CHAPTER – 4

NATIONAL HUMAN RIGHTS COMMISSIONS
CHAPTER – 4
NATIONAL HUMAN RIGHTS COMMISSIONS

4.1 Introduction

India is a new State – just 60 years-old but is admittedly an ancient society. Being the motherland of one of the oldest civilizations of the world and the birthplace of diverse cultures and religions, has a very rich heritage of human rights ideals and values. India is bestowed with all principles and institutions of democratic governance and is also a signatory to the Universal Declaration of Human Rights and international covenants, which fortify India’s commitment to the respect for human rights. The Constitution of India, which came into force on 26 January 1950, also has a rich content of human rights in Part III and Part –IV. The historical distinction between fundamental rights and Directive Principles was diluted in a series of constitutional amendments as well as in judicial interpretations over a period of time.

These developments may be classified into two periods: (1) between 1950 and 1978 and (2) between 1978 and 1993. The year 1978 is important because of the decision given by the Supreme Court in Maneka Gandhi v. Union of India. During the first period, certain basic rights like the right to privacy were held to be part of personal liberty under article 21. The right of travel abroad was also read into personal liberty in Article 21. The detenu’s right to write and be published was held to be part of personal liberty. In the second period, there has been a much faster development in the form of judicial interpretations to protect rights and liberties of individuals against the communications and omissions of the State. In the decision in Meneka Gandhi v. Union of India, Justice P. N. Bhagwati observed.

The expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers variety of right, which go to constitute the personal liberty of man, and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.
This was turning point for judicial activism in upholding the right and liberties of individuals under the Indian Constitution.

During the period between 1973 and 1993, considerable developments took place in the protection of the rights of individuals. The rights of prisoners and under trials, which are not mentioned anywhere, were sought to be protected. The right to livelihood was read into Article 21. Justice Bhagwati observed in *Francis Coralie v. Union Territory of Delhi*.

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one in adverse forms, freely moving about and mixing and commingling with fellow human beings.

In *Bandhu Mukti Maecha v. Union of India*, in addressing the right of release and rehabilitation of bonded labour, Justice Bhagwati observed:’ … these are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State… has the right to take any action which will deprive a person of the enjoyment of these basic essentials. In an earlier case, Justice V. R. Krishna Iyer observed.

The high value of human dignity and the worth of human person enshrined in Article 21, read with Article 14 and 19obligate the State not to incarcerate except under the law which is fair, just and reasonable in its procedural essence.

In *Sodan Singh v. NDMC*, the Supreme Court held that in view of the global developments in the sphere of human rights these judicial decisions are a pointer towards the recognition of an affirmative right to the basic necessities of life under Article 21.

The right of women and children housed in protective homes to suitable living conditions and to effective safeguard of their interests was upheld by the Supreme
Court. Free legal aid to the accused was held to be a right under Article 21. The Court went a step further and said that the trial court is under an obligation to tell an accused who cannot afford legal representation that he is entitled to be represented by a lawyer at the cost of the State. The right to speedy trial was held to be part and parcel of individual rights. The right to claim monetary compensation for the violation of rights, including the unremunerated rights in Article 21, has been recognized by the Supreme Court. The right to education was also read into the right to life under Article 21.

These decisions are mentioned to indicate that the Supreme Court has been doing an excellent job since 1978 in realizing the Human Rights of all individuals, whether mentioned in the Fundamental Rights chapter or not. In 1993, Justice J. S. Verma in Nilabati Behera v. State of Orissa referred to Article 9(5) of the International Covenant on Civil and Political Rights 1966, which provides: ‘Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation,’ and held that it is not alien to the concept or enforcement of a guaranteed right, in yet another place, Justice Verma observed.

It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of fundamental rights is ‘distinct from, and in addition to the remedy in private law for damages for the tort’ resulting from the contravention of the fundamental rights.

India has ratified the International Covenant on Civil and Political Rights.

This brief survey of the attempt to protect, through judicial decisions, the basic human rights, the fundamental rights as well as the Directive Principles of state policies of State Policy (reflecting social, economic and cultural rights) leads us to the fundamental question, should a separate and independent National Human Rights
Commission be established or not? If established, would it not undermine the judicial process through which the rights have got fool protection?

Before the establishment of the NHRC, a series of seminars and workshops were held to identify the method and manners and workshops were held to established, its powers and functions, and related legal and constitution questions. At a seminar organized by the Bar Council of India, several views were presented for and against the NHRC. Justice V. R. Krishna Iyer, reacting to the establishment of NHRC because of criticism from other countries, observed.

It is a creation in panic, a shame that we should think in terms of a Commission on Human Rights only because Sweden or the United State Congress or some other country tells (us) You are not respecting human rights. Therefore, have a Commission if you really want help from us. The mendicancy to which this nation is reduced not merely financially but even in regard to human rights ideology is a matter for pity. We may be proud of our judiciary, we may be proud of our Press but I am not proud of international mendicancy which originates from Delhi.

He went on to describe the NHRC as an optical illusion, cosmetic coloration, opium for the people at home and Brower sugar for countries abroad, a legislative camouflage, a verbal wonder which conceals more than it reveals. An ineffectual angel which beats its golden wings in the void in vain.

He also opined that we should have the Human Rights Division of the Supreme Court of India, it will be useful. Similarly we may have at the High Court level and then they can operate with infrastructure which is provided. We really want, therefore, a commission which is vitalized, a commission which has an independent investigating staff not deputed from the police.

**In favour of the NHRC, Justice T. K. Thommen Observed**

The proposed National Commission on Human Rights is, in many respects, intended to be an ombudsman to oversee the enforcement of laws and effective protection of
human rights. It is the primary responsibility of the legislature to address itself to be
enactment of effective laws; it is the responsibility of the executive to implement laws
promptly and Justly; it is the function of an independent judiciary to administer
justice, according to law. The power of the proposed commission are intended to be
so wide as to oversee the functioning of the organs of the state, not with a view to
interfering with their constitutionally assigned functions, but to highlighting before
them the passing problems endangering human rights in order that the Commission,
which the people of this country have given unto themselves to safeguard a true
democratic system of administration, becomes a meaningful instrument of justice and
equity and an invigorating force of carry the nation forward. The people of this
country, rich or poor, literate or illiterate, forward or backward, demand justice being
done to them without fear or favour. The commission is not a court. Its function is to
be the watchdog of human rights. Its procedure is not expected to be adversarial or
accusatorial. It must not allow itself to be bogged down by procedural formalities.

