Chapter VI

HUMAN RIGHTS ENFORCEMENT MACHINERY
IN INDIA

6.1 Introduction

The role of National governments in the realization of Human Rights is particularly important. Human Rights involve relationships among individuals, and between individuals and the state. Therefore, the practical task of protecting and promoting Human Rights is primarily a National one, for which each state must be responsible. At the National level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies and the establishment of democratic institutions. In addition the most effective education and information campaigns are likely to be those which are designed and carried out the National or local level and which take the local cultural and traditional context into account\(^1\). When states ratify a Human Right instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore Universal Human Rights standards and norms today find their expression in the domestic laws of most countries. Often, however the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal, powers and institutions necessary to ensure their effective realization\(^2\).

Human Rights are best protected under National Systems. This is due to several reasons. Firstly because most of the International Human Rights instruments often leave the implementation to the state parties. Secondly, most of the International Human Rights Instruments require exhaustion of domestic remedies, before Human Rights violation petition is entertained by International bodies; Thirdly Article 2(7) of the U.N Charter assures that U.N will not interfere in the matters which are within the domestic jurisdiction of a state. Most of the states believe that Human Rights are matter of domestic jurisdiction and any interference in that matters affects their

\(^{1}\) The office of the United Nations High Commissioner for Human Rights Fact Sheet No. 19, National Institutions for the promotion and protection of Human Rights page. No.1

\(^{2}\) Ibid.
sovereignty. Fourthly International law is weak law attributed to the several reasons like (a) lack of executive authority (b) lack of effective sanctions; (c) lack of effectively enforcement machinery (d) International court of justice lacks compulsory jurisdiction etc., Lastly Human Rights perceptions of states have varied depending upon the culture, religious composition, socio-economic and political conditions. States practices also reveal that Human Rights are best protected by National Systems.

The Indian system of protection of Human Right rests largely on the Indian constitution, where they are guaranteed as Fundamental Rights and Directive Principles of State Policy and other legislations, through the judiciary and commissions acting as ombudsman. The Human Rights enforcement machinery in India may be broadly divided into four categories, which are as follows:

I. Human Rights Enforcement Machinery under the constitution of India:
   (a) The Supreme Court of India
   (b) High Courts in India

II. Human Rights Enforcement Machinery under the protection of Human Rights Act, 1993:
   (a) The National Human Rights Commission
   (b) The State Human Rights Commissions
   (c) The Human Rights Courts in Districts

III. Other Specific National Commissions for the promotion and protection of Human Rights in India:
   (a) The National Commission for Women
   (b) The National Commission for Children
   (c) The National Commission for Minorities
   (d) The National Commission for Scheduled Castes
   (e) The National Commission for Scheduled Tribes
   (f) The National Commission for Backward classes.

IV. The Non-Governmental Organisations for the promotion and protection of Human Rights.
Human Rights enforcement machinery under the constitution of India i.e. the contribution of the Supreme Court and High Courts relating to promotion and protection of Human Rights in India will be discussed in the forthcoming chapter namely Chapter VII titled “The Supreme Court of India and protection of Human Rights”. However, Human Rights enforcement machinery under the protection of Human Rights Act, 1993 will be discussed in this chapter.

6.2 Human Rights Enforcement Machinery under the Protection of Human Rights Act, 1993

Respect for Human Rights is the hallmark of a civilised society. A civilised Nation cannot ignore the violations of the Human Rights of its people. The establishment of the National Human Rights Commission (hereafter referred as NHRC), under the protection of Human Rights Act, 1993 becomes significant in this context. In that year, the U.N. General Assembly adopted the Paris principles, which prescribed minimum standards for the operation of National Human Rights institutions all over the world. The Indian parliament has enacted the protection of Human Rights Act (hereafter referred to as PHRA, 1993) in the same year.

PHRA1993 sets out the legal framework of the 1. National Human Rights Commission 2. The State Human Rights Commissions 3. Human Rights Courts. The PHRA, 1993 also states that the constitution of these institutions is for the better protection of Human Rights and for the matter incidental thereto. However the PHRA 1993 has been amended in the year 2006 for the effective enforcement of Human Rights.

