## CHAPTER V
### THE KERALA STATE HUMAN RIGHTS COMMISSION - CONSTITUTION, POWERS, FUNCTIONS AND ACTIVITIES

<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>INTRODUCTION</td>
<td>126</td>
</tr>
<tr>
<td>5.2</td>
<td>HISTORY OF K.S.H.R.C.</td>
<td>126</td>
</tr>
<tr>
<td>5.3</td>
<td>COMPOSITION AND POWERS</td>
<td>135</td>
</tr>
<tr>
<td>5.5</td>
<td>ACTIVITIES OF THE K.S.H.R.C. DURING THE PERIOD FROM 1ST APRIL 2000 TO 31ST MARCH 2001</td>
<td>163</td>
</tr>
</tbody>
</table>
5.1 Introduction

In tune with the spirit of the Universal Declaration of Human Rights on 10th December 1948 and pursuant to the Protection of Human Rights Act, 1993, the Government of Kerala set up the Kerala State Human Rights Commission in the year 1998. It was indeed a dream come true for all those who valued humanistic values. Notwithstanding the fact that Kerala is often described as the most enlightened State of the Union, that this State has been a tragic victim of a multitude of human rights violations remains an inescapable reality. At a time when the oppressed and the downtrodden commoners had no institutional framework to fall back upon in the matter of the violation of their Constitutionally protected rights, the launch of the Kerala State Human Rights Commission has been welcomed by one and all.

5.2 History of K.S.H.R.C.

Chapter V of the Protection of Human Rights Act of 1993 (Central Act 10 of 1994) contains the provision for the setting up of the State Human Rights Commissions.¹ The Government of Kerala had decided to constitute the said Commission in the State in accordance with Section 21 sub-section 1 of the above said Act. Accordingly, the Government of Kerala constituted the Kerala State Human Rights Commission on 11th December 1998.² However, owing to financial strains the Government of Kerala constituted the K.S.H.R.C. with three members, instead of five as stipulated in the Protection of Human Rights Act 1993 and has not yet increased the number of its members.

The Government of Kerala constituted the Kerala State Human Rights Commission on 11th December 1998 in exercise of the powers
conferred upon it by Section 21 of the Protection of Human Rights Act, 1993. The Kerala State Human Rights Commission is comprised of a Chairperson and two members, who are appointed by the Governor of Kerala. Chapter V of the Protection of Human Rights Act, 1993, stipulates that, the State Human Rights Commission shall have five members including the Chairperson.

In exercise of the powers conferred by sub-section (1) of Section 22 of the Protection of Human Rights Act, 1993 (Central Act 10 of 1994), the Governor of Kerala appointed Mr. Justice M.M. Pareed Pillay, retired Chief Justice of the High Court of Kerala, as the Chairperson, and Dr. S. Balaraman, former Pro-Vice-Chancellor of Cochin University for Science and Technology and Sri. T.K. Wilson, District and Sessions Judge as members of the Kerala State Human Rights Commission as per Notification dated 11th December 1998.

In February 1999, the State Government appointed on deputation Sri. C.P. Jayachandran, District and Sessions Judge, who was on other duty as Motor Accidents and Claims Tribunal, Manjery as the Commission’s Secretary. Sri. Jayachandran assumed charge on 22nd March, 1999. In June 1999, the State Government appointed on deputation Sri. Ramesh Chandra Bhanu I.P.S., Inspector General of Police, to head the investigation team. Sri. Ramesh Chandra Bhanu assumed charge on 11th June 1999. The State Government provided supporting staff to the Commission consisting of a Registrar, a Finance Officer, two Section Officers, six grade I Assistants, two grade II Typists, one Driver and three Peons. They were all appointed on deputation.
The Kerala State Human Rights Commission set up its office at a rented facility namely ‘Arkanilayam’ on M.P. Appan Road, Vazhuthacaud, Trivandrum on 14th May 1999. The Commission has been functioning in the above said premises since then. For its functioning, the Commission depends solely on the funds provided by the State Government as grant-in-aid under its budgetary allocation.

Mr. Justice M.M. Pareed Pillay, the Chairperson of the Kerala State Human Rights Commission, retired on 18th September, 2003 when he reached seventy years of age. Thereupon, by an order of the Government,6 dated 16th October 2003, Dr. S. Balaraman was authorised to act as the Chairperson of the K.S.H.R.C. The other remaining member of the K.S.H.R.C., T.K. Wilson filed a writ petition7 before the High Court of Kerala, questioning the appointment of the member Dr. S. Balaraman as acting Chairperson of the K.S.H.R.C. Dr. S. Balaraman was appointed acting Chairperson by the Government of Kerala to fill the vacancy caused by the retirement of Justice M.M. Pareed Pillay. Mr. Wilson's plea was that as he was the judicial member of the Commission and as he was senior to Dr. Balaraman by virtue of the fact that although both of them were sworn in on the same day, it was the petitioner who was the first to be sworn in and hence he was legally entitled to be appointed as the acting Chairperson of the K.S.H.R.C. in lieu of Dr. Balaraman. In the order of the High Court dated 4th November in Writ Petition (C) No. 34528/2003, Justice Ramachandran Nair held that the Law Secretary to the Government could be appointed as the third member of the Commission on a provisional basis as he was the senior most District Judge in the State judiciary and that he was the most suitable person among the three to hold the post of acting Chairperson of the K.S.H.R.C.
Dr. S. Balaraman filed an appeal before the Division Bench of the Kerala High Court challenging the judgement and order of the High Court in WP (C) 34528/2003. Having considered the contentions raised in the memorandum of the Writ Appeal, the Division Bench stayed the operation of the impugned order dated 04/11/2003 in Writ Petition (C) No. 34528 of 2003 was 'stayed' in the Writ Appeal filed by Dr. S. Balaraman (I.A. 2426 of 2003 in Writ Appeal no. 1807 of 2003). The order authorised the appellant Dr. S. Balaraman to act as the Chairperson of the K.S.H.R.C. subject to the final decision on the Writ Appeal.

By virtue of the powers granted to the State Governor by sub-Section (1) of Section 22 of the Protection of Human Rights Act 1993 (Central Act 10 of 1994), Sri. Sikander Bakht, Hon. Governor of Kerala appointed Mr. Justice V.P. Mohan Kumar, retired judge, High Court of Kerala and Prof. S. Varghese, retired Deputy Director of Collegiate Education as members of the State Human Rights Commission. They assumed charge as members of the Commission on 28th January 2004 and 19th January 2004 respectively. By virtue of the powers conferred by sub-section (1) of Section 22 of the Protection of Human Rights Act 1993, R.L. Bhatia, the Hon. Governor of Kerala, appointed Justice A. Lakshmikutty, retired Judge of the High Court of Kerala, as member of the K.S.H.R.C. In exercise of the powers conferred by sub-section (1) of Section 25 of the Protection of Human Rights Act 1993, the Governor of Kerala authorised Mr. Justice V.P. Mohankumar, member of the Kerala State Human Rights Commission, to act as the Chairperson of the Commission constituted as per Notification G.O.(P) No. 523/98/ Law dated 17th December 1998 for a period of three months or until the appointment of a Chairperson to fill such vacancy, which ever was earlier.
Mr. Jomon Puthenpurackal, a well-known human rights activist, questioned the appointment of Justice Mohan Kumar as acting Chairperson of the K.S.H.R.C. in the High Court of Kerala by filing a Writ Petition\textsuperscript{12} on the ground that the appointment of the acting Chairperson violated the provisions of the Protection of Human Rights Act 1993. Chapter V of the Act [vide Section 21, sub-section (2), clause (a)] explicitly stipulates that a retired Chief Justice of a High Court shall be the Chairperson of the State Human Rights Commission. Section 21 of the said Act in sub-section 2 says that the State Human Rights Commission shall consist of five members. But the Government of Kerala by Notification (vide No. GS - 5 5412004 dated 15\textsuperscript{th} January 2004), appointed only two members - Justice V.P. Mohan Kumar and Prof. S. Varghese.