With a view to strengthen the process of the protection of human rights in India, the
Government of India decided to set up at national level an autonomous National
Human Rights system. On 14th May 1993 the Protection of Human Rights Bill was
introduced. But on 29th September 1993, the President of India, under Article 123 of
the Constitution promulgated an ordinance for setting up a National Human Rights
Commission to inquire into the complaints of violations of human rights against the
public servants in every part of the country. The Union Parliament promptly passed it.
This paved the way for the setting of a National Human Rights Commission. It is a
fully autonomous body; its autonomy derived out of the method of appointment of the
members, their fixity of tenure, and statutory guarantees thereto, the status they have
been accorded; the manner in which the staff responsible to the commission would be
appointed and would conduct themselves; as also the autonomy it enjoys in terms of
its financial powers. Accordingly the NHRC started its functioning with its first
Chairperson Justice Ranga Nath Mishra on 12th October in the same year.\(^{1}\)

\(^{1}\)Protection of Human Rights and National Human Rights Commission Reflections –
Ch. 4 Pg – 113 to 117
4.2 National Human Rights Commission – Role in Human Rights Protection

Human rights attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. They specify the minimum conditions for human dignity and a tolerable life. Human rights are those which are inherent to all human beings whatever be the nationality, place of residence, sex, national or ethnic origin, color, religion, language, or status in the society. Human rights encompass a wide variety of rights. Human rights are universal and moral. All individuals entitled to these rights without any discrimination on any ground. All these rights are interdependent, inter-related and indivisible.

Human rights are important to the stability and development of all the countries around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure obedience to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance in protecting human beings from the ill-effects of change. However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.

DEFINITION AND MEANING

Human rights can be defined as the fundamental rights which the humans have by the fact of being human, and which are neither created nor abrogated by any government. Human rights are the rights and freedoms of all human beings. They are fundamental and universal. Human rights consist of civil and political rights as well as economic, social and cultural rights. Supported by several international conventions and treaties (such as the United Nation’s Universal Declaration of Human rights in 1948), these include rights such as right to life, liberty, education and equality before law, and nationality. Promulgation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national
constitutions. Although they were defined first by the UK philosopher John Locke (1632-1704) as absolute moral claims or entitlements to life, liberty, and property, the best-known expression of human rights is in the US Declaration of Rights in 1776 which proclaims that “All men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society they cannot by an compact deprive or divest their posterity.” The term came into wide use after World War II, replacing the earlier phrase “natural rights,” which had been associated with the Greco-Roman concept of natural law since the end of the Middle Ages. As understood today, human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as universal, applying to all human beings everywhere, and as fundamental, referring to essential or basic human needs. The following definition expresses clearly the meaning of human rights:

“A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human.” An alternative explanation was provided by the philosopher Kant. He said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life.

Rights have been catalogued by the United Nations in the Universal Declaration of Human Rights (1948)—a General Assembly resolution that is not legally binding—and elsewhere. Other accounts are present in many countries’ constitutions and regional organizations of states including Europe. Different countries ensure these rights in different ways. For eg: In India they are contained in the Constitution as fundamental rights, i.e. they are guaranteed statutorily. In the UK they are available through precedence, various elements having been laid down by the courts through case law. In addition, international law and conventions also provide certain safeguards. The first generation of civil and political rights restricts what others (including the state) may do, for example, life, liberty, and freedom from torture. A second generation of social and economic rights requires active provision, such as by imposing an obligation on government. Some analysts call them ideals, often
constrained in practice by inadequate resources. A third generation concerns such rights as peace, development, and humanitarian assistance.

Today there is universal consensus that all individuals are entitled to certain basic rights under any circumstance. These include certain civil liberties and political rights. The most fundamental of these rights is the right to life and physical safety. Human rights are the articulation of the need for justice, tolerance, mutual respect, and human dignity in all the activities. Speaking of rights expresses the idea that all individuals are part of the scope of morality and justice.

**NHRC UNDER HUMAN RIGHTS ACT**

Protection of Human Rights Act was passed in the year 1993 with a view to provide for a constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights and for matters concerned therein. It lays down provisions for – constitution of National Human Rights Commission, appointment of its chairperson and other members, removal of the members of the Commission, term of office of members, terms and conditions of service of members, procedure to be regulated by the Commission, officers and other staff, functions and powers of the Commission and the method to be followed in case of a complaint.

**NHRCs DEFINITION OF HUMAN RIGHTS**

In terms of section 2 of the Act, “human rights” means the rights relating to the life, liberty, equality and dignity of the individual, guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. “International Covenants” means the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December, 1966.

**FUNCTIONS OF NHRC UNDER THE ACT**

One of the primary functions of NHRC is to receive complaints and initiate investigations into violations of Human Rights by public servants by acts of commission and omission through negligence on their part to prevent violation of
human rights when brought to its notice within one year of the commission of such violation. Since its inception, the Commission has handled a variety of types of complaints. In the latest period, the major types of complaints have been: in respect of police administration - Failure in taking action, Unlawful detention, False implication, Custodial violence, Illegal arrest, Other police excesses, Custodial deaths, Encounter deaths, Harassment of prisoners; jail conditions; Atrocities on SCs and STs; Bonded labor; child labor, Child marriage; Communal violence; Dowry death or its attempt, dowry demand; Abduction, rape and murder; Sexual harassment and indignity to women, exploitation of women and numerous other complaints which cannot be categorized, have also been taken up.

WORK DONE BY NHRC

Since its inception in 1993 the NHRC has been at the forefront of protection and promotion of human rights in our country. It has made significant contributions to bring a human rights approach to legislation, policy and programs in our country. Its contributions in India have gone beyond the expected role of investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, providing advice and assistance to governments, creating awareness, promoting interaction, exchange, and better coordination among other state and international human rights institutions and publishing annual reports. Its contributions in the fields of child labor, rights of the disabled, education, food security, right to health, right to development and good governance; making the Indian Criminal Justice System victim centric and custodial justice, sexual harassment and trafficking of women in India; to name a few issues, have been pertinent towards strengthening the Human Rights Jurisprudence in our country in the past decade and a half. It has set the agenda for a methodology towards a rights based approach at an international level as well.

Over the years the NHRC has highlighted several important human rights issues and taken on many challenges cases. The commission took up the issue of starvation deaths with the collaboration of the Supreme Court in 1996 and has made several significant contributions. Its role in the ‘Punjab Mass Cremation Case’ where it highlighted the concept of deemed custody with the police and awarded compensation.
has been appreciated by one and all. The commission’s work with respect to overseeing the functioning of Mental Health Institutions has also been laudable.

