Chapter – III
CHAPTER III
MECHANISMS FOR HUMAN RIGHTS PROTECTION

Since the inception of the United Nations, the promotion and protection of human rights have been at its very core. Over the years the United Nations has created a wide range of mechanisms for human rights protection, and the Indian government has set up several special Institutions at the National level and at the State level under the different acts of parliament to give effect to the constitutional provisions of human rights of all persons.¹

International Mechanism
United Nations Human Rights Bodies

Human Rights are recognized as fundamental by the United Nations and, as such, feature prominently in the preamble of the charter of the United Nations: “To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. The organizations prominent role in this area is carried out by a number of human rights bodies.² The General Assembly is the main deliberative body of the United Nations. Respect for human rights and human dignity “Is the foundation of freedom, justice and peace in the world”, the General Assembly declared three years later in the Universal declaration of Human rights. Over the years a whole network of human rights instruments and mechanisms has

been developed to ensure the primacy of human rights and to confront human rights violations wherever they occur. The General assembly review and takes action on human rights matters referred to it by its third committee and by the economic and social council.\(^3\) The General Assembly promotes and encourages the observation of human rights for all. The Security Council is the principal organ of the United Nations. The main function of the Security Council is to maintain International peace. In discharging its duties, the security council is required to act in accordance with the purposes and principles of the United nations, one of these purposes is “to achieve International co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. The Economic and Social Council (ECOSOC), works under the authority of the General Assembly and co-ordinates the Economic and social work of the United Nation. ECOSOC makes recommendations to the General Assembly on human rights matters and review reports and resolutions of the commission on human rights and transmits them with amendments to the General Assembly. It also works closely with agencies of the United Nations system which have a special interest in human rights matters.\(^4\)

The United Nations (UN) system for the protection and promotion of human rights consists of two main types of body: bodies


created under the UN charter, including the UN commission on Human Rights and sub-commission, (Charter bodies) and bodies created under the international human rights treaties (Treaty bodies). Most of these bodies receive secretariat support from the treaties and commission branch of the Office of the High Commissioner for Human Rights (OHCHR).

**Charter-based Bodies**

**The U.N. Commission on Human Rights**

The UN commission on Human Rights was established in 1946. The commission is the central UN body responsible for promotion and protection of human rights. The commission is the Main policy-making body dealing with human rights issues composed of 53 members Governments. The commission, as per its reference, makes studies, prepares recommendations and drafts international instruments concerning human rights.

It also undertakes special task assigned to it by the General assembly on the Economic and social council, including the investigation of allegations concerning violations of human rights and handling of communications relating to such violations. It also co-operates closely

---

6 ECOSOC, Recs 5 (I) of 16 February, 1946.
with all other United Nations bodies having competence in the field of human rights.\textsuperscript{9}

The commission meets annually in Geneva. Its meetings are public except when it meets in closed session for several days to discuss the “1503 procedure” (the confidential procedure for complaints about alleged human rights violation). During the public meetings, governments which are not members of the commissions and non-governmental organizations which have been granted consultative status with the UN Economic and Social council may observe proceedings from the meeting room and make written and oral statements concerning issues on the agenda.\textsuperscript{10} The commission is a subsidiary of the UN Economic and social council (ECOSOC) to which it reports annually. ECOSOC operates under the authority of the UN General Assembly and reports annually to that body.

The commission’s annual report to ECOSOC is a public document which summarizes the results of the session and includes the text of all adopted resolutions. During recent years, the commission has discussed subjects including human rights situation in various countries, self-determination, torture, capital punishment; detention for exercising the right to freedom of expression, religious intolerance, rights of the child, migrant workers, the role of the youth in the protection and promotion


of human rights, and protection of human right defenders. In order to assist in its work the commission has established a number of subsidiary bodies, including the Sub-Commission on Prevention of Discrimination and protection of Minorities.

The U.N. sub-commission on prevention of Discrimination and protection of Minorities. It undertakes studies and makes recommendations to the commission concerning the prevention of discrimination against racial, religious and linguistic minorities and to perform any other functions entrusted to it by the Economic and social council or commission of Human Rights, composed of 26 experts, the sub commission meets each year for four weeks.

The Sub-Commission submits a public report annually to its parent body, the UN Commission on Human Rights. That report summarizes the results and includes the text of all adopted resolutions.