In this case the respondents are: No.1, The State of Kerala represented by the Chief Secretary to the Government; No.2, Sri. V.P. Mohan Kumar, retired judge, High Court of Kerala and No.3, Professor S. Varghese, retired Deputy Director of Collegiate Education. In the Writ Petition (W.P.(C) No. 3992/2004) the petitioner Mr. Jomon Puthenpurackal prayed before the High Court to restrain respondents 2 and 3 from continuing to function as members of the Kerala State Human Rights Commission. After hearing the arguments of Mr. K.Ramkumar, Advocate for the petitioner, Mr. V.K. Beeran, Additional Advocate General for respondent No.1, Mr. T. Sethumadhavan, Counsel for respondent No.2 and Mr. N. Nandakumara Menon, Counsel for respondent No.3, the Division Bench of the Kerala High Court comprising acting Chief Justice N.K. Sodhi and Justice K.K. Denesan passed the following order.\textsuperscript{13}
We have also heard the learned Counsel for the parties in regard to the prayer for interim stay and are, prima facie, of the view that a two member Kerala Human Rights Commission as constituted by the State Government cannot be allowed to function.

The challenge in this Writ Petition is to the appointment of the second and third respondents as members of the Commission. Section 21 in chapter V of the Protection of Human Rights Act, 1993 provides for the constitution of the Commission. Sub-section (1) of Section 21 provides that the State Government may constitute a body to be known as the State Human Rights Commission. The use of the word 'may' makes it clear that it is not mandatory for the State Government to constitute a State Commission. It may constitute such a Commission or it may not. If it decides to constitute a Commission then according to sub-section (2) of Section 21 of the Act, it shall consist 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 who are human rights activists having knowledge of or practical experience in matters relating to human rights. The use of the word 'shall' in sub-section (2) makes it imperative for the State Government to constitute the Commission in terms thereof. In the case before us the State Government constituted the Commission on 11-12-1998 and appointed Mr. Justice M.M. Pareed Pillay, a retired Chief Justice of this Court as the Chairperson and Dr. S. Balaraman and Sri T.K. Wilson, District Judge as members in terms of clauses (a), (d) and (c) respectively of sub-section (2) of Section 21 of the Act. The term of the Chairperson expired on 18-09-2003 when he attained the age of 70 years.
and the tenure of the other two members also came to an end on 15-12-2003 and 18-12-2003. Thereafter all the five members of the Commission as stipulated under sub-section (2) of Section 21 of the Act had to be appointed afresh. The Governor in exercise of the powers under sub-section (1) of Section 22 of the Act appointed Mr. Justice V.P. Mohan Kumar, a former Judge of this Court and Professor S. Varghese, retired Deputy Director of Collegiate Education as members of the Commission in terms of clauses (b) and (d) of sub-section (2) of Section 21 of the Act. The Chairperson of the Commission has not been appointed nor has any District Judge been appointed as member. Another person having knowledge of or practical experience in matters relating to human rights in terms of the aforesaid clause (d) too has not been appointed. After appointing the second and the third respondent as members of the Commission, the Governor of Kerala authorized the second respondent to act as Chairperson of the Commission for a period of three months or until the appointment of a Chairperson to fill such vacancy whichever is earlier. The question that arises for consideration is – could this be done?

We are, prima facie, of the view that the two members, namely, the second and third respondents cannot function as a Commission till such time all the members of the Commission in terms of sub-section (2) of Section 21 of the Act are appointed. It is the admitted case of the parties that till date the Commission has never been constituted in terms of sub-section (2) of Section 21 of the Act inasmuch as at no point of time were 5 members ever appointed. In 1998 when the Commission was first constituted, only three members including the Chairperson were appointed and they continued to function till their tenure expired. Now only two members have been appointed.
The Chairperson has to be a former Chief Justice of a High Court. The second respondent does not possess this qualification. He has been appointed a member of the Commission in his capacity as a former Judge of this Court. He could not be notified as a Chairperson of the Commission. The argument of the learned Additional Advocate General is that on the retirement of Mr. Justice Pareed Pillay as Chairperson of the Commission on 18-05-2003 a vacancy in the office of the Chairperson had been caused and, therefore, in exercise of the powers under Section 25 of the Act the Governor could authorize the second respondent to act as Chairperson till such time a Chairperson was appointed. We are unable to accept this contention. If we lift the veil it becomes abundantly clear that the mandatory provisions of the Act have been circumvented and the State Government has done indirectly what it could not do directly. The vacancy contemplated by Section 25 of the Act presupposes that the office of the Chairperson is first filled up and someone who is eligible is appointed and thereafter if during his tenure a vacancy were to occur due to death, resignation or for any other reason it would be open to the Governor to exercise the powers under Section 25 of the Act. Inaction on the part of the Government in appointing a Chairperson does not result in the vacancy of the office of the Chairperson so as to entitle it to nominate any one member of the Commission as its Chairperson. Moreover, the date on which the vacancy in the office of the Chairperson occurs is relevant because it is only from amongst the members existing on that day that the Governor can authorize one of them to act as Chairperson as an interim measure. If the term of all the members has expired as in the case before us the Governor could not after appointing new members ask one of
them to act as a Chairperson under Section 25 of the Act. As already observed, the vacancy occurred on 18-09-2003 and on that day respondents 2 and 3 were not members of the Commission and, therefore, none of them could be asked to act as a Chairperson. According to Section 10 read with Section 29 of the Act the Commission is required to meet at such time and place as the Chairperson may think fit and the Commission is required to regulate its own procedure. A headless body cannot be allowed to function. Since the full Commission has not been constituted in terms of Section 21 of the Act, the second respondent who has been asked to discharge the function of the Chairperson is ineligible on account of the fact that he has never been a Chief Justice of a High Court, we are prima facie of the view that the second and third respondents cannot function as a Commission till such time all the members including its Chairperson are appointed in terms of Section 21 of the Act. We, therefore, restrain the second and third respondents from functioning as the Commission till such time the Commission is properly constituted in terms of Section 21 of the Act.

The State of Kerala filed petition for Special Leave to Appeal\(^{14}\) (vide Civil No. 7082/2004) before the Supreme Court of India challenging the judgement and order of the High Court of Kerala in Writ Petition 3992/2004 dated 11/03/2004. The learned senior counsel who appeared for the State of Kerala stated that in addition to the two members in the State Human Rights Commission one more member should be appointed at the earliest. He further stated that no qualified person as per statutory requirements was available to be appointed as the Chairperson and that the Commission was lying dormant.\(^{15}\)
In view of the statement by the learned counsel appearing for the State of Kerala the Supreme Court suspended the impugned order of the High Court of Kerala in W.P. 3992/2004, dated 11/03/2004. The Supreme Court let the Commission function with two members or with three members subject to the appointment of a third one. Justice V.P. Mohan Kumar was allowed to function as acting Chairperson.¹⁶

5.3 Composition and Powers

The State Commission shall consist of:¹⁷

1. A Chairperson who has been a former Chief Justice of a High Court
2. One member who is or has been a Judge of a High Court
3. One member who is or has been a District judge in that State and
4. Two members to be appointed from among persons having knowledge or practical experience in matters relating to human rights.

Besides these, there shall be a Secretary who is the Chief Executive Officer of the State Human Rights Commission and he shall discharge such functions of the State Commission as are delegated to him. The Secretary to the K.S.H.R.C. may be appointed by deputation from the category of Assistant Registrar in the High Court Service or from the category of Under Secretary in the Kerala Secretariat Service. The K.S.H.R.C. can enquire into violations of human rights only in respect of matters relating to any of the entries enumerated in List II and List III in the Seventh Schedule of the Constitution.¹⁸

5.3.1 Appointment of Chairperson and Members

The State Governor shall appoint the Chairperson and other members of the Commission. Members of the Commission (K.S.H.R.C.) shall be appointed by the State Governor on the recommendations of a committee consisting of:¹⁹
1. The Chief Minister (Chairperson)
2. Speaker of the Legislative Assembly (Member)
3. Minister in charge of the Department of Home in that State (Member)
4. Leader of the Opposition in the Legislative Assembly (Member)

It is also provided that where there is Legislative Council in a State, the Chairperson of that Council and the Leader of the Opposition in that Council shall also be the members of the Committee.

5.3.2 Term of Office

All the members of the K.S.H.R.C. shall hold office for a period of five years from the date of appointment or until the age of seventy years, whichever is earlier. No member shall hold office after he has attained the age of seventy years. A member is eligible for reappointment for another term of five years subject to the age limit of 70 years. 20

5.3.3 Removal of Members

The Chairperson or any other member of the State Commission shall be removed only by the President of India on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, holds an enquiry in accordance with the procedure prescribed by the Supreme Court and reports that the Chairperson or such other member, as the case may be, ought to be removed on the following grounds: (a) is adjudged an insolvent or (b) engages during his term of office in any paid employment outside the duties of his office (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 (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President of India involves moral turpitude. 21 The President may by order remove such a person from his office.
5.3.4 Investigation

The Commission may for the purpose of conducting any investigation pertaining to the enquiry utilise the service 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. For the purpose of investigation into any matter pertaining to the enquiry, any officer or agency whose services are utilised under Section 14(1) shall be subject to the direction and control of the Commission.22

No statement made by persons in the course of giving evidence before the Commission shall be used against him23 in any civil or criminal proceedings except for 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 enquiry.