However, the role of the Human Rights commissions cannot be viewed in isolation. The role and impact of the NHRC and state human rights commissions also depends on the strength of their financial and other resources. Their effectiveness also depends on how well their role is understood by collaborative agencies such as the police, judiciary and other functionaries of the state machinery.

**COORDINATION BETWEEN GOVERNMENT AND NGOs**

Optimum realization of human rights can be achieved through the enactment/development of protective law and the establishment of mechanisms to implement that law. National human rights institutions, along with inter-governmental and non-governmental organizations, can play an important role in promoting human rights at the domestic level. According to the Paris Principles relating to the status of national institutions, a national human rights institution should “cooperate with the United Nations and other organizations in the United Nations System, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.” Cooperation and collaboration, in fact, reinforce the initiatives taken by the institution and thereby enhance its overall effectiveness.

National Human Rights Commission is well aware of these principles and hence developed close and cooperative relation/ties between a number of institutions and persons in order to achieve its objective as mentioned in the Protection of Human Rights Act, 1993.

**HUMAN RIGHTS AWARENESS, EDUCATION AND TRAINING**

The Commission attaches considerable significance to the dissemination of information and awareness on human rights issues. It has already come out with several publications, both priced and non-priced, on variety of subjects related to human rights. The Commission which had in December, 2004 released a collection of eight booklets under the “Know Your Rights” series, continued its endeavor to have it
translated in all the regional languages. The booklet series is now available in 8
regional languages apart from English and Hindi. The process of its publication in 5
other regional languages is underway. As a part of its objective of human rights
education at the University level, the Commission continues to hold summer and
Winter Internship program. During these internship programs, selected students are
sensitized towards the activities of the Commission and human rights values.

OTHER PROGRAMMES TAKEN UP BY COMMISSION

Other Programmes and Human Rights issues taken up by the Commission
include- review of the Child Marriage Restraint Act, 1929, Protocols to the
Convention on the Rights of the Child, Preventing Employment of Children by
Government Servants : Amendment of Service Rules, Abolition of Child Labor,
Guidebook for the Media on Sexual Violence against Children, Trafficking in Women
and Children: Manual for Judiciary for Gender Sensitization, Sensitization
Programme on Prevention of Sex Tourism and Trafficking, Maternal Anemia and
Human Rights, Rehabilitation of Destitute Women in Vrindavan, Combating Sexual
Harassment of Women at Work Place, Harassment of Women Passengers in Trains,
Abolition of Manual Scavenging, Dalit issues including atrocities perpetrated on
them, Problems faced by denotified and Nomadic Tribes, Rights of Disabled, Right to
Health, HIV/AIDS, Relief Work for the Victims of 1999 Orissa Cyclone, Monitoring
of relief measures undertaken after Gujarat Earthquake 2001, District Complaints

ROLE OF NHRC

India has been a nation where many of its people have been denied their rights and the
exploitation of human life has desensitized many of us. In this context, NHRC should
continue with its focus on educating our nation on the importance of human rights for
human rights.

Globalization has also led to interesting yet formidable challenges in the area of
Human Rights Jurisprudence. And in the era of globalization the NHRC has a key
role to play in ensuring that the all sections of society can productively engage with
the expansion of opportunities. We must ensure that globalization does not further
perpetuate the gross economic and social inequalities that exist in our country. By ensuring equal opportunities and protecting citizens against discrimination and inaction, the NHRC can provide a level playing field to all our citizens and help in shaping our country into a truly global leader. The NHRC and other institutions concerned with the development of good governance must also examine how the harnessing of technology can help in the promotion of good governance. Technology if harnessed well and universalized in access can be a great social leveler. For instance, the impact of the internet and related technologies in the promotion of good governance through better delivery of various government services cannot be underscored. Thus, promotion of universal access of technology, in particular, of the internet and tele-communications would go a long way in strengthening the social fabric of our society and deepening democracy itself. And as long as India as a country is unable to bridge the wide socioeconomic gap amongst its people, the challenge towards development of appropriate Human Rights Jurisprudence and its practice, protection and enforcement must remain a constant and rigorous effort.

ANALYSIS OF WORKING OF NHRC

The objective assessment of the Commission’s endeavors must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances. Not unexpectedly, given the seriousness of the issues that the Commission has faced and the variety of expectations concerning it, diverse views have been expressed on the worth of the Commission’s efforts. An institution that was unknown ten years ago is now very much part of the life of the nation and, increasingly, of consequence to the quality of its governance. The performance of a national institution has to be assessed in terms of not only its successes in achieving its stated objectives, but also the constraints within which it has worked. A pertinent question here is whether the NHRC as the requisite powers to fulfill its functions as a national institution with a statutory basis. Compared to the institutions of similar nature around the world, it has a relatively heavy case-load; that is, it handles a larger number of complaints of violation of human rights, or of negligence in preventing such violation. And dealing with complaints is only one of the 10 major functions assigned to the Commission under Section 12 of the Act. Its ambit ranges from reviewing safeguards for the protection of human rights and performing such other
functions as it may consider necessary for the promotion of human rights. However, year after year the NHRC has been complaining of a lack of response from the Union government to its pleas to amend the law so as to realize its objective of “better protection of human rights and for matters connected therewith or incidental thereto”.

Each day, hundreds of our compatriots seek the intervention of the Commission for the redressal of their grievances, stemming from what they perceive to be the violation of their human rights. They belong to all parts of India and to all of its communities. Within the past ten years, there can be no doubt that the awareness of the rights guaranteed by the Constitution, and included in the international instruments to which India is a State party, has increased dramatically. Such critics are entitled to their views, but they appear to be mis-informed about the provisions of the Protection of Human Rights Act, 1993 which expressly preclude the Commission from inquiring into any matter “which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force” or to inquire into any matter “after the expiry of one year from the date on which the act constituting the violation of human rights is alleged to have been committed.” They also appear to be unaware that the Commission sought an amendment to these provisions of the Act, along with others, over three years ago, but that its recommendations in this respect are yet to be acted upon.

Human rights are a sort of special moral entitlement. They belong to an individual as a consequence of being human. Human rights are defined at different places differently. In India, human right now days is a burning issue. The act passed to protect human rights i.e. Protection of National Human Rights Act, 1993 was passed very recently with a view to prevent human rights violations. The setting up of the NHRC through the Protection of Human Rights Act, 1993, is an important development in the quest for human rights in India. The appointment of such Commission can make a platform for institutionalizing the concept of human rights in addition to the provision of fundamental rights as enshrined in the Constitution of India.