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3 This Act was enacted in the context of International covenant on civil and political rights, 1966 and the International covenant on Economic, Social and Cultural Rights, 1966
4 Chapters II, III, and IV, sections 3 to 20 of the PHRA, 1993
5 Chapter V sections 21 to 29 of the PHRA, 1993
6 Chapter VI sections 30 and 31 of the PHRA, 1993
7 The PHRA, 1993 preamble
8 Act No, 43 of 2006 received the assent of the President on September 13 2006 and published in the Gazette of India, Extra-part-II, section-1 dated 14th September 2006 – p.p.1-7 SI. No. 50
6.3 National Human Rights Commission (NHRC)

The NHRC was established on the October 12, 1993 under the legislative mandate of the PHRA, 1993. It is a unique expert body for examining and investigating the complaints relating to violation of Human Rights or abetment thereof or negligence on the part of any public servant in prevention of such violation. The NHRC is an embodiment of India’s concern for the promotion and protection of Human Rights. The NHRC is the first of its kind among the south Asian countries and also one of few among the Nation Human Rights Institutions, which were established in early 1990s. In India the NHRC’s can play a vital role in influencing the police making and sometimes even policy initiations facilitating protection and promotion of Human Rights. Such institutions provide an excellent mechanism for building public opinion and strong alliances and partnerships with Non-Governmental Organisations and other Human Rights activists for influencing the National agenda on Human Rights. Apart from the resolution of disputes brought to such institutions, voice articulated studies conducted and research produced by these institutions carry great credibility and respectability and thus can be important source material in the quest of securing and protecting Human Rights. There is a need to evolve more meaningful interaction and networking among these institutions.

The NHRC is an institution that acts as a catalyst to improve the quality of governance on which depends the state of Human Rights in a country. It has been entrusted with an all India role and responsibility of protecting and promoting Human Rights of the citizens. The NHRC has taken the first steps towards creating Jurisprudence of Human Rights. Owing to the prevalence of vast and variety of Human Rights issues in India, the commission faces a gigantic task. The question is whether the provisions of the protection of Human Rights Act, 1993 are sufficient to

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9 Sec 12 of the PHRA, 1993
10 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. It shows the Government of India’s commitment for implementation of Human Rights provisions under National and International instruments.
meet and satisfy the present challenges? It may be mentioned that the Act is very comprehensive piece of legislation which apart from the NHRC, also envisages State Human Rights Commissions at State level and Human Rights Courts at District level for better protection and promotion of Human Rights in India. The role assigned to National Human Rights commission and state Human Rights Commissions is participative, supplementary and collaborative, the only difference being in the area of jurisdiction, since their respective functions overlap.

6.3.1 Distinctive Feature of NHRC

Since its inception in 1993 the NHRC has been at the forefront of protection and promotion of Human Rights in our Country. An attempt is made here to analyse the statutory framework of NHRC from the point of view of credibility and acceptance, because ultimately these will determine whether it can face the challenge of creating a Human Rights culture in this country. The credibility or acceptance of any institution created by the state such as a NHRC depends upon at least two factors namely: (1) Independence and (2) Transparency.

6.3.1 (a) Independence

The greatest strength of NHRC is that the Act provides the commission with the independence, functional autonomy and broad mandate that are essential to the proper functioning of a National institution based on the Paris principles. It involves the capacity to take an independent decision uninfluenced by any vested interest including the state. Autonomy is ensured by the manner of appointments to the commission, the statutory status and the position of its members security of their tenure and unconditional financial grants to carryout its activities. All these matters have been inserted in the Act.

