CHAPTER - VII

A CRITICAL ANALYSIS ON THE ROLE OF THE NATIONAL HUMAN RIGHT COMMISSION
CHAPTER VII

COMPARATIVE STUDIES OF NATIONAL HUMAN RIGHTS COMMISSION WITH OTHER COMMISSION OF THE WORLD

I. Introduction

The creation of National Human Rights Commission of India under the Protection of the Human Rights Act 1993 marked the beginning of a new era of human rights governance in India. Since seventieth years of its establishment the National Human Rights Commission of India has received popular recognition as indispensable institution of governance due to its sincere and spontaneous efforts to maintain the standard of integrity and transparency in its functioning.

However, there are certain drawbacks in the Protection of Human Rights Act 1993, which needs to be re-examined. The National Human Rights Commission has been hampered in realizing its full potential by external and internal factors. This fact can be better understood if one makes systematic comparative study of the National Human Right Commission of India with other Commissions of the world.

The other countries of the world have shown their interest in establishing national institutions in their respective jurisdiction for redressal of grievances of violation of human rights. The working methods of these national institutions are similar to National Human Rights Commission of India. To make the National Human Rights Commission of India efficient and effective there is a dire need to work by the National Human Rights Commission towards a national capacity building through sharing of experiences, information and best practices on human rights by other national institutions of the world.
The National Human Rights Commissions have been established in a number of countries for the promotion and protection of their citizens’ human rights and most of the Commissions are public bodies but with some degree of independence from the state. Some countries the ombudsman performs that role.

II. A Comparative Study with National Human Rights Commission of other Countries

1. Great Britain (U.K.)

The national institution for protection and promotion of human rights in Great Britain is known as Equality and Human Rights Commission. This Commission comes through the Human Rights Commission Act 2000.

The Commission shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and to acquire hold and dispose of any other property. 1

The Commission shall consist of a President and eight other members. 2 Of the members of the Commission, not less than four of them shall be men and not less than four of them shall be women. 3 The members of the Commission are appointed by the government.

A person who holds a judicial office in the Supreme Court may, without relinquishing that office, be appointed, with his or her consent, to be the President of the Commission, but, unless otherwise provided by the terms of his or her appointment, he or she shall not be required to perform his or her duties under statute as the holder of the judicial office while he or she remains the President of the Commission. 4

The Great Britain Human Rights Commission performs the following functions. 5

a. To keep under review the adequacy and effectiveness of law and practice in the state relating to protection of human rights.
b. If requested by a Minister of the government, to examine any legislative proposal and report its views on any implications of such proposal for human rights.

c. To consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit.

d. Either of its own initiative or on being requested to do so by the government, to make such recommendations to the government as it deems appropriate in relation to the measures which the Commission considers should be taken to strengthen, protect and uphold human rights in the state.

e. To promote understanding and awareness of the importance of the human rights in the state and, for those purposes, to undertake, sponsor or to provide financial or other assistance for research and educational activities.

f. To conduct inquiries

g. To prepare and publish, in such manner as it thinks fit, reports on any research undertaken sponsored, commissioned or assisted by it.

h. To apply to High Court or the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may, be as amicus curiae in proceedings before that court that involve or are concerned with the human rights of any person.

From the composition and functions of the Great Britain Human Rights Commission, it is clear that the Commission has more or less similarities in various fields with the National Human Rights Commission of India. The Great Britain Human Rights Commission and National Human Rights Commission of India both work like a watchdog body in promoting and protecting human rights in their respective territories. Moreover both bodies are recommendatory in nature.

However, there are certain points of differences between the two Commissions. This can be represented as in tabular form as follow
### Table - 7.1

<table>
<thead>
<tr>
<th>National Human Rights Commission, India</th>
<th>Great Britain Human Rights Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Number of representatives of women is not fixed. However, the Chairperson of National Women Commission would be a member of the Commission.</td>
<td>1. According to Section 5 (2) of the Human Rights Commission Act 2000 (Great Britain), the number of representatives of man and women are four (4) each. Thus women are given equal opportunity with man.</td>
</tr>
<tr>
<td>2. Generally a retire Chief Justice of Supreme Court of India is appointed as the Chairperson of the Commission</td>
<td>2. A person who holds a Judicial office in the Supreme Court may, without relinquishing that office, be appointed to be the President of the Commission.</td>
</tr>
<tr>
<td>3. Under Section 12 (b) of the Protection of the Human Rights Act 1993, the Commission can intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.</td>
<td>3. The Great Britain Human Rights Commission can apply to High Court or Supreme Court as the case may be as amicus curiae in proceeding.</td>
</tr>
<tr>
<td>4. Suo motu powers of the National Human Rights Commission of India are not conditional</td>
<td>4. Suo motu power is conditional. This power is subject to Section 8 (a), (c), (d) or (e)</td>
</tr>
<tr>
<td>5. High Selection Board appoints the members of the National Human Rights Commission of India</td>
<td>5. Government appoints the members of the Great Britain Human Rights Commission.</td>
</tr>
<tr>
<td>6. The Commission though an autonomous body but cannot directly consult with international bodies particularly.</td>
<td>6. The Commission can consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit.</td>
</tr>
</tbody>
</table>
2. French National Consultative Commission on Human Rights

The French Commission on Human Rights was one of the first institutions to be created after the Second World War. Its creation was liked to a request by the United Nations Economic and Social Council for member states. The Commission was set up in 1947 with a restricted mandate. The Commission’s mandate at that time only focused on international human rights law. The Commission’s scope of activities was really limited until 1984 when it was reactivated.  

According to law, the French Commission’s role consists in advising and making proposals to the government in the field of human rights and humanitarian actions. It can also make suggestions to the Parliament and government on the measures that would promote and protect human rights. The French National Consultative Commission has no competence to deal with individual complaints and to visit places of detention. These competences belong to different institutions in France: the Ombudsman examines individual complaints and a prison controller visits places of detention.  