It is very necessary to protect the interests of people like SC, STs, etc. because these people form the vulnerable section of the society. Also, the procedure followed in
NHRC and SHRCs need to simplify a bit so that everyone including the vulnerable sections can access it. The concept of separate human rights courts which is coming up nowadays can perhaps help in more efficient protection of human rights of the vulnerable sections of the society.\(^{(2)}\)

4.2.1 The Protection of Human Rights Act 1993:-

PRELIMINARY

1. Short title extent and commencement.-

(1) This Act may be called the Protection of human Rights act, 1993.

(2) It extends to the whole of India.

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I list III in the Seventh Schedule to the Constitution as applicable to that State.

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions.-

(1) In this act, unless the context otherwise requires,-

   a) "Armed forces" means the naval, military and air forces and includes any other armed forces of the union;

   b) "Chairperson" means the Chairperson of the commission or of the State Commission as the case may be;

   c) "Commission" means the National Human Rights Commission constituted under section 3;

   d) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

\(^{(2)}\)www.nhrc.ac.in/issues accessed -NHRC Annual Report 2002-2003

381
(e) "Human Rights Court" means the Human Rights Court specified under section 30;

(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966;

(g) "Member" means a Member of the commission or of the State Commission, as the case may be, and includes the Chairperson;

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities act, 1992 (19 of 1992.);

(i) "National Commission for the Scheduled Castes and scheduled Tribes" means the National Commission for the Scheduled Castes and scheduled Tribes referred to in article 338 of the Constitution;

(j) "National Commission for Women" means the National commission for Women constituted under section 3 of the National Commission for women Act, 1990 (20 of 1990.);

(k) "Notification" means a notification published in the Official Gazette;

(l) "Prescribed" means prescribed by rules made under this Act;

(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code (45 of 1860.);

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

(2) Any reference in this act to a law, which is not in force in the State of Jammu and Kashmir, shall in relation to that state, be construed as a reference to a corresponding law, if any, in force in that State.

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human
Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, it under this Act.

(2) the commission shall consist of-
   (a) a Chairperson who has been a Chief Justice of the Supreme Court;
   (b) one Member who is, or has been, a Judge of the Supreme Court;
   (c) one Member who is, or has been, the chief Justice of a High Court;
   (d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairperson of the National commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to the Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the chief Executive Office of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

(1) The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

(a) The Prime Minister - chairperson.
(b) Speaker of the House of the people - member;
(c) Minister in-charge of the Ministry of Home affairs in the Government of India - member;
(d) Leader of the Opposition on in the House of the People -member;
(e) Leader of the Opposition in the Council of States -member
(f) Deputy Chairperson of the Council of states -member:

Provided further that no sitting Judge of the Supreme Court or sitting Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Committee.

5. Removal of a Member of the Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has on inquiry held in a accordance with the procedure prescribe din that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be bought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be,-

(a) is adjudged an insolvent; or
   (b) engages during his term of office in any paid employment outside the duties of this officer; or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands o declared by a competent court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Members
(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold an office for a term of five years from the date on which the enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the government of any state.

7. Members to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Members

The salaries and allowances payable to and other terms and conditions of service of. The Members shall be such as may be prescribed.

Provided that neither the salary nor allowances not the other terms and conditions of service of s Member shall be varied to his disadvantage after his appointment.

9. Vacancies, etc., not to invalidate the proceedings of the commission
No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the commission.

10. Procedure to be regulated by the Commission

(1) The Commission shall meet at such time and place as the Chairperson may think fit.
(2) The commission shall regulate its own procedure.
(3) All orders and decisions of the Commissions shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission-
   (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and
   (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under Subs-section (2) shall be such as may be prescribed.

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-
(a) Inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of-
(i) violation of human rights or abatement thereof; or
(ii) negligence in the prevention of such violation, by a public servant;

(b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) Visit, under intimation to the State Government, any jail or any other institution under the control of the state Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

(d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) Undertake and promote research in the field of human rights;

(h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means;

(i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) Such other functions as it may consider necessary for the promotion of human rights.

13. Powers relating to inquiries

(1) The Commission shall, while inquiring, into complaints under this act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particulars in respect to the following matters, namely:-

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

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court of office;
(e) issuing commissions for the examination of witnesses or documents;

(f) Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the commission may enter any building or place where the commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, in or so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of the commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code and the commission shall be deemed to be civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order,
transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any state Government with the concurrence of the Central Government or the State Government as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry any officer or agency whose service are utilised under sub-section (1) may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;
(b) require the discovery and production of any document; and
(c) Requisition any public record or copy thereof from any officer.

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

(4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the
conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the commission shall subject him to, or be used against, him in any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement
(a) is made in reply to the question which he is required by the Commission to answer; or
(b) is relevant to the subject matter of the enquiry;

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry the Commission
(a) considers it necessary to inquire into the conduct of a person; or
(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-
(i) call for information or report form the central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that-
(a) if the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own:
(b) if, on receipt of information or report, the commission is satisfied either that nor further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority it may not proceed with the complaint an inform the complainant accordingly;

(ii) Without prejudice to anything contained in clause (I), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps during and after inquiry

The Commission may take any of the following steps during or upon the completion of an inquiry held under this act, namely:

(1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority -

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court Concerned for such directions, orders or writs as that court may deemed necessary;

(c) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

(d) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall,
within a period of one month, or such farther time as the commission may allow, forward its
comments on the report, including the action taken or proposed to be taken thereon, to the
Commission,

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

19. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this act, while dealing with complaints of violation
of human rights by members of the armed forces, the commission shall adopt the following
procedure, namely;

(a) it may, either on its own motion or on receipt of a petition, seek a report from the
Central Government;
(b) After the receipt of the report, it may, either not proceed with the complaint or, as
the case may be, make its recommendations to that Government.

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

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

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

20. Annual and special reports of the Commission.

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

(2) The Central Government and the State Government as the case may be shall cause the annual and special reports of the commission to be laid before each House of Parliament or the state Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the commission and the reasons for non-acceptance of the recommendations, if any.

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the …………………… (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist 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 or District Judge in the State with a minimum of seven years’ experience as District Judge;

   (c) one Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights;

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State commission as it may delegate to him.

(4) The headquarters of the state Commission shall be at such place as the State Government may, by notification, specify;

(5) 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 List III in the Seventh Schedule to the Constitution.