Treaty-based Bodies

Human Rights Committees

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the

---

12 ECOSOC, Recs 9 (II) of 21 June, 1946.
treaty that they monitor. There are seven human rights Treaty bodies. They are given below,

The Human Rights committee (HRC) monitors implementation of the International Covenant on Civil and Political Rights 1966,

The Committee on Economic, Social and Cultural Rights (CESCR) monitors implementation of the international covenant on Economic, social and cultural Rights 1966;

The Committee on the Elimination of Racial Discrimination (CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination 1965;

The Committee on the Elimination of Discrimination against women (CEDAW) monitors implementation of the convention on the Elimination of all forms of Discrimination against women 1979;

The Committee Against Torture (CAT) monitors implementation of the convention against Torture and other cruel, Inhuman or Degrading Treatment;

The Committee on the Rights of the Child (CRC) monitors implementation of the convention on the Rights of the child 1989;

---

The Committee on migrant workers (CMM) monitors implementation of the international convention on the protection of the rights of all migrant workers and members of their families 1990.

Each treaty body receives secretariat support from the treaties and Commission branch of OHCHR in Geneva except CEDAW, which is supported by the division for the advancement of women (DAW). The treaty bodies generally meet at the U.N. office in Geneva, although the Human Rights committees usually hold its March session in New York.¹⁶

U. N. High Commissioner for Human Rights

In a landmark decision on 20th Dec. 1993 the General Assembly created the position of U.N. High commissioner for Human Right by passing a resolution.¹⁷ It can be reckoned as a turning point in U.N. action in the Human rights. The High commissioner would be appointed by the secretary General for a four year term subject to the approval by the General assembly. The High commissioner will report, annually to the commission on human rights and through the Economic and social council to the General Assembly, with a branch of office in New York. The High commissioner’s principal location will be in Geneva.¹⁸

The responsibilities of the High commissioner includes (i) strengthening and streamlining existing Human rights Mechanisms; (ii)

---

Engaging in dialogue with all governments to secure respect for all human rights; (iii) coordinating human rights; promotion and protection activities throughout the UN system, including UN education and public information programmes; (iv) to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights; (v) To provide advisory services, technical and financial assistance in respect of the human right to states at their request and to take steps for the enhancement of international co-operation for the promotion and protection of human rights.\textsuperscript{19}

Over the years the United Nations has created a wide range of mechanisms for Human rights protection. UN special rapporteurs representatives, experts and working groups have been established in order to monitor compliance of state parties with the varies human rights instruments and to investigate allegations of human rights abuses. In recent years a number of field offices have been opened at the request of Governments inter alia, to assist in the development of national institutions for the promotion and protection of Human Rights and to conduct education campaigns on Human Rights.\textsuperscript{20}

**National Mechanism**

**National Human Rights Commission**

In pursuance of a resolution of the General Assembly adopted in 1966, the Economic and social council asked the Human rights


commission of U.N. to consider the question of creation of National
commission of Human Rights to perform certain functions relating to the
observance of the International covenant on Human Rights. This
question was also considered by the commission in 1970 and the
commission recommended that the question of establishment of National
Commission of Human rights in each member state of the U.N. Ought to
be decided by each government of the member state keeping in view the
traditions and institutions of each country. Since then the Human rights
commission has several times stressed the need of the creation of National
commission of Human rights in each member state. Vienna Declaration
and programme of action adopted by the Vienna conference on Human
Rights on June 25, 1993 recommended that every state ought to provide
on effective framework of machinery or institution to provide remedies
in case of violations of Human Rights.

It was after that several states including India have established
National commissions of Human rights to redress Human rights
grievances or violations on 28th Sep 1993, the president of India
promulgate an ordinance which established a National commission of
Human rights.

Thereafter, of a bill on human rights was passed in the Lok Sabha
on Dec 18, 1993 to replace the ordinance earlier promulgated by the

---
President. This bill received the assent of the President on Jan. 8, 1994 and was published in the Gazette of India, Extraordinary part II, section 1, on Jan 10, 1994. Thus the protection of Human rights Act (No. 10 of 1994) came into force.24

But since the National commission of Human Rights has already been established and certain acts in pursuance of ordinance had already been performed, Article 1 (3) provided that the Act shall be deemed to have came into force on 28 September, 1993.

As a means of accomplishing its mission, the Act empowered the National Human Rights Commission to depose witnesses, conduct discovery, evaluate evidence, issue reports and recommendations, and ask the central government and/or the judiciary to enforce its opinions.25

Definitions

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. Definitions such as

(a) “Act” means the protection of Human Rights Act.1993;26
(b) “Chairperson” means the chairperson of the commission or of the state commission, as the case may be;

26 Human Rights Act 1993, Section. 1.
(c) “Commission” means the National Human Rights Commission under section 3;
(d) “Members” means a member of the commission.