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12 Principles relating to the Status of National Institutions
The commission is primarily a Judge-based body with three of its five members being judges including its chairman\textsuperscript{13}. The other two members have to be appointed from amongst those persons who have knowledge of or practical experience, in matters relating to Human Rights\textsuperscript{14}. The presence of judges and Human Rights experts in the NHRC lends prestige to the institution and the degree of solemnity to their recommendations. It is pertinent to mention that the eligibility criteria for membership of the commission in terms of qualification and background would have to be carefully considered. The guiding principle must be that eminence of the members should enhance the credibility, Prestige and the moral authority of the commission. The members should also be intimately aware of the field conditions in the country with respect to various aspects of Human Rights in particular the legal and enforcement aspects and the welfare thrust of the administration in respect of vulnerable sections of the society. The power of selecting the chairperson/members vests with a committee which consists of: (a) the Prime Minister (b) Speaker of the House of the People; (c) Minister in charge of the Ministry of Home Affairs in the Government of India(d) Leader of the opposition in the house of the people; (e) leader of the opposition in the council of states; (f) Deputy Chairman of the council of states. This ensures that the appointees enjoy not only the confidence of the party in power but also of the leaders of the opposition and the legislature on the basis of the recommendations of the said committee, the president of India appoints the members of the commission including its chairman\textsuperscript{15}.

The members of the commission including its chairperson are appointed for a five years term\textsuperscript{16} and can be removed earlier only on the grounds of proved misbehaviour or incapacity after an inquiry made by the supreme court in this regard. That accords the members necessary security of tenure, it ensures to act independently for effective promotion and protection of Human Rights in India. The NHRC however does not enjoy substantial financial Autonomy since it receives parliament approved

\textsuperscript{13} Sec 3(3) of the PHRA, 1993, for the performance of some functions as specified in clauses (b) to (j) of sec 12, the Chairperson of the National Commission for Minorities, the National Commission for Scheduled Tribes, the National Commission for the Scheduled Castes and the National Commission for women shall be deemed to be the members of NHRC.

\textsuperscript{14} Sec 3(2)(d) of the PHRA, 1993.

\textsuperscript{15} Sec 4 of the PHRA, 1993.

\textsuperscript{16} Sec 6 of the PHRA, 1993.
grants, the actual amount paid is determined by the Government\textsuperscript{17}. Nonetheless, funding through parliament as opposed to a particular ministry has certain in-built checks in that the opposition parties in parliament normally can expose and prevent the government’s attempts to starve the commission. Also, this method ensures a greater degree of functional autonomy to the commission.

6.3.1 (b) Transparency

In the functioning of the commission, transparency is another crucial factor for its credibility and acceptance. It is ensured by the openness and fairness of the procedures adopted to pursue matters before it. The commission has framed detailed regulations, which govern its procedures to make an inquiry\textsuperscript{18}. The commission either proceeds to inquire into the matter itself or it may handover the case for further investigation for which it maintains its own investigative machinery headed by a person not below the rank of a Director-General of police\textsuperscript{19}. Thus the commission does not depend upon the State for investigation. The investigative machinery works under the control and direction of the commission.

To ensure more transparency, outsiders can be appointed as investigators or observers. To ensure fairness, the regulations require the commission to afford in its discretion, a personal hearing to the petitioner or any other person if the commission considers it necessary for the appropriate disposal of the matter before it. Witnesses who appear before it may also be cross-examined and an opportunity of reasonable hearing is given to a person who might be adversely affected by the findings of the commission. The openness with which the commission is supposed to function is further clear from the fact that it is required to provide a copy of its inquiry to the complaint\textsuperscript{20}; make its decision public\textsuperscript{21}; and place its reports before the parliament\textsuperscript{22}.

\textsuperscript{17} Sec 32 of the PHRA, 1993 provides the central Government shall after due appropriations made by parliament by law in the behalf, pay to the commission by way of grants such sums of money as the central government may think fit for being utilised for the purposes of this Act.

\textsuperscript{18} National Human Rights Commission (Procedure) Regulation, 1993

\textsuperscript{19} As per Regulation 18: The investigation team consists of one Deputy Inspector General of Police, 2 Superintendents of Police, 6 Deputy Superintendents, 24 Inspectors of Police and others appointed by the commission as and when required.

\textsuperscript{20} Sec. 18 (d) of the PHRA, 1993

\textsuperscript{21} Sec. 18 (e) of the PHRA, 1993

\textsuperscript{22} Sec. 20 of the PHRA, 1993
The Act and the regulations made there under, thus ensure openness as well as objective fairness of the proceedings.

### 6.3.2. Constitution of NHRC

The constitution of the NHRC dealt with in chapter-II of the Act. 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\(^\text{23}\).