It is important to bear in mind that functions of the Commission is to prevent human rights violation by detecting short comings in the law and suggesting improvements since efficiency lies in prevention and not only in solving problems.

The Commission comprises of representatives from human rights non-governmental organizations, qualified personalities and expert sitting in International Human Rights Organizations, representative from Trade Unions, from Ombudsman Office, from two members of Parliament and one member from Social and Economic Council.

The members have three (3) years non removable mandate, they are nominated by the Prime Minister but the decision is made in consultation with the Vice-President of Supreme Administrative Courts and President of Supreme Judicial Court and Budgetary Court. Both non revocability of the mandate and the nomination process ensure the independence of the members.
The organization of the French National Consultative Commission on Human Rights Commission is as follows:

1. **The President**
   - They are chosen among the members of the Commission.

2. **Two Vice-President**
   - They are chosen among the members of the Commission.

3. **Plenary Assembly**
   - The Plenary Assembly is made up of all the members of the Commission, meets around six times in a year to debate and adopt draft opinions and studies (majority vote).

4. **Bureau**
   - The Bureau is made up of the President and two Vice-Presidents and decides on the calendar and agenda of the meetings.

5. **Coordination Committee**
   - The Coordination Committee is made up of the members of the bureau, Presidents and Vice-Presidents.

6. **Sub Commissions**
   - The Sub Commissions are headed by a President and two Vice-Presidents and meet once a month to discuss topics concern, to listen to expert and representative from Ministries, and select issues which are needed to be examined.

7. **Secretary General**
   - The Secretariat General made up a Secretary General, three legal advisors and two administrative assistants, is responsible for coordinating the overall work.

Thus the French National Consultative Commission on Human Rights has more or less similarities with the National Human Rights commission of India. The French National Consultative Commission on Human Rights and National Human Rights Commission of India, both are working as vigilant body in promoting and protecting human rights in their respective areas. Both bodies have been working as a recommendatory body. However, there are certain provisions which place the French Commission on Human Rights in a better position than the National
Human Rights Commission of India. The French National Consultative Commission on Human Rights has certain specific area and some specific areas have been left out for Ombudsman. This is not the picture in India. Since Ombudsman has not been established in India, hence it is National Human Rights Commission of India who has to look after the individual and collective human rights violation. These differences can be summarized as following.

Table - 7.2

<table>
<thead>
<tr>
<th>National Human Rights Commission of India</th>
<th>French National Consultative Commission on Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The composition of the National Human Rights Commission of India is limited</td>
<td>1. In French Commission the following representatives are allowed as member of it NGOs, Expert sitting in International Origination, Trade Union, Ombudsman Office, Member of Parliament and Member from Socio-Economic Council</td>
</tr>
<tr>
<td>2. Duration of membership is five year</td>
<td>2. Term of membership is three year.</td>
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<tr>
<td>3. It is not completely an independent body.</td>
<td>3. Non-revocability of the mandate and the nomination process ensure the independency of it.</td>
</tr>
<tr>
<td>4. The National Human Rights Commission of India can investigate individual matter</td>
<td>4. It has no competency to deal with individual complaints</td>
</tr>
<tr>
<td>5. The National Human Rights Commission of India can visit jail as it is its function.</td>
<td>5. The French Commission cannot visit jail.</td>
</tr>
<tr>
<td>6. The functions as stated in Section 12 of the Protection of the Human Rights Act are not only preventive in nature but also remedial in nature hence it hampers its efficiency.</td>
<td>6. Functions of the French Commission are preventive in nature only (because efficiency lies only on prevention)</td>
</tr>
</tbody>
</table>
3. Equal Treatment Commission (Netherlands)

The Equal Treatment Commission of Netherlands came through Equal Treatment Act. Section 12 of the Act ensures its establishment. The Commission may establish sub-committees among its members for the performance of its duties. The Commission may, in response to a request in writing, conduct an investigation to determine whether discrimination as referred to in the Act, the Equal Opportunities Act or Section 646 of Book 7 of the Civil Code has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiatives to determine whether such discrimination is systematically taking place in the public service or in one or more sectors of society. 12

The Commission shall comprise of nine members including a Chair and two assistant Chairs and same number of deputy members. The members and deputy members shall be appointed by the Minister of Justice, in consultation with Minister of Interior, Minister of Employment and Social Security, Minister of Education and Science and Minister of Welfare, Health and Cultural Affairs. 13

An office shall be set up to assist the Commission in the performance of its duties. The Minister of Justice shall, on the recommendations of the Commission, appoint, promote, suspend and dismiss the staff of the office. The Minister of Justice shall decide in what cases they shall be appointed, promoted suspended and dismissed. 14

The Commission may, in the performance of its deities, call on the assistance of civil servants. The Commission may call for all information and documents which may reasonably be considered necessary for the performance of its deities. Every one shall be obliged, unless they are exempt on the official or professional confidentiality, to provide information and document. 15

Thus the Equal Treatment Commission (Netherland) has more or less similarities with the National Human Rights Commissions of India. Basically both
bodies are recommendatory in nature. Most significant provision for the Equal Treatment Commission (Netherland) is that the public servants are subordinate to the Commission. It helps the Commission in promoting and protecting human rights in their country because the public servants are the executors of law. In India, if public servants are made subordinate to National Human Rights Commission, there is a hope that the National Human Rights Commission of India can protect and promote human rights in a better way. However, the following are the areas, where distinctions between two bodies can be summed up

**Table -7.3**

<table>
<thead>
<tr>
<th>National Human Rights Commission</th>
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<tr>
<td>India</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Equal Treatment Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Netherland)</td>
</tr>
</tbody>
</table>

1. A committee headed by Prime Minister will appoint the member of the National Human Rights Commission of India.

2. The Commission cannot use the civil servants directly for discharging its deities.

3. Public servants are not obliged to follow the instructions, since the National Human Rights Commission of India is a recommendatory body.