The National Human Rights Commission is constituted by the Central Government to exercise the powers conferred upon, and to perform the functions assigned to it under the Act.\textsuperscript{27} The Commission consists of a chairperson who has been the chief justice of the supreme court; one member who is, or has been, the Judge of the supreme court; another member, who is, or has been the chief justice of a High court; and two members to be appointed amongst persons having knowledge of, or practical experience in, matters relating to human rights.\textsuperscript{28}

Besides these, the chairpersons of National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for women shall be deemed to be members of the commission for the discharge of functions specified in clauses (b) to (j) of Section 12.\textsuperscript{29} The Headquarters of the National Human Rights Commission (NHRC) shall be at Delhi. If necessary, offices may be established at other places of India with the approval of the Central Government.\textsuperscript{30}

\textsuperscript{27} Human Rights Act 1993, Section 3 (1).
\textsuperscript{29} Human Rights Act 1993, Section 3 (3).
\textsuperscript{30} Arun Ray, \textit{loc.cit.}
Appointment of Chairperson and other Members

The Chairperson and the members are appointed by the President by warrant under his hand and seal after obtaining the recommendations of committee consisting of the Prime minister, as the Chairperson, and the Speaker of the House of the people, the Home minister, the leader of the opposition in the House of the people and the council of states and the Deputy Chairman of the council of states as members.31

Term of Office of Members

A person appointed as chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.32

A person appointed as a member shall also hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years. This is however, subject to the condition, that no member shall hold office after he has attained the age of seventy years.33 Further on ceasing to hold office, a chairperson or a member shall be in eligible for further employment under the Government or the Government of any state.34 This is indeed a welcome feature of the Act, such provision ought to be compulsory in respect of the offices of speaker of Lok Sabha, Deputy

---

32 Human Rights Act 1993, Section 6 ( 1 ).
33 Ibid., Section 6 ( 2 ).
34 Ibid., Section 6 ( 3 ).
Speaker of Rajya Sabha, Chief Election Commissioner and Governors of states.

**Removal of a Member of the Commission**

The chairperson or any other member of the commission can be removed from his office by order of the president on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the president, has on inquiry held in accordance with the procedure prescribed in that behalf by the supreme court, reported that the chairperson or such other member, as the case may be, ought on any such ground be removed.\(^{35}\)

But despite this provision or not withstanding this provision the president may by order remove from office the chairperson or any other member if the chairperson or such other person, as the case may be (a) is adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is unfit to continue in office by reason of infirmity of mind or body; or (d) is of unsound mind and stands so declared by a competent court; or (e) is convicted and sent to imprisonment for an offence which in the opinion of the president involves moral turpitude.\(^{36}\) In the above cases, it will not be necessary for the president to refer the matter to the Supreme Court and obtain its report before ordering the removal of a chairperson or a member.\(^{37}\)

\(^{35}\) *Ibid.*, Section 5 (1).
\(^{36}\) *Ibid.*, Section 5 (2).
Constituent divisions of NHRC

There are six divisions in the commission. Though each of these have been entrusted specific tasks, the division work in close consultation and co ordination with each other these are, 1. The administrative division, 2. Law division, 3. Investigation division, 4. Policy, Research, Projects and Programmes Division 5. Information and public relations divisions 6. Training division and the sections like library and computer cell.

Administrative Division

This division is headed by a joint secretary assisted by under secretaries, section officers and other secretariat staff, and functioning under the overall guidance of the secretary general. This division looks after the administrative, personnel, establishment and cadre matters of the staff and other ministerial staff. The Hindi section of the commission manages for the translation of complaints from Hindi, and other Indian languages into English, as well as the normal Hindi work of the commission including the translation of the monthly newsletters and the annual reports.\(^{38}\)

Law Division

The division headed by a senior judicial officer. The post has a scale of additional secretary to the govt. of India. It deals with the matters relating to human rights violations either on its own or on a request by a party provides, hearing to the parties in appropriate cases depending upon

the facts and circumstances of each case. The registration (law) is assisted by a joint registrar and others.³⁹

Investigation Division

When the commission requires and independent enquiry to be conducted. It is effected through the investigation division which is headed by an officer of the rank of Director General of Police. He is assisted by an Inspector general of police / Deputy inspector general of police, Superintendents of police, Inspector of police and constables.⁴⁰ The division also assists the commission in examining complaints, inscrutinising reports received from the police and other investigation agencies and looking reports of custodial violence or other Misdemeanors.

Policy-Research, Projects and Programmes Division

Whenever the commission on the basis of its hearing deliberations or otherwise, arrives at a conclusion that a particular subject is of generic importance. It is converted into a project / programme to be dealt by the policy research project and programmes division.⁴¹ The division also under takers and promoters research in human rights. This division is headed by the joint secretary and consists of a director, an officer on special duty (Research), a senior research officer consultants and secretariat staff.⁴²

⁴⁰ Available at http://www.nhrc.nic
Information and Public Relation Division

The division disseminates information relating to the activities of the commission through the printing materials and electronic media and is headed by information and public relation officer, who also function as the editor of the Monthly Human rights News-letter the division also has an assistant information officer.