In exercising the powers conferred by Section 27 of the Protection of Human Rights Act 1993, read with Rule 15 of the Kerala State Human Rights Commission Rule 1998, the Notification issued by the Government of Kerala24 lays down that the team of investigation of the Kerala State Human Rights Commission shall consist of the following categories of Police and other officers to assist the Inspector General of Police appointed under Section 27 of the said act for the efficient performance of the functions of the Commission: (a) one Superintendent of Police (b) one Deputy Superintendent of Police (c) one Circle Inspector of Police (d) one Assistant Sub Inspector of Police (e) two Head Constables (f) two Police Constables (g) two Confidential Assistants (h) one Typist (i) two Drivers.
Section 27 of the Human Rights Commission, Rule (Procedure) Regulations 2001 stipulates that where an investigation is undertaken by the Commission’s investigation team or by any officer or investigation agency of the Government as enjoined under Section 14 of the Act, the report of investigation shall be furnished to the Commission within 10 days of the completion of the investigation unless further time has been allowed by the Commission.

5.3.5 Inquiry into Complaints

The Commission while inquiring into the complaints of violations of human rights may –

i) call for information reports from the State Government or any other authority or organization subordinate there to 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 enquire 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.
5.3.6 Steps After Enquiry

The Commission may take any of the following steps upon the completion of an enquiry held under the Protection of Human Rights Act of 1993 namely:

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 Authority concerned for the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the person or persons concerned.

2. Approach the Supreme Court or High Court concerned for such directions, orders or writs as the 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 members of his/her family, as the Commission may consider necessary.

4. Subject to the provisions of Clause (5) provide a copy of the enquiry report to the petitioner or his representative.

5. The Commission shall send a copy of its enquiry report together with its recommendations to the Government or authority concerned and the Government or 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 authority concerned, if any, and the action taken or proposed to be taken by the Government or authority concerned on the recommendations of the Commission.
5.3.7 Constitution of Benches

A single 'Bench' of the Commission shall deal with all complaints. If, however, the 'Bench', dealing with a particular complaint, having due regard to the nature of the issue involved is of the opinion that the case should be considered by a 'Division Bench' or 'Full Bench,' the 'Single Bench' may refer the case to the Chairperson who may constitute a 'Division Bench' or 'Full Bench,' as the case may be, and refer the case to the bench so constituted.\(^7\)

5.3.8 Complaints

(i) Every complaint should disclose a complete picture of the matter complained of and disclose the name and address of the respondent. The Commission may, if it considers necessary,\(^8\)

a) Call for further relevant information from the complainant

b) Direct the complainant to file an affidavit in support of the complaint

c) Obtain sworn statements of the complainant

d) Take statement of the complainant by issuing a commission for that purpose or by any other means considered necessary

(ii) No fee shall be chargeable on complaints. The Commission may, in its discretion, accept telegraphic complaints and complaints conveyed through fax. Complaints and other communications relating to violation of human rights requiring urgent attention shall, however, be placed by the court officer before the Registrar who shall cause it to be placed immediately before the member available\(^9\) for appropriate orders.

Complaints may be made to the Commission (K.S.H.R.C.) in Malayalam or in English or in any of the languages included in the 8th Schedule of the Constitution of India. However, when complaints are made in any language other than Malayalam or English, translated version of the complaint either in Malayalam or in English shall also be furnished.
5.3.9 Complaints not Ordinarily Maintainable

The Commission may dismiss complaints of the following nature.

a) Illegible
b) Vague, anonymous or pseudonymous
c) Trivial or frivolous
d) Barred under sub-section (1) or (2) of Section 36 of the Act
e) Allegations that do not disclose involvement of any public servant
f) Issue raised relates to civil disputes, service matters, labour or industrial dispute
g) Allegations that do not raise any violation of human rights
h) If the matter raised is sub-judice before a court or tribunal
i) The matter is covered by a judicial verdict/decision of the National Commission or a State Commission
j) Where the complaint is only a copy of the petition addressed to some other authority
k) Where the petition is not signed or where the original petition is not sent to the Commission
l) Where the matter raised is outside the purview of the Commission on any other ground

5.3.10 Sittings of the Commission

The Commission shall ordinarily hold its meeting at its headquarters at Thiruvananthapuram during the first and last week of every month. However, the Commission may at the discretion of the Chairperson hold its meeting and sitting at any other place in the State. The Commission may hold camp sitting at District headquarters and at such other places taking into consideration the exigencies of individual cases and the
interest of the general public. There shall be three zones in the State for facilitating the functioning of the Commission, as indicated below.\textsuperscript{31}

a) Northern Zone - The Districts of Kasargod, Kannur, Kozhikode, Malappuram, Palakkad and Wayand.

b) Central Zone - The Districts of Trissur, Ernakulam, Kottayam and Idukki

c) Southern Zone - The Districts of Alappuzha, Kollam, Pathanamthitta and Thiruvananthapuram

5.3.11 Finance and Audit

The State Government shall pay the State Commission by way of grants such sums of money as the State Government may think fit to be utilised for the purposes of the Act.\textsuperscript{32} The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V of the Act.

The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor General of India. The accounts of the State Commission shall be audited by the Comptroller and Auditor General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor General. The accounts of the State Commission, as certified by the Comptroller and Auditor General or any person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.\textsuperscript{33}
5.3.12 Powers and Functions of the Commission

The Commission shall perform all or any of the followings 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 abettement 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, after 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) Undertake and promote research in the field of human rights;

g) 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;

h) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and

i) Any other functions as it may consider necessary for the promotion of human rights.
5.3.13 Powers Relating to Inquiries

a) 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 and in particular in respect of the following matters:

i) Summoning and enforcing the attendance of witnesses and examining them on oath

ii) Discovery and production of any document

iii) Receiving evidence on affidavits

iv) Requisitioning any public record or copy thereof from any court or office

v) Issuing commissions for the examination of witnesses or documents, and

b) 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 of 1860.

c) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized on 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 there from subject to the
provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

d) 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 is committed in the view 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, forward the case to a Magistrate who has 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 Section 346 of the Code of Criminal Procedure, 1973.

e) Every proceeding before the Commission shall be deemed to be a judicial proceeding. 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, 1973.35

5.4 Activities of the K.S.H.R.C. during the period December 1998 to 31st March 2000

The Kerala State Human Rights Commission received 2485 petitions during the period between its inception and 31st March 2000. Out of these, the Commission disposed of 1096 petitions.36 Owing to the lack of awareness among the general public about the spheres of activity, jurisdiction and powers of the Commission, a considerable number of these petitions were found outside the purview of the Commission and as such not sustainable. In the case of certain petitions, which were found prima facie sustainable, the Commission promptly took quick and effective action, which helped a lot to defuse the situation through the effective mediations of N.G.O.s.
In May 1999, a petition was received by the Commission wherein the aggrieved parties were groups of fishermen belonging to the Pentecostal Denomination of Christians, who earned their living from catching and selling fish at Vizhinjam, about 20 kilometers south of Thiruvananthapuram. They used to be continuously harassed by the Priest of the local Church. He was hostile to them because they refused to return to the particular denomination of the Church from which they had separated. He used to employ coercive methods to wreak vengeance upon them, which included loudspeaker announcement from the church persuading the people to prevent the petitioners from catching and selling fish at Vizhinjam. It was alleged that the Priest succeeded in his attempt and the petitioners were in dire distress. The petitioners apprehended danger to their lives and the life of their families. Sensing the dangerous situation in the area, the Commission immediately authorised Sri. Kadakkavoor Vikraman, Secretary General of the Human Rights Protection and Welfare Council, to visit the area to make an on-the-spot study of the situation and also to make sincere and tactful efforts to bring about an amicable settlement.37 Sri. Vikraman, after analysing the situation, convened a meeting of all the parties concerned including the Sub-Inspector of Police, Vizhinjam. By this timely action, the Commission could avert a major clash between two religious denominations and now they all live in perfect harmony.