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 form amongst persons having knowledge of, or practical experience in, matters relating to Human Rights\(^\text{24}\)

Apart from the chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for Scheduled Tribes and the National Commission for women shall be deemed to be members of the commission for the discharge of functions specified in clauses (b) to (j) of the section 12 of the Act\(^\text{25}\).

### 6.3.2 (a) Appointing Authority

Every appointment of the chairperson and the members shall be made by the president by warrant under his hand and seal; provided that every appointment shall be made after obtaining the recommendations of the committee consisting of –

\[^{23}\text{Sec 3(1) of the PHRA, 1993}\]
\[^{24}\text{Sec 3(2) of the PHRA, 1993}\]
\[^{25}\text{Sec 3(3) of the PHRA, 1993}\]
a. The Prime Minister Chairperson
b. Speaker of the House of People Member
c. Minister in-charge of the Ministry of Home Affairs in the Member
   Government of India
d. Leader of the opposition in the House of people Member
e. Leader of the opposition in the Council of States Member
f. Deputy Chairman of the Council of States Member

provided further that no sitting judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India26.

6.3.2 (b) Terms and Removal of The Chairperson and Other Members of The Commission:

The term of the office of the Chairperson and other nominated members is five years, from the date on which he enters upon his office or until he attains the age of seventy years, which ever is earlier. A member of the commission is eligible for reappointment provided that he had not attained the age of 70 years, but the chairperson is not eligible for a second term27.

The chairperson or any member of the commission can be removed from his office only by order of the President of India on the grounds of proved misbehaviour or incapacity after an inquiry by the Supreme Court, on reference being made to it by the President28. Further in any one of the following cases, the President of India may by order remove the chairperson or any other member who

(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

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26 Sec 4 (1) of the PHRA, 1993.
27 Section 6 of the PHRA, 1993.
28 Section 5(2) of the PHRA, 1993.
(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\textsuperscript{29}.

### 6.3.3 Functions and Powers of the Commission

The commission has been envisaged as an activist institution for creating a Human Rights promotion and protection culture in the country. The effectiveness and impact of the commission will depend upon the range of functions, it is required to perform, the powers conferred upon it to accomplish the job and the ultimate fate of its recommendations. Apart from its functions of adjudicating complaints regarding Human Rights violations, it acts as an overseer of the Human Rights situation in the country with the help of its suomotu initiations. The commission has a wide mandate including civil and political rights, economic, social and cultural rights and group rights. As per the mandate under sec 12 of the PHRA, 1993, the functions that are to be discharged by the commission are:

(a) The Commission can inquire, suomotu or on petition presented to it by a victim or any person on his behalf [or on a direction or order of any court]\textsuperscript{30} into complaints of

(i) Violation of Human Rights or abetment 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, notwithstanding anything contained in any other law for the time being in force, any jail or other institutions under the control of the state Government, where persons are detained or lodged for the purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government\textsuperscript{31}.

\textsuperscript{29} Sec 5 (3) of the PHRA, 1993

\textsuperscript{30} Inserted by Act 43 of 2006

\textsuperscript{31} Sec 12( c) of the PHRA, 1993 was substituted by the protection of Human Rights (Amendment) Act No. 43 of 2006.
(d) Review of 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 protection of Human Rights.

According to Section 29 of the PHRA, 1993 all the above provisions except (f) shall be applicable to the state Human Rights commissions. The commission has been empowered to hear and inquire all the complaints regarding the violations of Human Rights, undoubtedly all such roles are institutional and the statute contemplates NHRC as an institution behind and forward for protection and proliferation of Human Rights in India. The commission proceeds either suomotu or on the receipt of a complaints. The procedure applied in both the cases is the same. As per the mandate of section 19 of the PHRA, 1993, when the commission receives a complaint of Human Rights violations by the armed forces,\textsuperscript{32} the only action it can take is to call for a report from the Government and make its recommendations. It means that Human Rights violation by armed forces members are kept outside the purview of inquiry and investigation. Justice Krishna Iyer, has perhaps best captured the true nature of the commission when he dubbed it a “beautiful and ineffectual angel beating in the void its luminous wings in vain”\textsuperscript{33}. The Government has proved to be completely averse to any revision of the commission’s power in relation to the armed