4. It is a quasi judicial body

5. Here public servants are not obliged to give documents or information is not an effective mechanism.

1. The Minister of Justice will appoint the members of Equal Treatment Commission of Netherland after consultation with concern ministers.

2. The Commission can use the civil servants for discharging their duties.

3. Here public servants are obliged to give documents or information unless they are exempted.

4. It is purely an administrative body

5. Here public servants are obliged to give documents or information unless they are exempted is effective mechanism.
4. Scottish Commission for Human Rights

The Scottish Commission for Human Rights came into effect through the Scottish Commission for Human Rights Act 2006. The Commission consists of a member appointed to Chair the Commission, and not more than four other members. The member appointed to the Chair the Commission is to be individual appointed by her Majesty on the nomination the Scottish Parliament. The other members are to be individuals appointed by the Parliamentary Corporation.  

The Commission is not servant or agent of the Crown, and has no status, immunity or privilege of the Crown. The Commission, in exercise of its functions, is not to be subject to the discretion or control of any Member of Parliament, any member of the Scottish Executives on any Parliamentary Corporation.

The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conductive to, to exercise its functions. In particular the Commission may enter into contract and with the consent of the Parliamentary Corporation, acquire and dispose of land.

The Commission may perform the following general deities

1. The Commission may do an act to promote human rights, in particular, to encourage best practice in relation to human rights.

2. For the purposes of its general deities the Commission may publish or otherwise disseminate information or ideas, to provide advice or guidance, conduct research, provide education or training.

3. The Commission may review and recommend changes to any area of law of Scotland or any policies or practices of any Scottish public authorities.

4. The Commission may consult with the Scottish Law commission before undertaking a review of any area of law.

The powers and functions of the Scottish Commission for Human Rights are similar to the National Commission of Human Rights in India. Here also,
basically both Commissions are recommendatory in nature. The consultation process with the law Commission is an effective method applied in Scotland. It brings out effective and efficient rules and law which directly helps the Commission in promoting and protecting human rights in Scotland. However, there are some areas where the two Commissions differ from one another

Table – 7.4

<table>
<thead>
<tr>
<th>National Human Rights Commission India</th>
<th>Scottish Human Rights Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The members of the National Human Rights Commission of India are appointed by a high level Committee headed by the Prime Minister.</td>
<td>1. Members are appointed by the Crown after consultation with the Scottish Parliament.</td>
</tr>
<tr>
<td>2. Though the National Human Rights Commission of India is autonomous to some extent however, master servant relationship exists.</td>
<td>2. The Commission is not servant or agent of Crown.</td>
</tr>
<tr>
<td>3. In exercise of its deities, the Commission is subject to government particularly in case of Section 19 of the Protection of Human Rights Act 1993.</td>
<td>3. In discharging its deities the Commission is not subject to the discretion or control of any one.</td>
</tr>
<tr>
<td>4. In case of reviewing any law, the National Human Rights Commission of India does not require to consult with the Law Commission</td>
<td>4. In case of reviewing or recommendation of change of any law, the Commission is empowered to consult with the Scottish Law Commission.</td>
</tr>
<tr>
<td>5. The National Human Rights Commission of India comprises of nine (9) members including the Chairperson.</td>
<td>5. It comprises only five (5) members including the Chairperson.</td>
</tr>
</tbody>
</table>
5. Mexico’s National Human Rights Commission

Mexico’s National Human Rights Commission was created in 1990, through a presidential decree to monitor the human rights practices of government institutions and promote increase respect for fundamental rights in Mexico.

The Mexico National Human Rights Commission’s formal mandate is to protect, observe, promote, study and disseminate the human rights, protected by the Mexican legal system. While it is prohibited from analyzing electoral and labour issues, as well as decision by actors within the judicial system, this mandate provides broad room for addressing a wide range of pressing human rights problems in Mexico.

The Mexico National Human Rights Commission has five investigative areas, called vistiadurio, which carry out most of the Mexico National Human Rights Commission’s substantive work, following guidelines established by the Mexico National Human Rights Condition President and the institution’s internal rules.

The Mexico National Human Rights Commission’s modus operandi entails investigating and documenting human rights abuses and then employing a variety of instruments to resolve the cases. The most common instrument used in cases of serious human rights abuses is a public document and details the violations and identifies steps that state institutions should take to redress them. This document is formally known as a recommendation. When documenting generalized practices or systematic abuses, the Mexico Human Rights Commission may issue a ‘special report’ or a ‘general recommendation’ which also usually recommend ways in which the government should address the document abuses. For cases involving abuses that do not rise to the level of ‘serious’ human rights violation, the Mexico National Human Rights Commission can also issue a public recommendation but must first attempt to ‘conciliate’ the case by means of a signed agreement with the government authority responsible for documented abuses. This written ‘conciliation’ agreement contain analysis of the human rights violation and outline the steps that the government authorities have agreed to take to redress them. The Mexico uses this mechanism to solve 90 percent of the abuses its documents. The Mexico National Human Rights Commission thus has played a valuable role in
identifying human rights problem in Mexico and in some cases, pressing the
government to act in response to them.