Matters dealt with by the Commission may generally be categorized as follows:

a) Action taken on petitions to the K.S.H.R.C.
b) Action taken suo-motu by the K.S.H.R.C.
c) Visits conducted by the K.S.H.R.C.
Action Taken on Petitions

5.4.1 Human Rights Petition (H.R.P.) No. 3/99

The grievance of the petitioner was that, while he was working as overseer in the section Office of the Public Works Department, North Circle, Vadakara, he was placed under suspension on 07-06-1990 as per the order of the Chief Engineer P.W.D. He was given subsistence allowance only up to August 1995. After that date, it was abruptly stopped without intimation to him. The petitioner sought the intervention of the Commission for resumption of payment of subsistence allowance from September 1995 onwards.

The Commission called for the report of the Chief Engineer, P.W.D, Thiruvananthapuram under Section 17(1) of the Protection of Human Rights Act. It was stated in the report that a crime was registered against the petitioner by the Vadakara Police on the basis of the complaint that he had mentally and physically tortured his wife leading to her suicide on 05-06-1990 and that he was remanded for four days in judicial custody by the Judicial Magistrate of the First Class, Vadakara. Since the petitioner violated the Government Servants’ Conduct Rules, he was placed under suspension from 07-06-1990. It was further stated in the report that order had been passed to resume payment of subsistence allowance to him. As the petitioner’s grievance was redressed by resumption of payment of subsistence allowance, the matter was treated as closed.38

5.4.2 H.R.P. No. 28/99

The case of the petitioner was as follows:

Once there existed a burial ground in the Thiruvalla Municipal area, which was managed by the Municipality. While so, some individuals built
houses in the vicinity of the burial ground and, in due course, approached the Municipality for closure of the burial ground. The Municipal Authorities thereupon prevented further burials in the ground as a result of which people started burying dead bodies in their own house compounds. The area where the petitioner lived being heavily waterlogged, burial of bodies in house compounds resulted in pollution of soil and drinking water. He had, on many occasions, approached the Municipal Authorities for reopening the burial ground but to no avail. The Municipality was found dragging its feet on a proposal for the construction of an electric crematorium for which it had already acquired funds. The Secretary, Thiruvalla Municipality, stated in his report that the burial ground was closed on account of a temporary injunction from the Munsiff Court, Thiruvalla, on a suit filed by persons living in the vicinity of the burial ground. The Municipality secured funds from the State and Central Governments for setting up an electric crematorium but could not proceed with the matter in view of a High Court order directing it to maintain the status quo. As this order was lifted subsequently, steps were taken for the construction of the electric crematorium with the help of two Calcutta based companies. In view of this, the Commission disposed of the petition.

5.4.3 H.R.P.No. 43/99

The petitioner retired as Headmaster of an aided School at Vilabhagom, Varkala. Though he was paid pension from 01-04-1998 onwards, his death-cum-retirement gratuity amounting to Rs. 54,250/- was not paid even after 13 months of his retirement. The Commission called for the report of the Authority concerned and, having found that there was negligence in the matter of payment of gratuity to the petitioner, recommended to the Secretary, General Education, Government of Kerala to take expeditious steps so that the petitioner got the amount
within a month. The Commission further recommended payment of interest at 12% on the amount from 01-07-1998 till the date of disbursement. It also recommended that the amount of interest thus paid should be recovered from those officials who were found responsible for the delay.40

5.4.4 H.R.P. No. 64/99

The petitioner retired from State Government service on 30-05-1998 as Tehsildar, Revenue Recovery. His grievance was that he was not paid his pensionary benefits on the ground that a disciplinary case was pending against him and that one year had elapsed since the date of his retirement. The Commission, after studying the report filed by the Secretary, Revenue Department, in this regard, recommended to the Government that the disciplinary proceedings pending against the petitioner be disposed of within 2 months of the receipt of the recommendation so that the petitioner might get his superannuation benefits without further delay.41

5.4.5 Human Rights Miscellaneous Petition (H.R.M.P. No.51/99)

The petitioner’s complaint was that the drinking water supplied by the Vellanad Panchayat was muddy and contaminated. The Panchayat was supplying drinking water to eleven wards from the filtration plant, Vellanad. It was alleged that the gallery and water tank of this centre were not cleaned and maintained properly. The Commission called for the report of the Chief Engineer in the matter. As the report received was found not satisfactory, the Commission carried out a spot visit and was convinced that there was substance in the petition and that the water supplied from the filtration centre was not only unsafe for drinking purpose, but the supply itself was inadequate. The Commission discussed the matter
with the officials concerned. The Chief and the Superintending Engineers agreed to supply clean potable water in adequate quantity after carrying out necessary cleaning and repairs within a period of 3 months. The Commission again visited the spot and found that work was rapidly progressing. The officials assured the Commission that the work would be completed by the end of January 2000. The officials of the Commission visited the spot on 22-03-2000 and found that the work was completed properly. The Commission obtained a completion report from the official concerned on 27-03-2000. It also made inquiries and found that the beneficiaries were fully satisfied with the work done. As the grievance was redressed the matter was treated as closed.\(^42\)

5.4.6 H.R.M.P. No. 666/99

The petitioner stated that, while he was on his way to the hospital at Karimkunnam around 9 a.m. on 10-08-1996, one K.R.Gopi, who was on hostile terms with him, assaulted him on the road. He alleged that, although both of them sustained injuries in the scuffle, the Police were not impartial. The Deputy Superintendent of Police stated in his report that a crime had been registered by the Karimkunnam Police against the petitioner based on the first information statement of Gopi who lost a tooth in the scuffle and that, or the basis of the first information statement of the petitioner, a crime was registered by the same Police against Gopi. It was further stated that the case was duly investigated and charge sheets were laid before the Judicial First Class Magistrate Court, Thodupuzha. The report also revealed that the matter was squared up between the parties later by compounding the case under Section 320(8) of Cr.P.C. In view of this, the Commission closed the petition.\(^43\)
5.4.7 H.R.M.P. No. 725/99

The petitioner stated that both the father and his son who stayed in the neighbouring house sexually assaulted her unmarried daughter. She feared that she would not get justice from the Police. The Commission called for the report of the Sub-Inspector of Police, Mukundapuram. According to the report, a crime was registered against both the offenders and the charge sheets were furnished to the Public Prosecutor, North Paravoor. When the Commission examined the petitioner, she admitted that the Police in the matter took prompt action. The petition was, therefore, treated as closed. 44

5.4.8 H.R.M.P. 910/99

The petitioner was a School teacher. During the course of his service, an agitation in the School caused by the dismissal of 7 School teachers took a serious turn and the School had to be closed down for a period of about one year. When the petitioner retired from service, this period was considered break of service and was not counted for pensionary benefits. His grievance was that the break in service was due to no fault of his and that it was unfair that it should have been treated as a break.

The Commission called for the report of the Assistant Educational Officer, Valapad. As the A.E.O. stated in his report that the period in question was treated as qualifying service, the grievance of the petitioner was deemed as redressed and the petition was closed. 45

5.4.9 H.R.M.P. 1002/99

The petitioner sustained injuries in a motor accident but he did not get any compensation. The reason according to him was that he could not get the necessary certificates from the authorities concerned to prefer his claim for compensation. The Commission called for and obtained duly
attested copies of the necessary documents like first information report, wound certificate and scene-mahazar and handed over these certificates to the petitioner to enable him to obtain compensation.46

5.4.10 H.R.M.P. 1034/99

The petitioner stated in her petition that, although her husband had died under suspicious circumstances, no step was taken to investigate the crime and book the culprit. She also stated that, due to the inaction of the Village Officer, Mattathoor, she could not get financial help.

The Superintendent of Police, Thrissur, stated in his report that the post-mortem certificate of the petitioner's deceased husband clearly indicated that the death was on account of consumption of too much liquor on empty stomach. In view of this and also of the disabling provision contained in Section 36(2) of the Protection of Human Rights Act, the Commission declined to entertain the petitioner's request for fresh investigation in the matter. However, the Commission took cognizance of the delay in her getting financial assistance and directed the authorities concerned to expedite action in this regard. Incidentally, the petitioner stated before the Commission that the taluk official concerned had forwarded her request to higher authorities.47

5.4.11 H.R.M.P. 1510/99

The grievance of the petitioner was that, though the High Court of Kerala had directed the State Government to release to him a sum of Rs. 1,670/-, which was withheld from the gratuity payable to him, within a period of three months, the State Government did not comply with this direction. The Commission called for the report of the Divisional Forest Officer in the matter. It was stated in the report received from him that, although the Sub-Treasury Officer, Ettumanoor, was directed by him in
February 1997 to release the said amount, this was not done in spite of repeated reminders, the Sub-Treasury Officer having taken the plea that the necessary records were not available.