Training Division

It deals with the need of training in the different categories of official and non-official institution / organization etc. Networking with National / state level Institution (Both government / Non-Government).

Library

Besides serving the commission is also a resource centre used by items, research workers and NGO’s. It contains a collection of books and a variety of documents of the United Nations, AIR Manuals, Supreme Court reports, Government reports, NGO bulletins etc.\(^43\)

The Computer Cell

The computer cell of the commission function in closes co-ordination with the National informatics centre (NIC). It has developed a user-friendly package for monitoring the status of complaints from receipt to final disposal.\(^44\)

Special Rapporteurs / Special Representatives

Special rapporteurs /special representatives are very senior officers who prior to their retirement have served as secretaries to the government of India or directors General of Police, they are either given a subject or a group of subject to deal with bonded labour, child labour custodial justice, Dalit issues, Disability etc.\(^\text{45}\)

Function of the Commission

The National Human rights Commission has a wide mandate including Civil and Political rights economic, Social and Cultural and group rights.\(^\text{46}\)

1. Inquiring

   Suo Moto, or on petition presented to it by victims or any persons on their behalf in to complaints of

   (a) Violation of human rights or abetment thereof or
   (b) Negligence in the prevention of such violation by a public servant.\(^\text{47}\)

2. Intervening

   In any proceeding involving any allegation of violation of human rights pending before a court with the approval of such courts.

\(^{45}\) Arun Ray, \textit{op.cit.}, p.111.
\(^{47}\) Human Rights Act 1993, Section 12.
3. Visiting
Under intimation to the state government concerned any fail or other institution under the control of the state Government where persons are detained or ledged for purpose of treatment, reformation or protection to study the living conditions of the protection of human rights and recommending measures for their effective implement.

4. Reviewing the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommending appropriate remedial Measures.

5. Studying Treaties and other international instruments on human rights and making recommendation for their effective implementation.

6. Undertaking and promoting research in the field of Human rights.

7. Spreading human rights literacy amongst various sections of society and promoting awareness of the safeguards available for the protection of these rights, through publications, through media, seminars and other available means.

8. Encourage the efforts of NGO’s (Non Governmental Organizations) and institutions working in the field of Human Rights.

Procedure for Dealing with Complaints
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 ordinary 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.\(^{48}\)

(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.\(^{49}\)

2. No fee 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 to commission to take immediate action.

To facilitate the filing of the complaints the commission shall, however, entertain complaints in any language included in 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.

\(^{48}\) Ibid., Section 36 (2).

\(^{49}\) Ibid., Section 36 (1).
5. The commission shall have the power to dismiss a complaint in limini.

6. Upon admission of a complaint the chairperson / commission shall direct whether the matter would be set down for inquiry by it or should be investigated into.

7. On every complaint on which a decision is taken by the chairperson/commission to either hold an inquiry or investigation, the secretariat shall call for report/comments from the concerned Government/authority giving the latter a reasonable time therefore.

8. On receipt of the comments of the concerned authority, 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 concerned Government / authority and the petitioner as provided for in sections 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 required 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
may allow. 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 of 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.

**Kinds of Issues on which Complaints have been Received in NHRC**

Since its inception, the commission has handled a variety of types of complaints. In the latest period the major types of complaints have been (a) in respect of police administration, (b) Unlawful detention (c) False implications (d) Custodial violence (e) illegal arrest (f) other police excesses (g) Custodial deaths (h) Encounter deaths (i) Harassment of prisoners; Jail conditions (j) Atrocities on SC’s and ST’s (k) Bonded Labour (L) Child labour (m) Child Marriage (n) Communal violence (o) Dowry death or its attempt, dowry demand (p) Abduction; rape and murder (q) Sexual harassment and indignity to women; exploitation of
In contrast to Parliament or the state’s bureaucracy, the NHRC carries an air of legitimacy among the public and it has, at times, criticized the central government and various state governments for not doing more to protect human rights. Perhaps the most well known report from the NHRC involves the 2002 Gujarat riots. In early 2002 vicious riots broke out in the western state of Gujarat; most of the thousands of victims killed or brutalized were Muslims at the hands of Hindu nationalist-fanatics, although certainly those within the state’s Hindu community also suffered loses as well. In the months after the riots, the state and central governments launched investigations; the NHRC too conducted its own investigation, as did numerous domestic and international nongovernmental associations. As part of its findings, the NHRC condemned the police for not adequately protecting Muslim communities that came under attack. It also criticized the state government for politicizing the riots and fanning communal tensions. And when several Hindus accused of murdering a group of Muslims at the Best Bakery Shop were acquitted after key eyewitnesses during the trial recanted what they originally saw, the NHRC intervened and asked the Supreme Court to investigate whether the defendants should be re-tried outside of Gujarat.

and whether those charged had intimidated the witnesses. The investigation is still pending.\textsuperscript{53}

**Steps to be taken by NHRC after Inquiry**

After completion of the inquiry the National Human Rights Commission may take any of the following steps.\textsuperscript{54}

1. Where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons.

2. Approach the Supreme Court or the concerned High Court for such directions orders or writes, as the court may deem necessary.