The Mexico National Human Rights Commission has some similarities
with National Human Rights Commission of India. The method of identification of
human rights issues by Mexico Human Rights Commission is very effective. The
human rights violations are classified into two parts namely serious and non
serious. If violation is serious, the Commission sends a special report to
government for necessary action and if not, the Commission uses conciliation
process. The National Human Rights Commission of India does not use this
method to identify the human rights violation. In addition, there are certain are
where the commissions differ from each other. It can be summarized as

<table>
<thead>
<tr>
<th>National Human Rights Commission India</th>
<th>Mexico NHRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Commission can look after all the matter as given in the list I &amp; II of the VII Schedule of the Constitution of India.</td>
<td>1. The Mexico NHRC can analysis all matter except electoral and Labour issues.</td>
</tr>
<tr>
<td>2. The National Human Rights Commission of India does not have specific investigative area.</td>
<td>2. The Mexico Human Rights Commission has five specific investigative areas.</td>
</tr>
<tr>
<td>3. The National Human Rights Commission of India does not emphasis on conciliation method to address the problem.</td>
<td>3. The Commission has always given emphasis on the conciliation agreement with the government bodies and the Commission uses this mechanism to resolves 90% of the abuses.</td>
</tr>
<tr>
<td>4. The documentation mechanism is rarely used.</td>
<td>4. Documentation mechanism is frequently used where human rights violations are analysed in detail and discussed the probable redressed available to the victims.</td>
</tr>
<tr>
<td>5. The National Human Rights Commission of India does not classify of human rights violation for its identification.</td>
<td>5. The Commission classifies the human rights violation into two parts serious and non serious.</td>
</tr>
</tbody>
</table>

The South African Human Rights Commission is the national institution established to support constitutional democracy. It is committed to promote respect for, observance of and protection of human rights for everyone without fear or favour. The Commission was inaugurated on 2nd October 1995 under the Human Rights Commission Act 54 of 1994.


The South African Human Rights Commission consists of Commissioners and a Secretariat. Commissioners provide strategic leadership and direct policy. They are appointed by Parliament on a seven year term and can be reappointed. The South African National Human Rights Commission has the following powers:

(a) To investigate and report on the observance of human rights;
(b) To take steps and secure appropriate redress where the human rights have been violated;
(c) To carry out research;
(d) To educate;

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

The South African National Human Rights Commission has also some similarities with the National Human Rights Commission of India. Basically both bodies are recommendatory in nature. These bodies have been working as a watch dog body in promoting and protecting human rights in their respective territories.
However, there are certain areas where both Commissions differ from each other. It can be stated as –

Table – 7.6

<table>
<thead>
<tr>
<th>National Human Rights Commission (India)</th>
<th>South African NHRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Members of the National Human Rights Commission of India are appointed by a high level Committee headed by the Prime Minister.</td>
<td>1. Members are appointed by the Parliament</td>
</tr>
<tr>
<td>2. Every year the Commission must not require relevant organs of state to provide the Commission with information on measures that they have taken towards the realization of human rights, until any violation of human rights take place.</td>
<td>2. Every year the Commission must require relevant organs of state to provide the Commission with information on measures that they have taken towards the realization of human rights.</td>
</tr>
<tr>
<td>3. The members are elected for five years</td>
<td>3. The members are elected for seven years.</td>
</tr>
<tr>
<td>4. The members do not provide strategic leadership and direct policy.</td>
<td>4. Commissioners provide strategic leadership and direct policy.</td>
</tr>
<tr>
<td>5. The National Human Rights Commission of India comprises of nine members.</td>
<td>5. The Commission comprises of eleven members.</td>
</tr>
<tr>
<td>6. Each member of the Commission is not responsible for a particular aspect of human rights—children, disability, civil rights</td>
<td></td>
</tr>
<tr>
<td>6. Each member of the Commission is responsible for a particular aspect of human rights—children, disability, civil rights.</td>
<td></td>
</tr>
</tbody>
</table>

The Human Rights and Equal Opportunity Commission is established through the Human Rights and Equal Opportunity Commission Act 1986. The Commission is a body corporate, with perpetual succession; shall have a common seal and may acquire, hold and dispose of real and personal property. 26

The Commission shall consist of a President and Human Rights Commissioner, the Sex Determination Commissioners and the Disability Discrimination Commissioner. The members must act in a way that promotes collegiate nature: 27

It is the duty of the Commission to ensure that the functions of the Commission under this Act or other Acts are performed with regard for; the indivisibility and universality of human rights and the principle that every person is free and equal in dignity and rights. 28

The functions of the Commission are as follows- 29

1. Such functions as are conferred on the Commission by Age Discrimination Act 2004, the Racial Discrimination Act, the Sex Discrimination Act 1984;

2. To inquire into and attempt to conciliate complaints of unlawful discrimination;

3. To examine enactment, propose of enactments for ascertaining whether such enactments are inconsistent with or contrary to any human rights and to report to the Minister the result of such examinations;

4 To inquire into any act or practice that may be inconsistent with or contrary to any human rights;

5. To promote an understanding and acceptance, and public discussion of human rights in Australia;
Thus Human Rights and Equal Opportunity Commission (Australia) has more or less similarities with the National Human Rights Commission of India. However, there are certain areas where both Commissions differ. This can be shown as

Table - 7.7

<table>
<thead>
<tr>
<th>National Human Rights Commission India</th>
<th>Human Rights &amp; Equal Opportunity Commission (Australia)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The National Human Rights Commission of India does not work as collegiate nature.</td>
<td>1. The Commission works as a collegiate nature.</td>
</tr>
<tr>
<td>2. Conciliation is not a method to address the human rights violation issues.</td>
<td>2. Conciliation is a method to address the human rights violation issues</td>
</tr>
<tr>
<td>3. The National Human Rights Commission of India compromises of nine members.</td>
<td>3. The Commission comprises of seven members.</td>
</tr>
<tr>
<td>4. Policy making in the field of human rights is not a statutory mandate to the National Human Rights Commission of India.</td>
<td>4. Policy making in the field of human rights is a statutory mandate to the Commission.</td>
</tr>
<tr>
<td>5. The National Human Rights Commission of India does not undertake bilateral international activities as a part of government’s development programme.</td>
<td>5. The Commission undertakes bilateral international activities as a part of Australian Government’s development programme.</td>
</tr>
</tbody>
</table>

The Kenya National Commission on Human Rights was established in 2002 under the Kenya National Commission on Human Rights Act 2002. The Commission shall be the successor to the Standing Committee on Human Rights. The Commission shall be a body corporate with perpetual succession and a common seal and shall be capable, in its corporate name, of suing and being sued.  