**Provided** that if any such matter is already being inquired into by the commission or any other commission duly constituted under any law for the time bring in force, the state Commission shall not inquire into the said matter;

**Provided** further that in relation to the Jammu and Kashmir Human Rights commission this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the constitution," the words and figures "List III in the Seventh schedule to the Constitution as applicable to the state of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that state has power to make laws" had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section(1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.

**22.Appointment of Chairperson and other Members of State Commission**

(1) The Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal:

**Provided** that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of-

(a) the Chief Minister -chairperson;
(b) Speaker of the Legislative Assembly -member.
(c) Ministers in-charge of the Department of Home in that State -member;
(d) Leader of the Opposition in the legislative Assembly – member
Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the opposition in that Council shall also be members of the Committee:

Provided also that not sitting Judge of a High court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of (any vacancy of any Member in the committee referred to in sub-section).

23. Resignation and Removal of Chairperson or a Member of the State Commission

(1) The Chairperson or a Member of a State Commission may, be notice in writing under his hand addressed to the Governor, resign his office.

(1A) Subject to the provisions of sub-section (2), the Chairperson or any other Member of the State Government Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the supreme court on a 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 to be removed.

(2) Notwithstanding anything in sub-section (1), the President may by order remove from office the Chairperson or any other Member if the Chairperson or such other Member, as the case may be,-
(a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office; or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of
the President involves moral turpitude;

24. Term of office of Chairperson and Members of the State Commission

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

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years:

Provided that no Member shall hold office after he or she has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a state or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation, or otherwise, the Governor, may, by notification, authorise one of the Members to act as the chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) when the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the chairperson resumes duties.

26. Terms and conditions of service of Chairperson and Members of the state Commission
The salaries and allowances payable to, and other terms and conditions of service of, the Members shall be such as may be prescribed by the State Government:

**Provided** that neither the salary and allowance nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

**27. Officers and other staff of the State Commission**

(1) The State Government shall make available to the Commission

   (a) an officer not below the rank of a Secretary to the state Government who shall be the Secretary of the State Commission; and

   (b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the state Commission may appoint such other administrative, technical and scientific staff as it may considers necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

**28. Annual and Special Reports of State Commission**

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

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of state Legislature where it consists of two Houses, where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State commission and the reasons for non-acceptance of the recommendations if any.
29. Applications of certain provisions relating to National Human Rights Commission to State Commission

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to "Commission" shall be constructed as references to "State Commission";
(b) in section 10, in sub-section (3), for the word "Secretary-General," the word "Secretary" shall be substituted;
(c) in section 12, clause (f) shall be omitted;
(d) in section 17, in clause (I), the words "Central Government or any" shall be omitted

30. Human Rights Courts

For the purpose of providing speedy trial of offences arising out of violation of human rights, the state Government may, with the concurrence of the Chief Justice of the High court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if-
(a) a Court of session is already specified as special court; or
(b) a special court is already constituted, for such offences under any other law of the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

32. Grants by the Central Government

(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the commission by way of grants such sums of money as the central
Government may think it being utilised for the purpose of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1)

33. Grants by the State Government

(1) The State Government shall, after the due appropriation made by Legislature by law in this behalf a pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1)

34. Accounts and Audit

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the commission under this act shall have the same rights and privileges and the authority in connection with such audit as the comptroller and auditor-General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand the production of books accounts, connected vouchers and other documents and papers and to inspect any of the offices of the commission.

(4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received before each House of Parliament.

35. Accounts and Audit of State Commission

(1) The State commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts ins such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.
(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the state Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the comptroller and Auditor-General generally has in connection with the audit of Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the State Commission.

(4) The accounts of the State Commission as certified by the comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State legislature.

36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a state Commission or any Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences rising to violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State

400
Commission in respect of anything which is in good faith one or intended to be done in pursuance of this act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State commission of any report, paper or proceedings.

39. Members and officers to be public servants

Every member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

(1) The Central Government may, by notification, make rules to carry out the provisions of this act.

(2) In particulars and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the salaries and allowances and other terms and conditions of service of the Members under section 8;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 11;

(c) any other power of a civil court required to be prescribe under clause (f) of sub-section (1) of section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

(e) any other matter which has to be, or may be, prescribed;

(3) Every rule made under this act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall, be without prejudice to the validity of anything previously done under rule.
40 A. **Power to make rules retrospectively** – The power to make rules under clause (b) of sub-section (2) of section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

**Power of Commission to make Regulations**

40(B) (1) Subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the procedure to be followed by the Commission under sub-section (2) of Section 10;

(b) the returns and statistics to be furnished by the State Commissions;

(c) Any other matter which has to be, or may be, specified by regulations.

(3) Every regulation made by the Commission under this Act shall be laid, as soon as may be made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulations or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

41. **Power of State Government to make rules**

(1) The state Government may, by notification, make rules to carry out the provisions of this act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
(a) the salaries and allowances and other terms and conditions of service of the Members under section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of section 27;

(c) The form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the state Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consist of two Houses, or where such Legislature consist of one House, before that House.

42. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of the is Act, the central Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament

43. Repeal and savings

(1) The protection of Human Rights Ordinance, 1993 (Ord. 30 of 1993.) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.\(^{(3)}\)

4.2.2 Structure of the National Human Rights Commission

As per the protection of the Human Rights Act, 1993 the NHRC has neatly arranged its structural framework in order to execute its functions. The details of the Protection of Human Rights Act mentioned at appendix-III. It has been systematically arranged for the smooth functioning and to fulfill the objectives of the Act for better protection of human rights.

\(^{(3)}\)GSHRC National Act the protection of Human Right Act 1993
4.2.3 Composition of the Commission

The NHRC was established on 12 October 1993. Its Statute is contained in the Protection of Human Rights Act, 1993 as amended vide the Protection of Human Rights (Amendment) Act, 2006. The constitution of NHRC is in conformity with the Paris Principles that were adopted at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights organized in Paris in October 1991, and endorsed by the General Assembly of the United Nations in Resolution 48/134 of 20 December 1993. The Commission is an embodiment of India’s concern for the promotion and protection of human rights.

The Commission comprises a Chairperson, four full-time Members and four deemed Members. The Statute lays down high qualifications for the appointment of the Chairperson and Members of the Commission.