\textsuperscript{32} According to Sec 2(1)(a) of the PHRA, 1993 “armed forces” means the Naval, Military and Air forces and includes any other armed forces of the union

\textsuperscript{33} V.R. Krishna Iyer, Human Rights in India 137 (Oxford University Press, 1999)
forces. Not only did it clearly state its support for the procedure set down in sec 19 of the Act in the Memorandum of Action taken in April, 2002\(^\text{34}\) but it has also steadily ignored commission’s recommendations to narrow the definition of “armed forces” in the Act to exclude paramilitaries and ignored its recommendation that armed forces should report deaths and rape in custody to the NHRC within twenty-four hours\(^\text{35}\).

The commission shall submit an annual report to the central government and the state governments concerned\(^\text{36}\). The said Governments shall have to present the reports, along with a memorandum of action or acceptance, before each house of parliament and also before the house of the state legislature\(^\text{37}\). The commission is authorized to utilize the services of any officer or investigating agency of the central or state Governments for the purpose of conducting any investigation pertaining to the enquiry. The functions of the commission enumerated in section 12 of the PHRA, 1993, which encompasses a wide area to enable the commission not only to enquiry into the violation or negligence in prevention of violation of Human Rights but also to promote the Human Rights culture and perform any other functions as it may consider necessary for the protection and promotion of Human Rights\(^\text{38}\).

Ever since the constitution of the NHRC in accordance with the Paris Principles\(^\text{39}\) the Supreme Court of India has been facilitated considerably in the performance of its task of the protection of Human Rights. The complementary developed between the Supreme Court and the NHRC has been enabled the better protection of Human Rights and promotion of Human Rights spirit and culture in the country. The NHRC has been discharging its role as a catalyst to improve the quality of good governance, which helps in greater respect for Human Rights. In other words NHRC of India is seen as institution, which has proved that, if properly constituted, such an institution is greatly efficacious in enabling the state to discharge its

\(^{36}\) Section 20(1) of the PHRA, 1993
\(^{37}\) Section 20 (2) of the PHRA, 1993
\(^{39}\) Paris Principles are the conclusions reached in the first International workshop on National Institutions in 1991 at Paris, which were endorsed by the commission on Human Rights, 1992 and by the General Assembly in its resolution No. 48/134 of 20-12-1993.
obligations under the UN Charter and the National Democratic constitution of protecting Human Rights.

6.3.4 Implementation Mechanism

The important implementation mechanisms that can be used by the NHRC in the process of dealing with violations of Human Rights are as follows:

(a) Individual complaints
(b) Intervening in court proceedings,

6.3.4 (a) Individual Complaints

As per Regulation 8 of the NHRC (procedure) Regulations, 1994 “All Complaints in whatever form received by the commission shall be registered and assigned a number and placed for admission before a Bench of two members constituted for the purpose not later than the two weeks of receipt thereof ordinarily the complaints of the following nature are not entertainable by the commission.

(i) In regard to the events which happened more than one year before the making of complaints;
(ii) With regard to matters which are sub-judice
(iii) Which are vague, anonymous or pseudonymous.
(iv) Those, which are outside the purview of the commission.

The commission shall not inquire into any matter which is pending before a state commission or any other commission only duly constituted under any law for the time being in force.\textsuperscript{40} In addition to this the commission or the state commission shall not inquire into any matter after the expiry of one year, form the date on which the act constituting violation of Human Rights is alleged to have been committed.\textsuperscript{41} The commission shall perform functions pursuant to the direction issued by the Supreme Court in exercise of the jurisdiction under Article 32 of the constitution of India. The

\textsuperscript{40} Section 36(1) of the PHRA, 1993
\textsuperscript{41} Section 36 (2) of the PHRA, 1993
Supreme Court in Parmjit Kaur vs. State of Punjab\(^42\) stated that the commission would function pursuant to the directions issued by this court and not under the Act, which it is constituted. In deciding the matters referred by this court, National Human Rights Commission is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment or law and thus acts sui generis\(^43\). The power and jurisdiction of the Supreme Court under Article 32 of the constitution cannot be curtailed by any statutory limitation, including those contained in Section 36(2) of the protection of Human Rights Act, 1993. If the Supreme Court can exercise that power unaffected by the prohibition contained in section 36(2), there is no reason why the commission, at the request of the supreme court cannot investigate or look into the violations of Human Rights even though the period of limitation indicated in section 36 (2) might have expired. In such a situation the commission will not be affected by the bar contained in section 36(2) and it will be well in its rights to investigate the matter referred to it by this court.

