.

13 Regulations were made by N.H.R.C. in exercise of the powers conferred on it by sub-section (2) of section 10 of the Protection of Human Rights Act 1993 (Act 10 of 1994).

14 Human Rights Act, Section 18 (1-6).

15 Human Rights Act, Section 21 (2) (a-d).

16 Human Rights Act, Section 21(5).

17 Human Rights Act, Section 28.

18 Human Rights Act, Section 30.

19 Annual Reports of the N.H.R.C. 1997-98, 116. (The Madras High Court in a Criminal Revision petition case (No. 868/96) under Article 227 of the Constitution constituted a Special Bench to formulate the rules and procedures for the functioning of the Human Rights courts set up in accordance with the provisions of the protection of Human Rights Act of 1993 in all districts in Tamil Nadu and the High Court of Madras requested the commission to place its views before it on the various aspects of the scope, sweep, amplitude, powers, jurisdiction and functioning of the courts. The commission placed its views and suggestions. The High Court of Madras delivered its judgement on 23 June 1997 giving its views on various aspects of the functioning of the courts).

India signed the Convention on October 14, 1997.


Gobinda Mukhoty 1261.

Gobinda Mukhoty 1261.


Other members of the Committee are Justice Rajinder Sachar, Former Chief Justice of the Delhi High Court, Mr. P.C. Balakrishna Menon, former Chief Justice of Himachal Pradesh, High Court, Dr. Rajeev Dhavan, Senior Advocate, Supreme Court, Prof. N.R. Madhva Menon, member of the Law Commission of India, Dr. Ramaiah, Former Law and Justice Secretary and Shankar Sen, Director General, Investigation Division in the N.H.R.C.