**Composition of NHRC**
4.2.4 Appointment

The Chairperson and the Members of the NHRC are appointed by the President of India, on the recommendations of a high-level Committee comprising the Prime Minister (as Chairperson), the Speaker of the Lok Sabha (House of the People), the Minister in-charge of the Ministry of Home Affairs in the Government of India, the Leaders of the Opposition in the Lok Sabha and Rajya Sabha (Council of States), and the Deputy Chairman of the Rajya Sabha.

Selection Committee for Appointment of Chairperson and Members of NHRC

The statutory requirements relating to the qualifications of the Chairperson and Members of the Commission, as well as their selection of by a high-level and politically-balanced Committee ensures a high degree of independence and credibility to the functioning of the NHRC.

The Chief Executive Officer of the Commission is the Secretary-General, an officer of the rank of Secretary to the Government of India. The Secretariat of the Commission works under the overall guidance of the Secretary-General.

There are five Divisions in the Commission. These are—(i) Law Division, (ii) Investigation Division, (iii) Policy Research, Projects and Programmes Division (PRP&P Division), (iv) Training Division, and (v) Administration Division.
The Law Division services the Commission in receipt and disposal of human rights violation cases based on either complaints or registered *suo motu* or on the basis of information received. The Investigation Division carries out spot investigations all over the country on behalf of the NHRC. Furthermore, it facilitates in collection of facts from all parts of the country relating to varied complaints made to the Commission, in scrutinizing reports received from the police and other investigation agencies, and in looking into reports of custodial violence or other misdemeanors. In addition, the Division analyzes the intimations and reports from the State authorities regarding deaths in police and judicial custody as well as deaths in police encounters. It also renders expert advice on other matters related to police or armed forces. The Division has set-up a Rapid Action Cell to attend to complaints that require immediate attention and action. Other than this, it facilitates the Training Division in spreading human rights literacy as envisaged in Section 12(h) of the PHRA. The Policy Research, Projects and Programmes Division undertakes and promotes research on human rights and organizes conferences, seminars and workshops on important human rights issues. Whenever the Commission, on the basis of its hearings, deliberations or otherwise, arrives at a conclusion that a particular subject is of importance, it is converted into a project/Programme to be dealt with by the PRP&P Division. Besides, it reviews policies, laws, treaties and other international instruments in force for the protection and promotion of human rights. It assists in monitoring the implementation of the Commission’s recommendations by Central and State/Union Territory authorities. It also aids the Training Division in spreading human rights literacy and in promoting awareness about the safeguards available for the protection of human rights. The Training Division is responsible for training and sensitizing various officials and functionaries of the State and its agencies, NGOs, students and the civil society, about human rights concerns. The Administration Division looks after the establishment, administrative and related requirements of the Chairperson and Members of the NHRC. It also looks into personnel (including cadre matters), accounts, library and other requirements of the officers and staff of the NHRC. The Information and Public Relations Unit under the Administration Division disseminates information relating to the activities of the NHRC through the print and electronic media. It brings out a bilingual monthly Newsletter ‘Human Rights’ and
other publications of the Commission. Besides, it looks into applications and appeals received under the Right to Information Act, 2005.

The reach of the Commission is greatly enhanced by the appointment of Special Rapporteurs and the constitution of Core and Expert Groups. Special Rapporteurs are very senior officers who, prior to their retirement, have served as Secretaries to the Government of India or Directors General of Police or have done exemplary service in a human rights related field. They are either assigned specific subjects to deal with, such as bonded labour, child labour, custodial justice, disability, etc. or a zone comprising a group of States to look into human rights concerns and violations.

Core/Expert Groups consist of eminent persons or representatives of bodies working on human rights issues. These Groups render expert advice to the Commission on various issues. Some of the important Core/Expert Groups constituted in the NHRC are:

- Core Advisory Group on Health
- Core Group on Mental Health
- Core Group on Disability
- Core Group of NGOs
- Core Group on Legal Issues
- Core Group on Right to Food
- Expert Group on Emergency Medical Care
- Expert Group on Refugees
- Expert Group on Silicosis
- Expert Group on Unsafe Drugs and Medical Devices

4.3 Current Members

The current chairperson of the NHRC is K. G. Balakrishnan, and the other members are

- (one position vacant)

---

\(^{(4)}\)NHRC Annual Report 2009-2010 ch. 3 pg. 9 to 12
• Babulal Chandulal (B. C.) Patel
• Satyabrata Pal
• (one position vacant)

Ex-officio Members:
• Wajahat Habibullah, Chairperson, National Commission for Minorities
• Panna Lal (P. L.) Punia, Chairperson, National Commission for Scheduled Castes
• Dr. Rameshwar Oraon, Chairperson, National Commission for Scheduled Tribes
• Mamta Sharma, Acting Chairperson, National Commission for Women.

4.4 Former Chairpersons

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Name</th>
<th>Tenure</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Justice Dr. Shivaraj Patil</td>
<td>1 November 2006 – 1 April 2007</td>
</tr>
<tr>
<td>7.</td>
<td>Justice Govind Prasad Mathur</td>
<td>1 June 2009 – 6 June 2010</td>
</tr>
<tr>
<td>8.</td>
<td>Justice K.G. Balakrishnan</td>
<td>14 June 2010, and enjoy a tenure of five years. (5)</td>
</tr>
</tbody>
</table>

4.5 Functions

The Commission has a wide mandate. Its functions as laid down in Section 12 of the PHRA include:

• Inquires *suo motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of (i) violation of human rights or abetment thereof: or (ii) negligence in the prevention of such violation, by a public servant.

(5) www.nhrc.ac.in
• Intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of such court.

• Visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of inmates thereof and make recommendations thereon to the Government.

• Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.

• Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

• Study treaties and other international instruments on human rights and make recommendations for their effective implementation.

• Undertake and promote research in the field of human rights.

• Spread human rights literacy among various sections of society and promote awareness about the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

• Encourage the efforts of NGOs and Institutions working in the field of Human Rights.

• Such other functions as it may consider necessary for the protection of Human Rights.
4.6 Officers and other Staff of the Commission

The Act provides that besides the Secretary General, the Central Government shall make available to the Commission such polices and investigative staff and an officer not below the rank of Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The Commission may appoint other administrative, technical and Scientific Staff considered necessary in conformity with the Rules made by the Central Government in this behalf.