The Commission shall consist of a Chairperson appointed from amongst the Commissioners and nine Commissioners nominated by National Assembly and appointed by the President. A person shall be qualified for appointment as a Commissioner if such person is a citizen of Kenya, and is a person of high moral character and proven integrity and has knowledge and experience in matters relating to human rights. In case of Chairperson, he is qualified to hold office as a judge of the High Court of Kenya. No person shall be qualified for appointment as a Commissioner if such person is a Member of Parliament, a member local authority or is a member of executive body of a political party. In nominating or appointing persons as Commissioners the National Assembly and the President shall have regard to Kenya’s ethnic, geographical, cultural, political, social, economic diversity and principle of gender equality. There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary.

The functions of the Kenya National Commission on Human Rights are as given:

- To investigate on its own initiative or upon a complaint made by any person or group of persons, relating the violations of human rights;
• To visit prisons and places of detention or related facilities with a view to assessing and inspecting the condition under which inmates are held and makes appropriate recommendations;

• To inform and educate the public as to human rights for the purpose of enhancing respect for such rights by means of acontusing programme of research, publication, lectures and symposia and by such other means as the Commission may deem fit;

• To recommend to Parliament effective measures to promote human rights, including provision of compensation of victims of violations of human rights or their families;

• To formulate, implement and oversee citizens of and other persons resident in Kenya, awareness of their civic responsibilities and an appreciation of their rights and obligation as free people.

• To act as the chief agent of the compliance with its obligations under International Treaties and Conventions on Human Rights;

• To encourage the efforts of other institutions working in the field of human rights and cooperate bodies for the purpose of promoting and protecting human rights in Kenya;

• To perform such other function as the Commission may consider necessary.

In performance of its functions under the Act the Commission shall accommodate the diversity of Kenya people, observe the principle of impartiality and gender equality, have regard to all applicable International Human Rights Standards and in particular, to the fact that human rights are indivisible, interdependent, inter related and of equal importance for the dignity of human beings and observe the rules of natural justice and fairness.36
In performance of its functions under the Act the Commission shall have the powers of a court to:

1. Issue summons or other orders requiring the attendance of any person before the Commission and production any document or record relevant to any investigation by the Commission.

2. Question any person in respect of any subject matter under investigation before the Commission.

3. Require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

The Commission may, if satisfied that there has been an infringement of any human rights or freedom, order the release of any unlawfully detained or restricted person; the payment of compensation or any other lawful remedy or redress. A person or authority dissatisfied with an order made by the Commission may appeal to the High Court within twenty one days of such order. The funds of the Commission shall be derived from such sums as may from time to time be appropriated by the Parliament for that purpose. The Commission may receive grants and donations from any other source.

Thus, the Kenya National Human Rights Commission has more or less similarities with the National Human Rights Commission of India. The Kenya National Human Rights Commission has been playing a significant role like National Human Rights Commission of India in promoting and protecting human rights in Kenya. Basically both bodies are recommendatory in nature. However, there are certain areas where the both Commissions differ.
Table - 7.8

<table>
<thead>
<tr>
<th>National Human Rights Commission (India)</th>
<th>Kenya NHRC</th>
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<tbody>
<tr>
<td>1. The members of the National Human Rights Commission of India are appointed by a high level Committee headed by the Prime Minister of India</td>
<td>1. Commissioners are nominated by the Parliament and appointed by the President</td>
</tr>
<tr>
<td>2. Most of the members of the National Human Rights Commission of India are the government employees.</td>
<td>2. Commissioners are not officers of the government</td>
</tr>
<tr>
<td>3. The Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants as such as the Government thinks fit</td>
<td>3. The fund of the Commission will be determined by the Parliament.</td>
</tr>
<tr>
<td>4. The Commission does not have power to issue order of release of a person if detained unlawfully.</td>
<td>4. The Commission may issue order to release a person if detained unlawfully.</td>
</tr>
<tr>
<td>5. There are no expressed principles or guidelines under the Protection of the Human Rights Act 1993 to perform the duties of the Commission.</td>
<td>5. In performing its duties the Commission is guided by some expressed principles as stated in the Act.</td>
</tr>
</tbody>
</table>

9. National Human Rights Commission of Korea

The National Human Rights Commission of Korea, established in November 2001 under the National Human Rights Commission Act, is an independent government body composed of eleven human rights Commissioners including a Chairperson and three standing (full time) Commissioners. The Secretariat led by Secretary General has three bureaus (policy and education,
investigation, and administration), eleven divisions and three regional human rights offices. The human rights issues are considered and decided in the Plenary Committee, Standing Commissioner’s Committee, or Thematic Sub Committees such as Civil Rights Sub Committees, Anti Discrimination Sub Committee and Disability Rights Committee. The National Human Rights Commission of Korea works for the following purposes.