6.3.4 (b) Intervening in court proceedings

Wide powers have been given to the commission for discharging its functions. The commission either proceeds to inquire the matter itself or it may handover the case for further investigation for which it maintains its own investigative mechanism. The commission while inquiring into complaints shall have all the powers of a civil court trying a suit under the code of civil procedure of 1908, and in particular in respect of the following matters;

(a) Summoning and enforcing the attendance of witnesses and examining them on oath;
(b) Discovery and production of any document;
(c) Receiving evidence on affidavits
(d) Requisitioning any public record or copy thereof from any court or office
(e) Issuing commissions for the examination of witnesses or documents
(f) Any other matter, which may be prescribed\(^44\).

\(^{42}\) AIR 1999 SC P. 340
\(^{44}\) Section 13(1) of the PHRA, 1993
The commission has 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 by any person so required shall be deemed to be legally bound to furnish such information with in the meaning of section 176 and section 177 of the Indian Penal Code, 1890. The commission may authorise any officer not below the rank of a gazetted officer to enter any building or place where the commission has reason to believe that any document relating to the subject matter of inquiry may be found and may seize any such document relating to the subject matter of inquiry may be found and may seize any such document or take extract or copies there from subject to the provisions of section 100 of the code of criminal procedures, 1973, in so far as it may be applicable.

The commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view of presence of the commission, the commission may, after recording the statement of 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.

However under the present statutory scheme, section 13 deals with commission’s inquiry powers which do not provide the commission with the authority to compel the personal presence, which is an important aspect to strengthen the powers of the commission. Hence the commission in its Annual Report 1993-94 suggested an amendment to section 13 of the PHRA, 1993 granting it, the power to compel attendance of any person during inquiry, but till so far it has not been complied with.

45 Section 13(2) of the PHRA, 1993
46 Section 13(3) of the PHRA, 1993
47 Section 13(4) of the PHRA, 1993
6.3.5 Powers of Investigation

The commission has wide powers of investigation. The commission either proceeds to inquire into the matter itself or it may handover the case for further investigation for which it maintains its own investigative machinery headed by person not below the rank of Director General of Police, who is appointed by the commission itself\textsuperscript{48}. Thus the commission does not depend upon the state for investigation. The investigation machinery works under the control and direction of the commission.

While inquiring into complaints of violations of Human Rights, the commission may

(i) Call for information or report from the central government or any state government or any other authority or organisation subordinate thereto with in 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 proceed with the complaint and inform the complaint 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\textsuperscript{49}.

\textsuperscript{48} Section 11(1)(b) of the PHRA, 1993.
\textsuperscript{49} Section 17 of the PHRA, 1993
6.3.6 Powers of the Commission Subsequent to Inquiry

During and after completion of an inquiry the commission may, under section 18 of the PHRA, 1993, take any of the following steps:

(1) Where the inquiry discloses, the commission of violation of Human Rights or negligence in the prevention of violation of Human Rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against this 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 his family as the commission may consider necessary;

(4) Subject to the provision of clause (5) provide a copy of the inquiry 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 or authority who shall, within a period of one month or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the commission;

(6) The commission shall publish its inquiry report together with the comments of the 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.