4.7 Definition of Human Rights


4.8 Powers relating to inquiries

(1) The commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the code of civil procedure, 1908 (5 of 1908) and in particular in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of witnesses and examining them on oath;
(b) Discovery and production of any document;
(c) Receiving evidence on affidavits;
(d) Requisitioning any public record or copy thereof from any court or office;
(e) Issuing commission for the examination of witnesses or documents;
(f) Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the commission, may be useful for, or relevant to, the subject
matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code (45 of 1860)

(3) The commission or any other office, not below the rank of a Gazetted Officer, specially authorized in this behalf by the commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document of take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973(2 of 1974), in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in sec. 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973(2 of 1974), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196, of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974).

4.9 Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government as the case may be

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer urgency whose services are utilized under sub
section (1) may, subject to the direction and control of the Commission:

(a) Summon and enforce the attendance of any person and examine him;
(b) Require the discovery and production of any document, and
(c) Requisition any public record or copy thereof from any office

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the commission.

(4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf

(5) The commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report commission may take such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

4.10 Statement made persons to the Commission

No Statement made by a person in the course of giving evidence before the commission shall subject him to or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement.

Provided that the statement:

(a) is made in reply to the question which he is required by the commission to answer; or
(b) is relevant to the subject matter of the inquiry.
Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission;

(a) Considers, it necessary to inquire into the conduct of any person;

Or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

It shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defense;

Provided that nothing in this section shall apply where the credit of a witness is being impeached

4.11 Inquiry into Complaints

The commission while inquiring into complaints of violations of human rights may-

(i) Call for information or report from the central government or any state Government or any other authority or organization subordinate thereto within such time as may be specified by it,

Provided that-

(a) If the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own.

(b) If, on receipt of information or report, the commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not be proceed with the complaint and inform the complainant accordingly.

(ii) Without prejudice to anything contained in clause (i) it considers necessary having regard to the nature of the complaint, initiate an inquiry.

4.12 Steps after inquiry

The commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:
(1) Where the inquiry discloses, the commission of violation 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 prosecution or such other action as the commission may deem fit against the concerned person or persons;

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

(3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of the family, as the Commission may consider necessary;

(4) Subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) The Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government authority and the concerned Government or authority shall with a period of one month, or such further time as the Commission may allow, forward its comments on the report, including action taken or proposed to be taken thereon, to the Commission;

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

4.13  Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complains of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely;

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;
(b) After the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to the Government.

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

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

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

4.14 Annual and Special Reports of the Commission

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

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or propose to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

4.14.1 Basic Standards Recommended by Amnesty International Relating to NHRC

The creation of a national human rights commission can be an important mechanism to strengthen human right protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary
in India, the creation of such a human rights commission should go hand in hand with a thorough review of existing institutions and mechanisms – including legal and programs-in order to make these more effective instruments of human rights violations fully accountable, thus ending the impunity now effectively granted to virtually all those who violate human rights.

The commission on Human Rights adopted by consensus Resolution 1991/54 concerning the Principles relating to the status of national institutions and has transmitted these through the Economic and Social Council to the 47th regular session of the General Assembly for adoption. These internationally recognized Principles should serve as the basic minimum guidelines for the establishment of a national institution for the protection and protection of human rights. In addition, Amnesty International would like to put forward in this discussion document the following key recommendations relating to the establishment and functioning of a national human rights commission.

4.15 Non-Governmental Organizations

In pursuance of Section 12(i) of the PHRA, 1993, as amended in 2006, the NHRC since its inception has been encouraging the efforts of non-governmental organizations (NGOs) and civil society organizations working in the field of human rights. The NHRC in association with credible NGOs and civil society organizations has undertaken many projects including human rights awareness Programmes. It is of the firm opinion that the promotion and protection of human rights cannot gain momentum without the fullest cooperation between the Commission, NGOs and civil society organizations. The Commission considers them to be their most important allies and most honest critics. This has proven to be of considerable value both to the Commission and to the NGOs, reinforcing their understanding of each other and their capacity to work together in the furtherance of human rights across the country. Together with the Special Rapporteurs appointed by the Commission, the NGOs have provided a “multiplier effect” to the efforts of the NHRC, giving to it a vast infusion of high ability and public support.
In order to facilitate its interaction with the NGOs and civil society organizations, the Commission constituted a Core Group of NGOs in July 2001. This Core Group was reconstituted in October 2006 and a few new members were later included again in November 2006, August 2008 and September 2008. The members of the Core Group are leading representatives of NGOs and civil society organizations working primarily in the field of human rights.

During the period under review, a meeting of the Core Group of NGOs was convened in the NHRC on 10 September 2009 under the chairmanship of Justice Shri G. P. Mathur, Acting Chairperson, and NHRC. Other Members of the Commission, namely, Justice Shri B. C. Patel, Shri Satyabrata Pal and Shri P. C. Sharma also attended the meeting. Some of the senior officers of the NHRC participated in the meeting as well. In the said meeting, Members of the Core Group of NGOs were apprised about all the activities undertaken by the Commission including those in which they had participated since July 2001.

In the above meeting, the Commission clarified that given its other roles and responsibilities; it would not be possible to convene NGO Core Group Meetings on quarterly basis. However, a half-yearly meeting of members of the NGO Core Group would be a more feasible and practical step. It was thus agreed that the NHRC henceforth would convene meetings of NGO Core Group on half-yearly basis. Other issues discussed in the meeting were: encounter deaths; the national action plan on human rights being prepared by the NHRC; economic, social and cultural rights; human rights education; bonded labour; plight of homeless mentally-ill persons; anti-begging laws; and having a policy on human rights defenders.

4.16 Mandate and Composition

The basic standards recommended by Amnesty International and the provisions of the Protection of Human Rights Ordinance as well as the Act (1993) are the same, with a few exceptions.
The Commission should be independent from government and its charter should reflect this. The Commission should be established by law or, preferable, by constitutional amendment. But in India, the NHRC was established by the Protection of Human Rights Act, 1993 and by constitutional amendment.

The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, or threats or interferences from any quarter or for any reason. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector. The method of section of its members should be fair and transparent and should afford all necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and should be able to serve in their individual capacity and should be able to serve the Commission effectively. The terms of their appointment, tenure and removal should be clearly specified, laid down in the Charter and should afford the strongest possible guarantees of competence, impartially and independence.

The Commission should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards, including the Universal Declaration of Human Rights, the International Convention against Torture, as well as the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Declaration or imprisonment and the UN Principles in the Effective Prevention and Investigation of Extra-Legal, arbitrary or Summary Executions.

The Commission should be mandated to review the effectiveness of existing legislation and/or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary. The Commission should also examine bills and proposals for new legislation put forward by the government or parliament.
to verify its conformity with international human rights standards and to ensure the State’s compliance with the above international human rights instruments.