1. Developing human rights policies through conducting research and issuing policy recommendations;

2. Investigating discrimination and human rights violation cases and provides adequate remedies;

3. Promoting human rights education and raising public awareness of human rights conduct and human rights research;

4. Making guidelines to define types and criteria of human rights violations and provide preventive measures;

5. Recommending the accession to and implementation of international human rights treaties;


Thus the Korea National Human Rights commission has more or less similarities with the National Human Rights Commission of India. The Korea National Human Rights Commission has a very well organized mechanism or sub branches for its proper functions. The National Human Rights Commission has also such divisions subject to approval of the Government of India. Both bodies have been playing significant role in promoting and protecting human rights in their respective areas. However, there are certain areas where the both Commissions differ from each other.
Table - 7.9

<table>
<thead>
<tr>
<th>National Human Rights Commission (India)</th>
<th>Korea NHRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The National Human Rights Commission of India is not properly an independent body</td>
<td>1. It is an independent body</td>
</tr>
<tr>
<td>2. The National Human Rights Commission of India has no classification relating to policy and education, investigation and administration.</td>
<td>2. The Secretariat led by Secretary Generals has three burettes (policy and education, investigation and administration)</td>
</tr>
<tr>
<td>3. The human rights issues are considered and decided by various Core Groups.</td>
<td>3. The human rights issues are considered and decided by various Committees</td>
</tr>
<tr>
<td>4. The National Human Rights Commission of India does not emphasise on anti discrimination policies and remedies of vulnerable groups.</td>
<td>4. It emphasises on anti discrimination policies and remedies of vulnerable groups</td>
</tr>
<tr>
<td>5. The Commission comprises of nine members including the Chairperson.</td>
<td>5. The Commission comprises of eleven members.</td>
</tr>
</tbody>
</table>

10. New Zealand Human Rights Commission

The New Zealand Human Rights Commission was established under Section 4 of the Human Rights Commission Act 1977. The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring holding, and disposing of real and personal property and of suing and being sued.42

The Commission shall consist of the following Human Rights Commissioners

a. A Chief Commissioner;
b. A Commissioner appointed to be the Race Relations Conciliator;
c. The Privacy Commissioner appointed under the Privacy Act 1993;
d. A Commissioner appointed to be the Proceedings Commissioners;
e. Not more than three other Human Rights Commissioners.

The Commissioners are appointed by the Governor General on the recommendations of the Ministers.43

The New Zealand National Commission on Human Rights performs the following functions.44

1. To encourage by education and publicity respect for an observance of human rights;

2. To encourage and co-ordinate programmes and activities in the field of the human rights;

3. To make public statements in relation to any matter affecting human rights, including statements promoting an understanding of, and compliance with this Act;

4. To prepare and publish, as the Commission considers appropriate guidelines for the avoidance of acts or practices that may be consistent with, or contrary to, the provisions of the Act;

5. To receive and invite representations from members of the public on any matter affecting human rights;

6. To consult and cooperate with other persons and bodies concerned with the protection of human rights;

7. To inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental if it appears to the Commission that human rights are, or may be, infringed thereby; and
8. To report to the Prime Minister from time to time on any matter affecting human rights including the desirability of legislative and administrative actions.

Thus the New Zealand National Human Rights Commission has similarities with the National Human Rights Commission of India. However, there are some differences. These can be summed up as

**Table - 7.10**

<table>
<thead>
<tr>
<th>National Human Rights Commission India</th>
<th>NHRC of New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The members have general functions as laid down in Section12 of the Protection of Human Rights Act 1993.</td>
<td>1. The Commissioners have general as well as individual functions.</td>
</tr>
<tr>
<td>2. The Commission does not have power of inviting representation from members of public.</td>
<td>2. The Commission can invite representation from members of the public on any matter affecting human rights.</td>
</tr>
<tr>
<td>3. The National Human Rights Commission of India submits its report annually before the Parliament of India.</td>
<td>3. The Commission directly submits its report to the Prime Minister</td>
</tr>
<tr>
<td>4. It comprises of nine members</td>
<td>4. It comprises of seven members.</td>
</tr>
<tr>
<td>5. The members of the National Human Rights Commission of India are appointed by a high level committee headed by the Prime Minister of India</td>
<td>5. The members are appointed by the Governor General on recommendations of Ministers.</td>
</tr>
</tbody>
</table>
III. A Comparative Study of National Human Right Commission of India with International and Regional Bodies

International mechanisms have also done a credible job in promoting and protecting human rights at international arena. Therefore, there is a need to study the composition, jurisdiction and methods of work of these institutions and make a comparative study with the National Human Rights Commission of India.

1. United Nations Human Rights Council

The United Nations Human Rights Council (UNHRC) is an intergovernmental body within United Nations system. The United Nations Human Rights Council is the successor to the United Nations Commission on Human Rights, and is a subsidiary body of United Nations General Assembly. The Council works closely with the Office of the High Commissioner for Human Rights and engages the United Nations’ Special Procedures. The members of the General Assembly elect the members who occupy the United Nations Human Rights Council’s forty seven seats. The term of each seat is three years, and no member may occupy a seat more than two consecutive terms.


The United Nations Human Rights Council has a well organized complaint procedure. The purpose of such procedure is to address consistent patterns of gross and reliably attested violation of all human rights and all fundamental freedoms occurring in any part of the world. The United Nations Human Rights Council has two working groups namely “Working group on Communication (WGC)” and
"Working Group on Situation (WGS)" The Working Group on Communication consists of five independent and highly qualified experts, and is geographically representative of five regions represented by Advisory Committee. The experts determine whether a complaint deserves investigation. If a complaint deserves investigation, the Working Group on Communication passes the complaint to the Working Group on Situation.