3. Recommend to a concern Government or authority for the grant of such immediate interim relief to the victim or the members of its family, as the commission may consider necessary.

4. Provide copy of the inquiry report to the petitioner or his representative.

\textsuperscript{53} Jayanth Krishnan, *loc.cit.*
5. Send a copy of an inquiry report together with recommendations to the concerned Government or authority and the concerned Government or authority shall, with in a period of one month, or such further time as the National Human Rights Commission may allow, forward to National Human Rights Commission, its comments on the report, including the action taken or proposed to be taken.

6. Publish its inquiry report together with the comments of the concerned Government or authority, if any and the action taken or proposed to be taken by the concerned Government or authority on the recommendation of the commission.55

Procedure with Respect to Armed Forces

Section 19 of Protection of Human Rights Act, 1993 provides,56

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 procedure, namely,

   (a) It may, either on its own motion or on receipt of a petition, seek a report from the central Government,

   (b) After the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

---

55 Human Rights Act 1993, Section. 18.
2. The central Government shall inform the commission of the action taken on the recommendations within three month 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.

Annual and Special Reports of the Commission

The National Human Rights Commission is required to submit an annual report to the Central Government and to the State Govt. concerned and may at any time submit special reports on any matter which, in its opinion is of such urgency or importance that it should not be deferred till submission of the annual report.\textsuperscript{57} After the annual report is submitted by the commission, the Central Govt. and the state Govt. as the case may be, shall cause the annual and special reports of the commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the commission and the reasons for non-acceptance of the recommendations, if any.\textsuperscript{58}

\textsuperscript{57} Human Rights Act 1993, Section 20 ( 1 ).
\textsuperscript{58} Ibid., Section 20 ( 2 ).
Protection of Rights

The number of complaints received by the commission has increased from 496 in 1993-94 to 1,14,114 in 2006-2007, reflecting the growing credibility of the commission and the trust reposed in it by citizens. The commission has recommended systematic reforms in police functioning and in prison administration; the commission has also laid down stringent reporting requirements in cases of deaths/rapes in custody. The commission has reviewed a number of legislative bills/acts, which impinge on human rights of people in general and vulnerable sections of society in particular.

The commission has played an important role in monitoring the misuse of the terrorists and disruptive activities (Prevention) act 1987 (TADA) and gave its opinion on the prevention of terrorism bill, 2000 and the prevention of terrorism ordinance 2001 (POTO), pursuant to the Commission efforts, the govt. of India have signed the convention against torture, and other cruel, inhuman, degrading treatment or punishment in 1997.

Recognizing the gaicial linkages between public health and human rights, the commission has made significant recommendation on mental anemia; HIV / AIDS and access to health care.

In the field of social and economic rights the commission has made comprehensive and systematic recommendations for the protection of the

---

59 NHRC, Case No: 525 / 30 / 2002 – 2003 – CD.
vulnerable sections of the people, including Women,\textsuperscript{60} Children,\textsuperscript{61} Dalits,\textsuperscript{62} Minorities,\textsuperscript{63} Disabled and denotified and nomadic tribes.\textsuperscript{64}

It has also undertaken programmes for the elimination of manual scavenging; bonded labour, child labour and trafficking in women and children.

Promotion of human rights literacy and awareness in the educational system; human rights training for the armed forces and police, public authorities, civil society and students; research through well-known academic institutions and NGO’s on various issues relating to human rights are major initiatives of the National Human Rights Commission. The commission in practice has proved to be an effective body for the observance of Human rights in the country.\textsuperscript{65}

The National Commission for Women

The National Commission for Women (NCW) was constituted on 31 January, 1992 in pursuance of the national commission for women Act 1990. The Commission shall consist of (a) A Chairperson, committed to the cause of women, to be nominated by the Central Government. (b) five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of

\textsuperscript{60} NHRC, Case No: 1775 / 35 / 2003 – 2004.
\textsuperscript{61} NHRC, Case No: 443 / 1 / 2001 – 2002.
\textsuperscript{63} NHRC, Case No: 422 / 18 / 1998 – 1999.
\textsuperscript{64} NHRC, Case No: 14971 / 24 / 1997 – 1998.
women, women’s voluntary organizations (including women activist), administration, economic development, health, education or social welfare.\textsuperscript{66}

Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively. The chairperson and five other members hold office for three years.