Following from the recommendation that the scope of the Commission’s concerns be defined in terms of State obligations under international human rights law Amnesty International believes that the Commission should exclude from its mandate criminal organisations, by political groups which have resorted to arms as a means to achieve their goal criminal actions occurring in the context of domestic violence to which separate mechanisms can devote special attention.

The Commission should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations and set clear priorities for its work in accordance with the seriousness of the violations alleged. Priority should be given to alleged violations of the right to life and security of the person and the right not to be tortured (rights from which no derogation can to be made by any government under any circumstances) as well as the right not to be arbitrarily arrested or detained.

The Commission should be directed to establish effective cooperation with non-governmental organizations with first-hand information about reports of human rights violations.

The Commission should also have the power to conduct wise ranging national inquiries on human rights concerns of fundamental importance to the nation. One critical analysis which Amnesty International recommends be made is an in-depth study of the factors which have contributed to the persistence of human rights violence in India, including the failure of existing institutions and legal mechanism adequately to protect human rights. Such a study, which could draw upon authoritative investigations already carried out, such as by other National Police Commission, could recommend institutional and these changes necessary to bring about effective reform to halt the violations.
The Commission should be empowered to investigate the conduct of the police as well as the army and paramilitary security forces in all Indian states. In order to do this effectively, the Commission should have adequate facilities to conduct through investigation independent of the police and other security forces, whose conduct it will be called upon to assess.\(^6\)

### 4.17 Facilities and Methodology

The Commission should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations put before it. The Commission should have own investigative machinery and should have access to its expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations. The Commission should have immediate and unhindered access to all places where detained persons are held or are suspected to be held. Officials should be obliged to cooperate with the Commission investigations.

The Commission should have powers to initiate investigations on its own motion. It should be able it receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf and non-governmental groups. Investigations initiated by the Commission should be adequately published, especially in the State concerned to enable and encourage witnesses to come forward to testify.

The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.

The Commission should have full and effective powers to protect witnesses, complainants or others providing evidence to the Commission, including bringing

\(^6\) *Protection of Human Rights and National Human Rights Commission Reflections* ch. 4 pg. 118 to 126
about the suspension or transfer of officials allegedly involved to other duties where they would have no power over witnesses or complaints-without prejudice pending completion of investigations. Victims or relatives should have access to all relevant information and documents relating to the investigation and be granted all necessary facilities to present evidence. The Commission should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the Commission.

The Commission should work in an open way with its hearings generally open to the public. Private hearings should be an exceptional measure and be resorted to only in specific pre-established circumstances. The Commission’s methodology and the results of its investigations, together with official reports, including post mortem and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensible from. The Commission should also prepare regular reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of the its other activities for and protection of human rights. The Commission’s reports should be presented periodically to representative bodies such as the National and State Assemblies.

The result of the Commission’s investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice. The government should ensure that any prosecutions for human rights related offences are brought by authorities which are distinctly independent from the police or security force or other bodies allegedly implicated in the human rights violations.

The Commission should have power to ensure that superior officers are held accountable for acts committed under their authority and should be mandated to closely follow subsequent legal proceeding in the case, for example by serving as a
‘watchdog’ at trials, if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.

The Commission should have power to ensure effectively remedies including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that and prompt compensation in paid and other measures of redress and rehabilitation are taken in all cases it has taken up in which the police or the security force are found to have perpetrated human rights violations.

The government should undertake an obligation to respond, within a reasonable time, to the case specific as well as the more general findings, conclusions and recommendation made by the Commission. The government’s response should be made public.

From the above analysis, it is clear that NHRC is a fully independent body and based on two important pillars namely autonomy and transparency. It has been vested with the powers of quasi-judicial in nature. Fact-finding is the core of human rights activity which has been effectively used by this investigatory body. The status of the Commission is not confined with its status only; rather it has its Constitutional validity under the Commission of Inquiry Act 1952. The status of the commission is also defined in International Law particularly in Paris Principle of 1991 and many international workshops on National Institutions for the Promotion and Protection of Human Rights.”

There was wide spread feeling among the general public and the intelligentsia in particular, that with a democratic constitution granting Fundamental Rights enforceable by the courts and provision for periodical elections on universal adult franchise, there was no need for an institutional mechanism for monitoring and safeguarding human rights. By setting up the Commission like NHRC India has fulfilled not only the objectives as enumerated in the Preamble of the Constitution of India but also the provisions of Article 51 as mentioned in the Part IV of the Constitution. Being seen the activities of NHRC of the past years, it will not be any
wrong if its scope is widened and more power is given to this important mechanism of human rights protection in the era of globalization.(7)

4.18 State Human Rights Commission

Section 21 of the PHRA, 1993 as amended in 2006, provides for constitution of State Human Rights Commissions (SHRCs) in all the States. The existence and functioning of a Human Rights Commission in the State goes a long way in the ‘better’ protection and promotion of human rights. It is now an accepted fact that good governance and human rights go hand in hand. The SHRCs have been set-up in 18 States. The names of these States are “Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. In Himachal Pradesh, however, the State Government had so far only appointed a Secretary to the State Human Rights Commission. Other appointments pertaining to the Chairperson and Members had not taken place. During 2009-2010, information was received from the Government of Sikkim too about the constitution of a State Human Rights Commission. However, a copy of the notification, name of the Chairperson and Members were awaited from the State.

The NHRC is keen that SHRCs are set-up in all the States so that each and every citizen of the country has easy resource to better protection of ‘human rights’ as well as for matters connected therewith or incidental thereto. The Commission earnestly recommends to all those States which have not yet constituted SHRCs to follow suit at the earliest in the interest of better protection and promotion of human rights. Besides, the Commission has taken the initiative to hold regular interactions with the SHRCs to explore and further strengthen areas of cooperation and partnership amongst themselves.(8)

(7) Protection of Human Rights and National Human Rights Commission reflections ch. 4 pg no. 127 to 129  (8) NHRC Annual Report 2009-2010 ch. 10 pg 113
4.19 Conclusion

Here detailed discussion is being carried out about Human Rights and after getting detailed information about provision of human rights in constitution, the detailed discussion is being done in this chapter about detailed information of the activities, duties, powers, formation, functions of human rights commission which does the activity of protection of people in India. The Human Rights Commission is being established at many places in the State so that the protection of human rights can be carried out in perfection.

The Formation of the Human Rights Commission in the State in detail is being discussed in the coming chapter.