The Working Group on Situation also consists of five independent and highly qualified experts, and is geographically representative of five regions represented by Advisory Committee. The Working Group on Situation reports to the United Nations Human Rights Council about the complaints received from the Working Group on Communication and makes recommendations about the course of action the United Nations Human Rights Council should take.46

Though the purpose and functions of National Human Rights Commission of India are same with the United Nations Human Rights Council, however, there are some differences and it can be summed up as

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The National Human Rights Commission of India does not have Advisory Committee.</td>
<td>1. It has an Advisory Committee comprising of 18 members.</td>
</tr>
<tr>
<td>2. The National Human Rights Commission of India does not have working groups to deal with the complaint procedures.</td>
<td>2. The United Nations Human Rights Council has two working groups namely “Working group on Communication (WGC)” and “Working Group on Situation (WGS)”</td>
</tr>
<tr>
<td>3. The members of the National Human Rights Commission of India are appointed for five years.</td>
<td>3. Members are appointed for three years.</td>
</tr>
</tbody>
</table>
2. Inter American Human Rights System

For almost half a century, the Inter-American Human Rights System has played an important role in the consolidation of democratic norms in the Western Hemisphere. The Inter-American Court of Human Rights (the Court) and its sister institution, the Inter-American Commission on Human Rights (the Commission, or IACHR) is charged with protecting human rights in the Western Hemisphere. The Commission was established in 1959 and began to operate in 1960. Functionally, the Court and the Commission play quite distinct role in promoting human rights in America. The Court operates as a forum of last resort for complaints of human rights abuses that are not adequately addressed by domestic remedies. The Commission assists the Court in identifying and handling these cases, and also develops separate activities of human rights monitoring and promotion in order to prevent future abuses.

Under the American Convention, the Commission is broadly charged with the responsibility to promote respect for and defence of human rights. The Commission fulfils this mandate through a variety of activities. First, the Commission monitors the situation of human rights in all countries of the hemisphere, publishing reports on subjects and countries of special concern. The Commission may also establish special rapporteurships to bring attention to topics and themes of concern in the Americas and propose amendments and additional protocols to the Convention, to be voted upon by the General Assembly of the Organizations of American States. Secondly, the Commission receives and processes complaints of specific human rights abuses. If the claim is admissible and has merit, the Commission shall seek to negotiate a friendly settlement between the offending state and the injured party, or make a finding of fault and recommendations as to how the state should resolve the matter. In one recent year, the Commission received over 1376 individual petitions, declaring forty-nine to be admissible, reaching four friendly settlements, and producing seven reports on the merits. If the state does not comply with the recommendations and has
accepted the contentious jurisdiction of the Court, the Commission may submit the matter to the Court,\textsuperscript{55} which has the power to issue legally binding orders to the state.\textsuperscript{56} A state may also refer a case to the Court if it wishes to challenge the Commission's finding of responsibility.\textsuperscript{57}

The Court determines whether it has jurisdiction to hear the case, entertains preliminary objections, and rules on whether a state has committed a violation of human rights as set forth in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man.\textsuperscript{58} If the Court finds that a violation has occurred, it may award injunctive relief and compensatory damages.\textsuperscript{59}

The Court has two additional tools available to protect and promote human rights in the hemisphere. First, it has the power to order provisional measures also referred to as precautionary measures to prevent irreparable harm in cases of extreme gravity and urgency.\textsuperscript{60} Procedurally, this is similar to the use of a preliminary injunction in U.S. courts. These may be issued, at the request of the Commission, even where no case is before the Court.\textsuperscript{61} In practice, provisional measures are most frequently used to order state parties to delay an imminent execution or provide protection to other persons who have been threatened with other bodily harm.\textsuperscript{62} Second, the Court may issue advisory opinions interpreting the human rights obligations of states under the American Convention or other treaties protecting human rights in the hemisphere, upon the request of a state party or any organ including the Commission. States may also request the Court to issue an advisory opinion regarding the compatibility of their laws with applicable human rights instruments.\textsuperscript{63}

The jurisdiction of the Commission and Court is bounded both geographically and by subject matter. Both institutions have supreme competence to interpret and apply the human rights treaties of the Organization of American States. In resolving petitions and cases, the Inter-American human rights bodies
may also consider other international human rights treaties ratified by a particular State, which may impose additional obligations or aid in the interpretation of regional treaties.64

The purpose and functions of National Human Rights Commission of India are same with the Inter American Human Rights Commission and Court. Inter American Human Rights Commission and Courts have done a credible job in protecting and promoting human rights in the entire region. The National Human Rights Commission of India has also played a significant role in India. However, there are some differences and it can be summed up as

Table - 7.12

<table>
<thead>
<tr>
<th>National Human Rights Commission of India</th>
<th>Inter American Human Rights Commission and Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The National Human Rights Commission can interfere in court proceeding with the permission of the court.</td>
<td>1. The Commission cannot take up such matters which are adequately addressed by domestic bodies.</td>
</tr>
<tr>
<td>2. The National Human Rights Commission of India does not emphasis on friendly settlement of cases between the state and victim party.</td>
<td>2. It always emphasis on friendly settlement of cases between the state and victim party.</td>
</tr>
<tr>
<td>3. The National Human Rights Commission of India does not have contentious jurisdiction</td>
<td>3. It has contentious jurisdiction. Under it Commission refers the case to the Court.</td>
</tr>
<tr>
<td>4. The National Human Rights Commission of India does not grant injunctive relief</td>
<td>4. It grants injunctive relief</td>
</tr>
<tr>
<td>5. It is a recommendatory body only</td>
<td>5. Its' orders have bindingness.</td>
</tr>
</tbody>
</table>
3. African Commission on Human and Peoples’ Rights

The African Commission on Human and Peoples’ Rights is a quasi judicial body task with promoting and protecting human rights and collective rights throughout the African continent as well as interpreting the African Charter on Human and Peoples’ Rights considering individual complaints of violation of the Charter.

The African Commission on Human and Peoples’ Rights is made up of eleven members, elected by secret ballot. These members, who serve six member renewable terms, are chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples’ rights. The Commission has three broad areas of responsibilities; promoting human and peoples’ rights, protecting human and peoples’ rights and interpreting the African Charter on Human and Peoples’ Rights. In pursuant of these goals, the Commission is mandated to collect documents, undertake studies and researches on African problems. With creation of the African Court on Human and Peoples’ Rights, the Commission is required to have an additional task of preparing cases for submission to the court’s jurisdiction.