The Commission took a serious view of this official malfeasance and disregard of the court’s verdict and recommended to the Government disbursal of the amount without further delay, besides payment of a sum of Rs.500/- to the petitioner by way of compensation for the delay in payment.48

**Action taken on Suo Motu basis by the K.S.H.R.C.**

Cases into which the Commission conducted inquiries suo motu are many. For the purpose of illustration, a few cases are stated below.

**5.4.12 Killing of an Under-trial in Attakulangara**

In the sensational news item about the killing of an under-trial in front of the sub-jail, Attakulangara, Thiruvananthapuram, in a bomb blast, the ‘Indian Express’ daily highlighted the security lapses leading to the tragedy. The Commission considered it proper to take cognizance of this incident suo motu49 and make an inquiry about the security lapses on the part of the authorities concerned. Accordingly, the Commission called for the report of the Director General of Police and Deputy Inspector General of Prisons, Thiruvananthapuram. After a meticulous study of the report submitted by the Additional Director General of Police, Prisons, the Commission recommended to the Government that expeditious steps be taken to augment the strength of the staff of the Central Prison and sub-jails. It recommended further that in case there was delay on the part of the public Service Commission to prepare the rank list of warders, the vacancies in the category should be filled temporarily through employment exchanges. The Commission also made two important recommendations viz., that (i) special category prisoners should invariably
be escorted by Police Constables and (ii) the Jail Wardens should properly brief the escort Police about the antecedents of the under-trials while they are being taken out of the prisons.

5.4.13 Obscene Cinema Posters

Based on a press report in the 'Jenmabhoomi' daily that obscene cinema posters were on display in the Municipal area of Punalur, the Commission called for a report in the matter from the Deputy Superintendent of Police, Punalur. It was stated in his report that steps had been taken to prevent the recurrence of such incidents.

5.4.14 Taluk Hospital Aluva

The Commission has taken suo motu cognizance of a report that appeared in the 'Mathrubhoom' daily about the inadequacy of facilities in the Taluk Hospital, Aluva and the unsatisfactory service of the doctors and the staff in the hospital. It called for the report of the authorities concerned. It was stated in the report that remedial measures had already been taken and steps were afoot to ameliorate the conditions in the hospital. The Commission decided to make suitable recommendations to the Government in this regard.

Visits Conducted by the K.S.H.R.C.

5.4.15 Jail Visits

During the period 1998-2000 March, the Commission made seven jail visits under Section 12 (C) of the Protection of Human Rights Act, with a view to studying the conditions in the jails from the human rights' perspective. Of these visits, two were to the central prisons at Thiruvananthapuram and Kannur, three were to the sub-jails at Aluva, Moovattupuzha and Palghat and one each to the open jails at Nettukalatheri and Women's Prison, Neyyattinkara in Thiruvananthapuram District.
The Commission found the conditions of the Central Prison, Thiruvananthapuram, quite satisfactory vis-à-vis the human rights of the inmates. The Central Prison, Kannur, was overcrowded. Besides, there were complaints from inmates like (i) non-intimation to them of the outcome of appeals filed by them (ii) making those who were detained for non-payment of maintenance liable for such payment during the period of their incarceration (iii) inordinate delay from the part of the Police in the issuance of certificates to enable the prisoners to obtain parole and (iv) inadequacy of food allowance for prisoners when they were taken to court.

The visit to the sub-jail at Palghat also brought to light certain shortcomings like overcrowding, inadequacy of toilet facilities, scarcity of drinking water, poor maintenance, problems connected with providing medical aid to the inmates etc. In all these cases, suitable recommendations were put forward to the State Government. The visits convinced the Commission that the conditions in the jails were, by and large, satisfactory. The visit to the sub-jail Moovattupuzha convinced the Commission of the need for constructing residential quarters for the Superintendent and rest room for the wardens. In this case also recommendations were made to the State Government by the K.S.H.R.C.

5.4.16 Hospital Visits

During this period from 1998 to 2000 March, the Commission visited 9 hospitals in the State such as the District Hospitals at Kollam, Mananthavadi and Palakkad, the Taluk Hospital at Aluva, the mental health centres at Oolampara, Thiruvananthapuram and Kuthiravattom, Kozhikode, the Government Hospital at Vellarada, the Government Hospital, Thiruvananthapuram and the Victoria Hospital at Kollam. The overall impression the Commission gathered from these visits was
quite dismal. Besides the general malady like overcrowding of patients, shortage of hospital staff and their indifferent attitude towards patients, the total lack of hygiene found in most of the hospitals really deplorable. To cite an example, most of the wards in the Government Hospital, Thiruvananthapuram, smelled obnoxious, mainly on account of the totally inadequate maintenance of lavatories. In the children's ward excreta was seen on most of the beds. When the horribly dirty mattresses were lifted, cockroaches and other insects were found running about. There were complaints of rude behaviour, indifference and greed for money from the part of the hospital staff. It was pointed out that some of the hospital staffers attached to the labour wards were in the habit of extorting money from by-standers even for revealing the sex of the child. The whole atmosphere was nauseating. A surprise visit carried out by the Commission during night revealed that the lifts were not working and that in the labour wards, two or more patients were accommodated in the same bed.

One strange fact observed by the Commission during the visit to the District Hospital, Kollam, was that although a total sum of Rs. 14.50 lakhs was available for the development of the hospital, (Rs. 10 lakhs from the friends committee and Rs. 4.50 lakhs from the M.P's fund), no steps were taken to utilize this amount.

The hospital at Vellarada was found unfit to be called a hospital at all. The operation theatre, although a newly constructed one, was found to be leaking and it was used to dump records. Besides, the hospital had no lavatory facility. The roads in the compound of the District Hospital, Palakkad were full of potholes and in a deplorable condition.
The conditions in the mental health centre, Oolampara, Thiruvananthapuram, were thoroughly unsatisfactory. There was overcrowding. Doctors and supporting staff were woefully inadequate to cope with the increasing number of patients. The vast hospital ground was in a dismal state of neglect. Wild vegetation covered the whole area. The playgrounds were also not properly maintained; periodical repair and maintenance works were not carried out at all.

The Commission made several recommendations to the Government on the basis of the facts crystallized during the course of these visits. The Commission observed that the treatment meted out to the sick and suffering law-abiding citizens in the hospitals run by the State was worse than the one meted out to the lawbreakers detained in prisons. This appears to be a tragic paradox.

5.4.17 Visit to Agati Mandiram, Palluruthy

The Commission visited the 'Agati Mandiram', Palluruthy on 24th November 1999. There were 196 inmates in the Mandiram, of whom 107 were women. Beggars were also accommodated in the Mandiram. Most of the inmates were those who had been abandoned by their families and or those who had left their families to escape ill treatment. Many of these inmates were found to be suffering from mental maladies requiring prolonged medical attention. Vocational training in handloom weaving, candle making and painting was given to the inmates. However, the asbestos roofing of the building and inadequate number of ceiling fans caused great hardships to the patients. The Commission made recommendations to the Government to improve the conditions of the Mandiram, especially keeping in view the mental state of the inmates.
5.4.18 Conducting Human Rights Awareness Programmes

One of the important functions of the Commission is to conduct awareness programmes to create and build up general public awareness of the various safeguards available for the protection of human rights as per Section 12 of the Protection of Human Rights Act. This can be done through various means such as publications, newspapers, radio and television and by organizing seminars. Keeping this in view, the Commission has prepared pamphlets in Malayalam setting out in clear terms all that one should know about human rights as also details of the Kerala State Human Rights Commission - its constitution, functions, powers and responsibilities. This pamphlet was sent to all the 910 Panchayats in the State requesting them to do whatever they could to effectively spread the message of human rights among the people.

The Commission seizes every opportunity to sensitize people about human rights by addressing meetings organized by N.G.O.s and other organisations. It has addressed well over hundred such meetings, besides giving a good number of radio talks and several television interviews.