The National Commission for Women performs multifarious functions: It may investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws. It does present to the central government, annually and at such other times as the commission may deem fit, reports upon the working of these safeguards. It makes, in such reports recommendations for the effective implementation of the safeguards for improving the conditions of women by the union or any state. It reviews, from time to time, the existing provisions of the constitution and other laws affecting women and recommends legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations. It takes up cases of violations of the provisions of the constitution and other laws relating to women with appropriate authorities. It looks into complaints and takes notice of matters relating to (i) Deprivation of women’s rights; (ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; and (iii) non-

compliance of policy decisions, guidelines or instructions aimed at mitigating hardship and ensuring welfare and providing relief to women.\textsuperscript{67} It calls for special studies or investigations into specific problems or situations arising out of discrimination and atrocities so as to recommend strategies for their removal. It participates in and advises on the planning process of socio-economic development of women. It inspects or gets inspected a jail, remand home, women’s institution or other places of custody, where women are kept as prisoners or otherwise, and takes up with the concerned authorities remedial actions, if found necessary. It makes periodical reports to the government on any matter pertaining to women and in particular, various difficulties under which women toil.\textsuperscript{68}

The National Commission for Scheduled Castes (SCs) and Scheduled Tribes (STs)

Though the constitution establishes right to equality and prohibits discrimination based on caste, race religion, sex or birth besides outlawing the age old practice of Untouchability, the ex-untouchables/dalits have not been fully integrated into social mainstream. Their rights are being violated every day. To bring social equality/justice constitutional and administrative safeguards were provided through the preferential policies commonly known as Reservation Policy (in jobs educational places and legislatures). The parliament passed three acts with a view to effectively enforce article 17 of the constitution, which abolishes Untouchability.


\textsuperscript{68} Available at http://www.ncw.nic.in
These acts are Untouchability (Offences) act of 1955 as amended by the Protection of Civil Rights Acts, 1976, and the Scheduled castes and Scheduled Tribes (Prevention of Atrocities), 1989. These Acts prescribe penalty for offences / atrocities against dalits.\textsuperscript{69}

In 1950 a special officer designated as commissioner for SCs and STs was appointed under Article 338 of the constitution to investigate all matters relating to the safeguards provided for these disadvantaged and weaker sections of the society. Subsequently, it was felt that, instead of a single officer, a high level five member commission would be a more effective arrangement.

Accordingly in 1990 the National Commission for SCs and STs was constituted for the protection, welfare, socio-economic development and advancement of SCs and STs and to evaluate the working of such safeguard. It is empowered to inquire into specific complaints of deprivation of rights of these people. It presents to the President of India annual reports upon the working of these safeguards and makes recommendations for undertaking measures necessary for the effective implementation of the safeguards. However, with the Constitution (Eighty-Ninth Amendment) Act, 2003 coming into force on 19-2-2004 vide notification of that date, the National Commission for Scheduled Castes and Scheduled Tribes got bifurcated and a separate National

Commission for Scheduled Castes was constituted, and separate National Commission for Scheduled Tribes was set up.\textsuperscript{70}

The National Commission for Minorities

In order to preserve secular traditions and to promote National integration the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and state Laws and in the government policies and administrative schemes enunciated from time to time.\textsuperscript{71} With a view to ensuring effective enforcement of the implementation of constitutional provisions relating to Minorities, a National Commission for Minorities (NCM) was created in 1978, which was given statutory status in 1992. According to the government notification, these Minorities include the Muslims, Christians Sikhs, Buddhists and Zoroastrians (Parsis) etc., The Commission consists of a chairperson, a vice-chairperson and five members-belonging mostly to the minority communities.\textsuperscript{72} The chairperson and members hold office for three years.

The commission performs, among others, the following function: -
1. Evaluate the progress of the development of minorities under the union and states; Monitor the working of the safeguards provided in the

\textsuperscript{72} Available at http://www.ncm.nic.in
constitution and laws in enacted by the Parliament and the State legislatures 2. Make recommendations for effective implementation of safeguards for the protection of the interests of minorities by the central government or the state governments; 3. Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities; 4. Conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities; 5. Make periodical or special reports to the central government on any matter pertaining to minorities and in particular, difficulties confronted by them.