These rapporteurs are highly regarded experts in their field who monitor, investigate and report on allegations of violation in member states of the African Union. There are five Working Groups that monitor and investigate various issues under the purview of the Commission: Working Group on Specific Issues Related to the Work of the African Commission, Working Group on Indigenous
The purpose and functions of National Human Rights Commission of India are same with the African Commission on Human and Peoples’ Rights. African Commission on Human and People’s Rights works at regional level and has done a lot in promoting and protecting human rights in Africa like National Human Rights Commission of India. Basically both bodies have been working as a watchdog body in the matter of human rights in their respective areas. However, there are some differences and it can be summed up as

<table>
<thead>
<tr>
<th>National Human Rights Commission of India</th>
<th>African Commission on Human and Peoples’ Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It consists of eight members</td>
<td>1. It consists of eleven members</td>
</tr>
<tr>
<td>2. It does not have effective working groups.</td>
<td>2. It has effective working groups who work with special mechanism with special issues.</td>
</tr>
<tr>
<td>3. It is not an independent body</td>
<td>3. It is an independent body</td>
</tr>
</tbody>
</table>

4. European Commission of Human Rights and European Courts of Human Rights

The European Commission of Human Rights shall consist of a number of members equal to that of the High Contracting parties. No two members of the Commission shall be nationals of the same state. The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the bureau of the Consultative Assembly, each group of the Representatives of the High Contracting Parties in the Consultative
Assembly shall put forward three candidates, of whom two at least shall be its nationals.

The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years. The members whose terms are to expire at the end of the initial period of three years shall be chosen by the Secretary-General of the Council of Europe immediately after the first election has been completed. A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term. The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken. The Commission shall perform the functions set out in Article 28 by means of a Sub-Commission consisting of seven members of the Commission. Each of the parties concerned may appoint as members of this Sub-Commission a person of its choice.

If the Sub-Commission succeeds in effecting a friendly settlement in accordance with Article 28, it shall draw up a report which shall be sent to the states concerned, to the Committee of Ministers and to the Secretary-General of the Council of Europe for publication. This report shall be confined to a brief statement of the facts and of the solution reached. If a solution is not reached, the Commission shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the report.
The European Human Rights Commission has some short of similarities with the National Human Rights Commission of India. European Commission of Human Rights is very active body and has able to protect human rights of the people of Europe. The European Commission of Human Rights and National Human Rights Commission of India have been playing pivotal role in protecting and promoting human rights in their respective spheres. European Human Rights Commission works in the entire Europe while National Human Rights Commission works at national level. In addition, the European Human Rights Commission differs from National Human Rights Commission in the following areas

**Table - 7.14**

<table>
<thead>
<tr>
<th>National Human Rights Commission of India</th>
<th>European Commission of Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. States are not adequately represented to the National Human Rights Commission of India. Section 21 of the Protection of Human Rights Act 1993 is directory in nature.</td>
<td>1. States are given membership to the Commission</td>
</tr>
<tr>
<td>2. The National Human Rights Commission of India does not work with Sub Commissions</td>
<td>2. It works with the sub Commission where states are members of it</td>
</tr>
<tr>
<td>3. It is a simply recommendatory body hence it does not emphasis in friendly relationship</td>
<td>3. It always emphasis on the friendly settlement of disputes</td>
</tr>
<tr>
<td>4. The National Human Rights Commission can take up a matter even where after domestic remedies have been exhaustive</td>
<td>4. It considers only those issues relating to the violations of human rights where after domestic remedies have been exhaustive. It reduces the overlapping situation in taking cognizance of cases</td>
</tr>
</tbody>
</table>
IV. Conclusion

From the systematic comparative studies of the National Human Right Commission of India with other Commissions of the world, one can easily understand that there are a lot of areas to be addressed to have an effective mechanism for protection and promotion of human rights in India. Like Great Britain, a person who holds as a Judge in the Supreme Court or High Courts, may, without relinquishing that office, be appointed to be the Chairman of the National Human Rights Commission. If chairman is appointed like this way, the National Human Rights Commission would be more authoritative and effective. In Netherland, public servants are made obliged to give documents or information to the Netherland Human Rights Commission. If this provision is incorporated as mandatory to the Protection of Human Rights Act, 1993 the National Human Rights Commission would be able to work effectively. Moreover, the master servant relationship between the Government and the Commission should be ended up like Scottish Human Rights Commission.
References

5. Section 8 of the Human Rights Commission Act, 2000 (Great Britain).
7. WWW.cnch.fx.
8. ibid.
9. Supra n 7.
10. ibid.
11. Supra n 7.
12. Section 12(1) of the Equal Treatment Act.
15. Section 19 of the Equal Treatment Act.
17. ibid.
18. Supra n 16.
19. Decree by which the National Commission on Human Rights is created as a de­
concentrated agency of Interior Ministry.
20. Law on CNDH, Article 2.
21. Law on CNDH, Article 44, 46 & 49.


24. ibid.


32. Section 8 of the Kenya National Commission on Human Rights Act, 2002.


34. Section 7 of the Kenya National Commission on Human Rights Act, 2002.


41. Ibid.


47. American Convention, supra note 2, art. 41.


52. Id. art. 40 (Friendly Settlement).

53. Id. arts. 43–44 (Decision on the Merits & Report on the Merits).


55. Commission Procedures, supra note 58, art. 45.

56. American Convention, supra note 2, art. 68(1).

57. PASQUALUCCI, supra note 36, at 7.


59. American Convention, supra note 2, art. 63(1).
60. American Convention, supra note 2, art. 63(2).

61. Commission Procedures, supra note 58, art. 25(2) (Precautionary Measures).


63. Id. art. 64(2).

64. See American Convention, supra note 2, art. 29 (Restrictions Regarding Interpretation).