Another objective of the Commission is to arrange seminars on human rights. The first step in this direction was taken by convening a meeting at the Office of the Commission on 5th November 1999. The coordinators of National Service Scheme programmes of the Kerala University, Cochin University, Mahatma Gandhi University and Sri Sankaracharya University, Assistant Registrar of Kannur University, Joint Secretary, Directorate of Panchayat, the Joint Director of Panchayat, Government of Kerala and the Deputy Youth Welfare Officer, Directorate of Sports,
Government of Kerala attended the meeting. Sri. Kadakkavoor Vikraman, Secretary General of the Human Rights Protection and Welfare Council, a non-government organization, also attended the meeting. It was resolved at the meeting that human rights orientation programmes might be conducted at all these Universities especially for the benefit of National Service Scheme Programme Officers of affiliated Colleges in order to create in them awareness about the basic ideas of human rights.

In pursuance of this decision, seminars were organized at Baselius College, Kottayam, at the premises of Calicut University, the conference hall of the Sree Narayana College, Kannur, the conference hall of Sree Sankara Sanskrit University, Kalady and at the seminar hall of the Cochin University. Dr. S. Balaraman, member, attended the seminars at Kottayam and at Cochin University premises and delivered keynote addresses. Sri. T.K. Wilson, member, addressed the seminar at Calicut and at the Sanskrit University, Kalady and delivered keynote addresses. Sri. A. Ibrahimkutty, Registrar of the Commission delivered the keynote address at the seminar at the S.N. College premises, Kannur. It is gratifying to note that these seminars were very useful in generating considerable interest on the subject among the participants.54

5.4.19 Meeting of the State Human Rights Commissions Convened by the N.H.R.C.

On 14th October 1999, the National Human Rights Commission convened a meeting of all the State level Human Rights Commissions, at its head office at Sardar Patel Bhavan, New Delhi. Mr. Justice M.M. Pareed Pillay, Chairperson of the Commission, along with Sri. C.P. Jayachandran, Secretary attended the meeting.55
The meeting was presided over by Justice M.N. Venketachelliah, the then Chairperson of the National Human Rights Commission. In his speech he emphasized the need for an integral approach towards human rights problems by the National Commission and the State Commissions. He exhorted the State Commissions to focus their attention on areas like health, literacy and individual dignity. He reiterated in his speech that slavery still exists in society in modern garbs and is cutting at the very roots of democracy. The Chairperson made a special mention of the very heavy backlog of cases in criminal courts and stressed the need to inject modern scientific techniques into the criminal justice system. In view of the fact that the support of judiciary is indispensable for an effective and meaningful functioning of the Human Rights Commissions, the need for evolving appropriate guidelines for discussing the matter with the Chief Justice of the Supreme Court of India was also stressed.

In the discussion that ensued, Mr. Justice M.M. Pareed Pillay, the Chairperson of the Kerala State Human Rights Commission, stated that of the 1036 complaints received by the Commission, 430 were already disposed of. He continued to affirm that with regard to the cases pending in courts, the criminal courts in Kerala generally dispose of the cases within 2 years and the session's courts within one year. He pointed out that camp sittings were held in District centres and various towns with a view to alleviating the difficulties of the common people to whom Thiruvananthapuram, the headquarters of the Commission is inaccessible. As regards, the public health system, he stated that the position in Kerala needed more attention, and therefore, the Commission made it a point to visit various hospitals in the State to give suitable recommendations to the State Government.
5.4.20 Celebration of the “Universal Declaration of the Human Rights Commemoration Day”

The Commission held a function at the Kanakakkunnu Palace, Thiruvananthapuram on 10th December 1999 to observe the ‘Universal Declaration of Human Rights Commemoration day’. His Excellency Mr. Sukhdev Singh Kang, the Governor of Kerala, inaugurated the function. Mr. Justice V.R. Krishna Iyer, former Judge of the Supreme Court and Mr. Justice P.C. Balakrishna Menon, Loka Ayukta, Kerala, addressed the meeting. Mr. Justice M.M. Pareed Pillay, Chairperson of the Commission, presided over the function. Dr. S. Balaraman, member welcomed the distinguished guests and the audience and Sri. C.P. Jayachandran, Secretary to the Commission, proposed the vote of thanks.55

The meeting was followed by two seminars - one on Human Rights Violations and the other on Bonded Labour. Sri. Ramesh Chandra Bhanu, I.P.S., the Chief Investigating Officer of the Commission chaired the former seminar. Dr. Raman Pillay, former Head of the Department of Politics, University of Kerala and Dr. Jancy James, Professor, Institute of English, University of Kerala spoke on the subject. Dr. Alexander Jacob I.P.S., Secretary, Institute of Management chaired the second seminar on bonded labour. Advocate Mr. Cherunniyoor P. Sasidharan Nair, Chairperson Centre for Human Rights Legal Aid and Research, spoke on the occasion. It was followed by a lively discussion.

5.4.21 Important Recommendations

Based mostly on its visits to hospitals and jails, the Commission has made a number of recommendations.57 These have been forwarded to the State Government for implementation. The Commission is aware
that many of the recommendations are difficult to be implemented as these entail financial outlays of the hospitals. Yet the right to get proper medical treatment in hygienic surroundings is an integral part of human rights and, therefore, it calls for special attention of a democratic Government. Corruption, rudeness and utter disregard of the primary task of maintaining neatness and cleanliness on the part of the hospital staff can be got rid of without any extra-pressure on the State exchequer.

In the matter of hospital management, air-conditioning of operation theatres, replacing worn-out sanitary fittings, providing lifts, incinerators and mega generators in major hospitals, modernizing labour rooms, constructing retiring rooms for by-standers, appointing radiologists, police surgeons (in District Hospitals), anaesthetists, nurses trained in psychiatry (at mental health centres), doctors specialized in psychiatry (at all major hospitals), besides constructing rehabilitation centres at mental health centres, are some of the recommendations. The Commission has also highlighted the need for augmenting staff strength to cope with the workload in the hospitals. Another vital suggestion is for opening paying counters in all major hospitals and for the supply of standard quality medicines at a moderate rate for the poor and the needy.

The recommendations based on jail visits undertaken by the Commission include among other things, the following:

a) Separating prisoners suffering from contagious diseases from other prisoners
b) Constructing additional cells in jails where adequate space is not available
c) Providing female escorts to female prisoners whenever they are taken out
d) Providing adequate funds for food of prisoners when they are taken out
e) Providing facilities in prison for teaching yoga to the inmates.
Table 5.1
Petitions Received and Disposed by the K.S.H.R.C (1999-2000) \(^{56}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of petitions received</th>
<th>No. of petitions disposed of</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1655</td>
<td>1338</td>
</tr>
<tr>
<td>2000 up to 31-03-2000</td>
<td>830</td>
<td>120</td>
</tr>
<tr>
<td>Total 1999-2000 March</td>
<td>2485</td>
<td>1458</td>
</tr>
</tbody>
</table>

5.5 Activities of the K.S.H.R.C. During the Period from 1\(^{st}\) April 2000 to 31\(^{st}\) March 2001

During this period the Commission was privileged to continue to have justice M.M. Pareed Pillay as its Chairperson and Dr. S. Balaraman and Sri. T.K. Wilson as members. C.P. Jayachandran continued as the Secretary. Sri. Ramesh Chandrabhanu, Inspector General of Police, continued to be the Chief Investigating Officer of the Commission. The Commission received as many as 4660 complaints during 2000-2001 as against 1655 complaints in 1998-1999.\(^{59}\) This increase in the number of cases received by the Commission indicates the growing faith of the general public in the Commission and the magnitude of their human rights awareness. Of the 4660 petitions received by the Commission in 2000-2001, the Commission has disposed of only 2415 petitions. A few cases dealt with by the Commission are presented here as examples.

Matters dealt with by the Commission may generally be classified into three. They are as follows: (a) Action taken suo motu by the K.S.H.R.C. (b) Action taken on petitions and (c) Visits conducted by the Commission.
Action Taken on Suo Motu by the K.S.H.R.C.