State Mechanism

State Human Rights Commission, Tamil Nadu

According to A.S. Anand, who was the Chief Justice of India between October 1998 and November 2001, who became the Chairperson of the National Human Rights Commission in February 2003, “Strong State Human Rights Commissions would go a long way in the better promotion of human rights”.73

According to section 21 (1) of the protection of Human Rights Act 1993, a state Government may constitute a body to be known as the (the name of the state) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned, to state commission under chapter V of the Act.74 The wording of this provision, especially the word ‘may’ indicates that it is not compulsory for the states

---

73 The Hindu, 14 December, 2005.
to establish State Human Rights Commission. Thus it depends upon the
discretion of the state. Tamil Nadu is one of the very few states which
have constituted a commission for the human rights.\textsuperscript{75} Tamilnadu was the
fifth state to form the commission. The Tamilnadu state Human Rights
Commission started its work on 17 April, 1997.\textsuperscript{76}

**Constitution of State Human Rights Commission**

The state human rights commission shall consists of (a) A
chairperson who has been a chief justice of a High court, (b) one member,
who is, or has been a judge of a High court (c) one member, who is, or
has been a , District judge in that state, (d) Two members to be appointed
amongst persons having knowledge of, or practical experience in
matters relating to human rights.\textsuperscript{77} (e) A secretary who shall be the chief
executive officer of the state commission and shall exercise such power
and discharge such functions of the state commission as it may delegate to
him.\textsuperscript{78}

**Appointment of Chairperson and Other Members of State Commission**

The chairperson and other members of state commission are to be
appointed by the governor under his hand and seal after obtaining the
recommendation of a committee consisting of chief minister as the
chairperson, speaker of the legislative assembly, the minister in charge of

\textsuperscript{75} Raja Mutthirulandi, *Human rights: the constitution and statutory institutions of

\textsuperscript{76} SHRC, Annual Report 1997 – 1998, p.3.

\textsuperscript{77} Human Rights Act 1993, Section 21 (2).

\textsuperscript{78} *Ibid.*, Section 21 (3).
the department home in that state and the leader of the opposition in the legislative assembly as members.\(^79\)

The headquarters of the state commission shall be at such place as the state Government may, by notification, specify. The commission is equipped with an investigative wing, Technical wing and a scientific wing.

A person appointed as chairperson or as a member is appointed for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier. While the chairperson after completion of his term of five years is ineligible for re-appointment.

A person appointed as a member is eligible for another term of five years subject to the condition that no member shall hold office after he has attained the age of seventy years.\(^80\)

**Jurisdiction of the State Commission**

Sub-section (5) of section 21 provides that a state commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in list II and list III in the seventh schedule to the constitution. This is however subject to a proviso that if any such matter is already being inquired into by the commission (i.e. NHRC) or any other commission duly constituted under any law for the

---


\(^80\) Human Rights Act 1993, Section 24.
time being in force, the state commission shall not inquire into the said matter.\textsuperscript{81}

**Annual and Special Reports of State Commission**

The state commission is required to submit an annual report to the state Government and May at time submit special reports on any matter which in its opinion, is of such urgency or importance that if should not be deferred till the submission of the annual report.\textsuperscript{82} After the annual and special reports are submitted by the state commission, the state government shall cause them to be laid before each house of the state legislature where it consists of two houses, or where such legislature consists of one house, before that house along with a memorandum of action taken or proposed to be taken on the recommendations of the state commission and the reasons for the non-acceptance of the recommendations, if any.\textsuperscript{83}

**Protection of Rights**

The commission’s purview covers the entire range of civil, political as well as economic, social and cultural rights. Areas facing terrorism and custodial death, rape and torture, reform of the police, prisons and other institutions such as mental hospitals and shelters for women have been given special attention. Basic needs such as potable drinking water, food and nutrition and highlighted fundamental questions of equality and justice to the less privileged, namely the scheduled castes and scheduled

\textsuperscript{82} Human Rights Act 1993, Section 28 ( 1 ).
\textsuperscript{83} Human Rights Act 1993, Section 28 ( 2 ).
tribes and the prevention of atrocities perpetrated against them, rights of women subjected to violence, sexual harassment and discrimination and rights of minorities have been the focus of the commission’s action on numerous occasions.\textsuperscript{84}

The commission creates awareness and conducted many programmes for spreading the message on the human rights. In 1997 the state commission received 2100 complaints and it increased to 12,315 in 2008. For the purpose of providing speedy trial of offences arising out of violation of human rights, the state Government may, with the concurrence of the chief justice of the High court, by notification, specify for each district a court of session to be a Human Rights Court to try the said offences.

But no such court shall be specified if (a) a court of sessions is already specified as a special court, or, (b) a special court is already constituted for such offences under any other law for the time being in force.\textsuperscript{85} For every human rights court, the state govt. shall by notification, specify a public prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a special public prosecutor for the purpose of conducting cases in that court.\textsuperscript{86}

\textsuperscript{84} Available at http://www.shrc.nic.in
\textsuperscript{86} Shantha Kumar, \textit{Human Rights}, (Madurai: People’s Watch Publication, 2005), p.185.
State Commission for Women, Tamil Nadu

State Commission for Women was constituted by the State Government of Tamil Nadu for safeguarding the rights and welfare of the Women. The Commission shall consist of a Chairperson and five other members to be nominated by the State Government, in which there will be Women I.A.S Officer, Women I.P.S Officer, a Prominent Social Worker, Principal of an Educational institution and a Prominent Women Member of the Legal Profession, provided that at least one member shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes.87