5.5.1 H.R.M.P. No. 47/99

It was reported in the media that around 2.30 a.m. on 19th September 1999 a rotating ceiling fan in Room C-32 of the pay ward attached to the Government Hospital for Women and Children, Thycaud, Thiruvananthapuram, fell down and injured the attendants of the patient. The Commission suo motu took cognizance of the matter and made an enquiry. The enquiry disclosed that the negligence of the authorities in properly maintaining the ceiling fan in the room had caused the physical and mental trauma to the victims. The Commission recommended an interim relief of Rs. 5000/- to the victims who had suffered mental shock and Rs.10000/- and Rs. 7500/- respectively to the two victims who had sustained injuries.60

5.5.2 H.R.M.P. No. 350/2000

This case was suo motu taken cognizance of by the Commission based on press reports which appeared in the Malayalam dailies, viz., the Malayala Manorama and the Mathrubhoomi on 7th February 2000 about the death of an youngster in the Padmatheertham Pond, East Fort, Thiruvananthapuram at the hands of a person alleged to be mentally disturbed.

In the enquiry, it became clear that one Sureshkumar, a person of disoriented mind, had started pelting stones at those assembled at the Padmatheertham pond for taking bath. In the meantime one Sasikumaran Nair, with a view to dissuading Sureshkumar from continuing with his mischief, approached him with a stick in his hand. In the struggle that ensued both Sureshkumar and Sasikumaran Nair fell into the pond and Sasikumaran Nair was drowned. A Police Constable witnessed this incident.
He could not single handedly encounter the mentally disoriented Sureshkumar. From the facts of the case, the Commission came to the conclusion that no public servant was responsible for the incident. However, the Commission held the view that the situation could have been suitably dealt with if the police personnel had been given training in swimming and the Commission recommended to the Government that when persons are recruited to the post of Constables, the Government should include swimming as one of the items in the training given to them.\textsuperscript{61}

5.5.3 H.R.M.P. 678/2000

Based on a press report in the 'Mathrubhoomi' daily dated, 14-03-2000, that the students who appeared for S.S.L.C examination in the Government High School, Chandragiri had to squat on the floor for writing the examination owing to shortage of desks, and benches in the School, the Commission suo motu took cognizance of the matter and called for a report from the District Educational Officer, Kasargod. The reports received from the District Educational Officer and from the Headmaster of the School revealed that the facts mentioned in the paper reports were true. After considering the matter, the Commission recommended to the Government to give directions to the District Panchayat Authorities, Kasargod, to make available sufficient funds for the purchase of desks and benches for the School and for the maintenance and repair of the School building.\textsuperscript{62}

5.5.4 H.R.M.P. No. 1770/2000

This case was taken cognizance of by the Commission on the basis of a report in the 'Madhyamam' daily dated, 02-07-2000 that a boy aged 6 years was fettered to an old minibus on Thrissur-Shornur road and that the boy was being put to inhuman torture.
In the report obtained from the District Collector, Trichur it was stated that the boy was taken to a philanthropic institution known as the 'Pope Paul Mercy Home' and that the child was under its care and protection. It was also stated that the parents of this youngster were given employment in the same institution. Since it appeared to the Commission that the boy was safe and was being looked after by the institution further proceedings in the matter were dropped.

5.5.5 H.R.M.P. No. 3090/2000

Reports appeared in the 'Malayala Manorama' and 'Mathrubhoomi' dailies dated 25-11-2000 that a 7th standard student of Perumbathoor Government High School had been subjected to harsh punishment by a teacher of that School and that consequently the girl had to be hospitalised. The Commission took cognizance of the matter suo motu.

In the report of the Headmistress of the School received by the Commission it was stated that the teacher had only directed the students who made noise in the class to stand up and sit down 6 times as a punishment. It was also stated therein that no complaint was made by anyone against the teacher. The Commission recorded the statement of the guardian of the victim and also the Medical Officer of the Taluk Hospital, Neyyattinkara who had examined the victim. The Commission felt that the punishment inflicted by the teacher was not commensurate with the breach of discipline committed by the student. The Commission observed that even though the question of discipline in an educational institution fell within the domain of the head of the institution and the teaching staff, the corporal punishment imposed on students should not be harsh and out of proportion to the gravity of the breach of discipline committed by the student. The Commission communicated its observation to the Headmistress of the School by a letter.\textsuperscript{63}
Action Taken on Petitions by the K.S.H.R.C.

5.5.6 H.R.M.P. No. 172/99

The petitioner's case was that she had retired from service as first grade Attender from the Medical College Hospital, Thiruvananthapuram on 30-04-1997 and that her arrears of salary for two months and balance of surrender leave salary as per pay revision order dated 01-03-1997 were not disbursed. The report from the Superintendent of Medical College Hospital, Thiruvananthapuram, to the Commission disclosed that her pay was revised on the new scale on 25-11-1998 and that the arrears of salary and the terminal surrender leave salary were claimed and disbursed. Since the pensionary benefits due to the petitioner were disbursed and her grievance was redressed, the petition was closed.64

5.5.7 H.R.M.P. No. 710/99

This was a mass petition filed against the continuance of a toddy shop in a housing colony in T.V. P.Jram Panchayat of Vaikom Taluk in Kottayam District. The Commission recommended to the State Government to take immediate steps to stop the functioning of the toddy shop at the site and to shift the same to a distant place, which would not cause inconvenience to children, women and the public.65

5.5.8 H.R.M.P. No. 925/99

On the basis of a news item in 'The Hindu' daily dated 28-08-1999, Justice Mr. T. Chandrasekhara Menon had put in a petition depicting the plight of 'Nayadis' a 'Scheduled Tribe' living at Karamkodu in Palakkad District. It was stated that the members of this tribe were living on rats and alms. They found it difficult to get even one square meal a day. The petitioner sought an investigation into the matter.

The report obtained by the Commission from the District Collector, Palakkad, disclosed that this tribe was financially and socially very backward.
It was stated further that the literacy level of this tribe was very low and that the rate of dropouts from the Schools was very high. The report listed a number of schemes intended to uplift this community. After considering the extreme backwardness of this community, the Commission recommended to the Government to grant a monthly stipend to the students to continue their education, to provide day care centre attached to the Schools having substantial number of “Nayadi” students and to provide housing facility, financial assistance and occupational training to the members of the tribe.

5.5.9 H.R.M.P. No. 1518/99

The petitioner was the unfortunate mother of a child who was injured seriously while handling scraps collected from the road at Kallikandi of Panoor in Kannur District. She sought an award of compensation for the injuries sustained by the child by an explosive device. During the course of the enquiry it came out in evidence that the boy ‘Amavasi’ while collecting scrap, inadvertently picked up an explosive substance and it exploded depriving him of his left palm and right eye. After considering the circumstances of the case the Commission observed that the Government was vicariously liable for not keeping the public road free from danger and that this failure resulted in the presence of the explosive substance and consequent injury to the child. The Commission recommended an interim relief of Rs. 50000/- to the victim.66

5.5.10 H.R.M.P. No. 420/2000

In this petition the complaint of the petitioner was that rubbish and waste materials were dumped in the pathway near his house. That apart, people were using this pathway as a public lavatory. The petitioner stated that on account of this life had become almost impossible. It was also
stated that the drinking water in the nearby wells had become polluted with filth and rubbish.

In the report received from the Secretary of the Koottikkal Grama Panchayat, it was assured that action would be taken to prosecute those who violated the directions of the Panchayat prohibiting dumping of rubbish and garbage on the pathway and using it as a public lavatory. In the report it was further stated that the Panchayat had decided to acquire a plot to construct a public comfort station in the area. On the basis of the assurance and undertaking given by the Panchayat, the grievance of the petitioner was deemed to have been redressed.67

5.5.11 H.R.M.P. No. 1107/2000

The complaint of the petitioner was that buses, lorries and other vehicles plying in the Aluva area were indiscriminately using air horns in violation of rules and regulations and the officials who were duty-bound to prevent this remained mute spectators.

The Commission called for the report from the Superintendent of Police. The report stated that he had taken necessary steps to implement the direction contained in the judgement of the High Court regarding the use of air-horns. The report assured that all effective steps would be taken to prevent the use of air horns and consequent noise pollution. In view of the report the Commission recommended to the Government to take steps to control sound pollution by insisting upon the use of box amplifiers for advertisement publicity purposes and to prohibit the use of air horns and horns near hospitals and schools.68

5.5.12 H.R.M.P. No. 3/2000

Sri. Binu, Chief Editor of 'Niyama Sameeksha', a law magazine, filed the petition seeking an enquiry into the shocking and humiliating experience of two suspects in a theft case suffering at the hands of the
Chittar Police in Pathanamthitta District. Two persons suspected by the Police were taken away from their homes in the dead of night and were beaten up at the Police Station and later the Police shaved off part of the moustache of one of the suspects and cut the hair of the other in order to humiliate them and to make them look ridiculous. The Commission observed that the Police making a person look clownish and ridiculous is an invasion of his personal dignity. The Commission further observed that it was really unfortunate that the Police in a civilized State like Kerala had committed such a reprehensible act. Since the victims were subjected to assault, harassment and humiliation by the Chittar Police, the Commission recommended to the Government of Kerala to pay an interim relief of Rs. 15,000/- each to the victims and to recover the amount so spent from the personnel of the Chittar Police Station who would be found in the departmental enquiry to be responsible for the violation of human rights.