The Commission shall perform all or any of the following functions, namely: (a) investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws (b) present to the State Government annually and at such other times as the commission may deem fit, reports upon the working of these safeguards and make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women (c) Review, from time to time, the existing provisions of the constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacuna, inadequacies or shortcomings in such legislations (d) look into the complaints relating to: (i) Deprivation of Women’s rights, (ii) Non-implementation of laws enacted to provide protection to women and also

to achieve the objective of equality and development. (e) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impending their advancement.\(^88\)

The commission shall submit an Annual Report to the State Government detailing its activities and recommendations. This will however not preclude the Commission submitting reports to the Government at any time they consider necessary on matters of urgency and within the scope of its functions.\(^89\)

The annual report together with a memorandum on linking the action taken on the recommendations and explaining the reasons for non-acceptance of the recommendations, if any, will be laid before the state Legislature.

**State Office of the National Commission for Scheduled Castes, Tamil Nadu**

With a view to provide safeguards against the exploitation of Scheduled Castes & Scheduled Tribes and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the constitution. The National Commission for Scheduled Castes functions from its headquarters at New Delhi and from the State Offices of the Commission located in many states.\(^90\) In Tamil Nadu the

---

\(^{88}\) Available at http://www.scw.nic.in


\(^{90}\) Available at http://www.ncsc.nic.in
State Office of the National Commission for Scheduled Castes which work closely with the National Commission. The State Office keeps a watch on the formulation of policy and issue of guidelines relating to the welfare of Scheduled Castes in the State and keep the Commission’s headquarters informed about the development periodically. Policy decisions taken by State Government affecting the interest of the Scheduled Castes is brought to the notice of the concerned authorities for necessary action. To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes, to make necessary recommendations for their protection, welfare and socio-economic development are some of the duties and functions assigned to the commission.

Regional Offices of the National Commission for Scheduled Tribes.\(^9\)

The National Commission for Scheduled Tribes functions from its Headquarters at New Delhi and from the Regional Offices of the Commission located in Six States – Bhopal, Bhubaneswar, Jaipur, Raipur, Ranchi, Shillong.\(^2\) The Six Regional Offices of the National Commission for Scheduled Tribes which work closely with the National Commission. The State of Tamil Nadu comes under the jurisdiction of the Bhubaneswar Regional Office. The Regional Offices keep a watch on the formulation of policy and issue of guidelines relating to the welfare of Scheduled Tribes in the States and keep the Commission’s headquarters informed about the development periodically. Policy decisions taken by any State Government affecting the interest of the Scheduled Tribes is

---

92 Available at http://www.ncst.nic.in
brought to the notice of the concerned authorities for necessary action. To investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes, to make necessary recommendations for their protection, welfare and socio-economic development are some of the duties and functions assigned to the commission.93

**State Commission for Minorities, Tamil Nadu**

State Minorities Commission, Tamil Nadu was constituted by the state Government for safeguarding the rights and interests of both Religious and Linguistics Minorities.94 In Tamil Nadu, the State Minorities Commission functions as a recommendatory body to the Government of Tamil Nadu. The Commission consists of a chairperson, and five other members, and the term of the commission is for three years from the date of constitution.

The State Minorities commission performs the following functions: (a) To examine and evaluate the working of the various safeguards provided in the constitutions and by the laws of the State Legislature for the protection of Minorities (b) To make recommend measures ensuring effective implementation and enforcement of such safeguards and laws. (c) To undertake a review of the implementation of the policies and schemes of the State Government for the welfare of the Minorities of the state. (d) To conduct studies, research and analysis and suggest ways and means of avoidance of discrimination against Minorities of the state. (e) To make recommendations for ensuring, maintaining and promoting communal

---

94 Available at http://www.scm.nic.in
harmony in the state (f) To make periodical reports at prescribed intervals to the State Government.

This commission visits various parts of the state to study the problems of the Minorities and recommends suitable remediable measures to the departments concerned.95

In India at the State level, there are 18 State Human Rights Commissions, 34 State Women’s Commissions, 15 State Minorities Commissions, 24 State Information Commissions, 12 State headquarter offices of the National Commission for Scheduled Castes, 35 State Commissioners for Persons with Disabilities and 6 State headquarter offices of the National Commission for Scheduled Tribes. Thus, there are almost 145 statutory Human Rights institutions at the state level in India, all these institutions at both the national and state levels contribute to the promotion and protection of Human Rights in India.

The establishment of the National Human Rights Commission after that and the constitution of State Human Rights Commission in Tamil Nadu are definitely the positive development due to the pressure and influence exercised by the Human Rights Non Governmental Organizations like People’s Watch, its history and its activities are explained in the following chapters.

---