Visits Conducted by the Kerala State Human Rights Commission

5.5.13 Hospital Visits

During the period 2000-2001, the Commission visited 11 hospitals in the State including Community Health Centres. They were the General Hospital, Thiruvananthapuram, Government Hospital for Women and Children, Thycaud, Government Hospital, Kayamkulam, Government Hospital, Harippad, Government: Hospital, Punalur, Government Hospital, Pathanamthitta, Government Hospital, Mundakkayam, Community Health Centre, Chengannoor, Community Health Centre, Erumeli, Community Health Centre, Adoor and Government Ayurveda Hospital, Kottoor. A few examples of the Commission's hospital visits and its observations are cited below.69

5.5.14 General Hospital, Thiruvananthapuram

The condition of ward no. 9 and the female ward of the General Hospital was deplorable. The stench of the ward kept the people away.
A garbage-dumping yard was found near this ward. The condition of the two cells for keeping patients suffering from rabies was worse than that of a cattle shed. The functioning of the geriatric ward also was not satisfactory. The incinerator was not in working condition. So was the generator. The number of grade II Attenders was inadequate. The condition of the toilets was disgusting.

5.5.15 Government Hospital, Harippad

The bed strength here was only 150, whereas the number of patients who came to the hospital each day was around 1000. The plight of a large number of inpatients of the surgical ward and maternity wards was pathetic. The building where these wards were housed was an old one. The physical condition of the building was such that it could endanger the lives of its occupants. The rooms of the building were damaged and the roof was leaking. The space in the paediatric ward was grossly inadequate. The number of toilets was insufficient and the septic tanks were found overflowing. The hospital had no mortuary as well.

5.5.16 Community Health Centre, Adoor

The condition of the centre that is now functioning as Taluk Hospital was dismal. The patients were accommodated even in the open verandah where the drain was overflowing. The stench emanating from overflowing latrines and drains was unbearable. The premises of the hospital were a breeding ground for mosquitoes and flies. Two to three patients were accommodated on a single bed. Waste materials left by the patients in the wards were dumped in the corners of the wards.
Visits Conducted by the Kerala State Human Rights Commission in Jails, Police Stations, Agathi Mandiram etc.

5.5.17  Sub Jail, Ottappalam

The Commission visited the sub jail, Ottappalam on 15-02-2000 with a view to studying the living conditions of the inmates there. The visit disclosed that the condition in the jail was by and large satisfactory. It was in fact a matter of satisfaction for the Commission that the inmates of this prison were happy with the administration of the jail and no one had any complaint against any of the jail officials. A flaw the Commission noticed was that the space provided in the cells for passing urine was not fitted with doors. Inadequate staff strength and the absence of a separate block for female prisoners were the other shortcomings. It was gratifying that the construction of a new block for the female prisoners was in progress.

5.5.18  Police Station, Kanjirappally

On the basis of a petition against the lack of basic facilities at the Kanjirappally Police Station, the Commission visited the station on 20-11-1999. The visit revealed that there was no rest room for the Police Officers. There was only one bathroom for the Police Officers though the staff strength was 45. Another serious handicap the Commission noticed was that the Police Station had no lock-up or a vehicle. The vehicle it had once was sold in public auction and no replacement was made. Want of sufficient space in the Police Station was a vexing problem. Taking into account the unsatisfactory condition of the Police Station, the Commission recommended to the Government to allot a vehicle to the Sub Inspector and also to construct a new building with all the basic amenities of a Police Station.

5.5.19  Kuttichal Grama Panchayat

The Commission visited the Kuttichal Grama Panchayat on 16-05-2000. The visit opened the eyes to the indifference of the Panchayat
authorities to the health and sanitation problems of the residents. The newly constructed drain was filled with rubbish and waste material thrown out from the nearby shops, thereby obstructing the free flow of wastewater. It was indeed shocking to note that the Panchayat well, dug near the Kuttichal bus stand, was not in use and it was filled with garbage and was a breeding ground for mosquitoes and other insects. The Commission was really surprised to note that dried fish were dumped and sold in this market.72

5.5.20 Celebration of the Universal Declaration of Human Rights Commemoration day

The Kerala State Human Rights Commission organised a function in the Sopanam Auditorium at Kollam on 10th December 2000 to observe the Universal Declaration of Human Rights Commemoration Day.73 Justice K.K. Usha, the Chief Justice of the High Court of Kerala, inaugurated the function. Justice Mr. M.M. Pareed Pillay, Chairperson of the K.S.H.R.C. presided over the function. Sri. C.P. Jaychandran, Secretary of the Commission, welcomed the gathering. Kumari Sabitha Beegum, Mayor of the Corporation of Kollam, Sri. N.K. Premachandran, Member of Parliament and Smt. K. Devaki, President, District Panchayat, Kollam addressed the meeting.

The meeting was followed by three seminars. The first seminar was on “Transparency in Public Life.” Sri. T.K. Wilson, member of the Commission, presented the paper on this subject. The second seminar was on “Human Rights Problems in the Educational Sector” and was chaired by Dr. Cyriac Thomas, Vice-Chancellor, Mahatma Gandhi University. At the third seminar Dr. Sukumar Azhikode presented the paper “Problems Caused by Liquor.” The participants from the Social Welfare Department, Local Bodies, Human Rights Awareness Forum and NSS volunteers from Sree Narayana College and Fathima Matha National College, Kollam actively took part in the seminar.
Human Rights Awareness Programmes Conducted by the K.S.H.R.C.

5.5.21 Workshop on Human Rights in Work Places

A Workshop on Human Rights in Work Places was organised by the Commission and Global Nirmiti Net at Kanakakkunnu Palace on 26th August 2000. Sri. Raveendra Varma, the Chairperson of the National Commission on Labour, delivered the inaugural address.74

5.5.22 The Meeting on a Social Dialogue on Social Integration of the Disabled

The meeting was organised under the joint auspices of the Kerala State Human Rights Commission and Global Nirmiti Net on 14th January 2001. The venue was the conference hall of the Government Guest House, Thycaud, Thiruvananthapuram. Dr. S. Balaraman, member of the Commission, chaired the meeting. Important recommendations made by the Commission to the Government of Kerala in the sphere of hospital management included construction of new buildings, mortuaries, repair of generators, construction of new toilets, supply of drinking water, replacing of rickety and worn out furniture, filling vacancies of the staff including doctors in hospitals, creation of new posts of staff nurses and attenders and augmenting the staff strength to cope with the work load in the hospitals.

The following chart indicates the position of the K.S.H.R.C. regarding the number of petitions received and the number of petitions disposed of.75

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of petition received</th>
<th>No. of petition disposed of</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1655</td>
<td>1338</td>
</tr>
<tr>
<td>2000</td>
<td>3502</td>
<td>2639</td>
</tr>
<tr>
<td>2001 (up to 31st March)</td>
<td>1358</td>
<td>197</td>
</tr>
<tr>
<td>Total</td>
<td>6315</td>
<td>4174</td>
</tr>
</tbody>
</table>
References and Notes


Human Rights Act, Section 21 (5).

Human Rights Act, Section 22(1) (a - d).

Human Rights Act, Section 24 (1 & 2).

Human Rights Act, Section 23 (1 & 2) (a - e).

Human Rights Act, Section 14, (1 & 2).

Human Rights Act, Section 15.


Human Rights Act, Section 17.

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


Procedure Regulations, Section 23 (b).

Procedure Regulations, Section 17 (a - i).

Procedure Regulations, Section (3-6).


Human Rights Act, Section 35 (1 - 4).

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

Human Rights Act, Section 13, (1- 5).


Annual Report: 12.

Annual Report: 10 & 11.


Annual Report: 16.
Annual Report: 27.
Annual Report, Annexure III: 34.
Annual Report: 10 & 11.
Annual Report: 15.
Annual Report: 30.
Annual Report: 40.
Annual Report: 40.
Annual Report: 41 & 42.