6.3.7 Limitation on the Jurisdiction of the Commission

Section 19 of the PHRA 1993 deals with the procedure when the members of the armed forces violate the Human Rights. As per this statutory mandate the commission has reduced powers to investigate violations committed by the armed forces. As regards the complaints of violation of Human Rights by the armed forces of the union, the commission is not empowered to make an inquiry or investigation in
the matter directly. Instead it may seek a report from the Central Government on its own motion or on the complaint filed by a party. After the receipt of the report, it may either not proceed with the complaint or, as in the case may make its recommendations to that government. Then the central government shall inform the commission of the action on the recommendations within three months or such further times as the commission may allow and the commission is to publish its report together with the government actions taken. There may be some justification to follow a different procedure and to bar an inquiry or investigation against armed forces on the grounds of National Security, when these forces are engaged in defending the country against foreign aggression. But there is no justification to take them out of the normal jurisdiction of the commission, when these forces are deployed to do policing which is not unusual in this country.

It is submitted that the members of the armed forces and the paramilitary forces cannot be regarded as persons above the law. They should come under the jurisdiction of the NHRC as they have, in the past, committed a number of acts, which amount to serious violations of Human Rights. Excesses of the army or the paramilitary forces in Kashmir and North-east are likely to be curbed if the NHRC would start taking up their cases on the complaint of the families of victims. Lack of jurisdiction over armed forces has been pointed out in International forums as a serious infirmity affecting the credibility of the NHRC. Another Lacuna in the PHRA, 1993 is the definition of Armed forces. As per Section 2(1)(a) of the PHRA 1993 “Armed forces means the Naval, Military and Air forces and includes any other armed forces of the union. It is excessively wide definition. This means that sections of the police force, such as the Border Security Forces and other paramilitary forces, are also excluded from the investigative powers of the NHRC, although they are headed by a different ministry and are subject to different policy decision and responsibilities. It is pertinent to submit that the PHRA,1993 should be amended so as to include the armed forces with in the investigative purview of the NHRC. If such attempt is not politically expedient, the definition of “armed forces” should be amended to include only the military, naval and air forces. So that paramilitary forces are available to the jurisdiction of the NHRC.
The PHRA 1993 does not specifically confer jurisdiction upon the commission to inquire or investigate Human Rights violations by organised groups in the society. The main focus of the act is to entertain complaints of violation of Human Rights by the Public Servants. Certain organised groups such as terrorists, religious fundamentalists, castes and communal groups are now considered as the greatest threat to Human Rights. So far as the state or its functionary is concerned they work under various types of pressures and checks. They are supposed to adhere to constitutional spirit and other rules and regulations. Organised group’s work under no such constraint. Hence the PHRA, 1993 should be appropriately amended to focus upon these groups, which is indispensable in the existing conditions in the society.

6.3.8 Working of the National Human Rights Commission

The NHRC completes 17 years of its pioneering work in the promotion and protection of Human Rights. The NHRC over the years has come to play a pivotal role in the enforcement of our constitutional rights and sensitising the state as well as other agencies to the importance of Human Rights. The NHRC had established a high-level advisory committee under the Chairmanship of Mr. Justice A.M. Ahmadi, former Chief Justice of India to assess the need for structural changes and amendments to the PHRA, 1993 for effective functioning of NHRC and State Human Rights Commissions (SHRCs). The Committee made the following significant recommendations for the effective promotion and protection of Human Rights.

(i) The NHRC and the State Human Rights Commissions should be granted financial autonomy

(ii) The composition of the NHRC should be changed to consist of two judicial members, and three non-judicial members, one of whom should be a woman.

(iii) The definition of Armed forces under section 2(1)(a) of the PHRA should be changed to bring Human Rights violation by paramilitary personnel under the purview of the NHRC;

(iv) To amend section 36(2) of the PHRA, 1993 to provide for enquiry into a complaint of Human Rights Violation by NHRC and State Human Rights
Commission even after the expiry of one year from the date of occurrence subject to there being good and sufficient reasons for the same;

(v) Superintendence power should be given to the NHRC (similar to those exercised by the supreme court vis-à-vis the High Courts under Article 136 of the constitution) in order to prevent miscarriage of justice in any case of Human Rights violation.

(vi) The recommendations of the NHRC “must receive proper faithful and time-bound consideration” by the central and state governments, which should intimate within three months, acceptance or otherwise of their recommendations and submit reasons in case of non-acceptance.

It is therefore imperative that the Government consider the Ahmed’s Committee Report above recommendations and take early action.

Since its inception in 1993 the NHRC has been at the forefront of protection and promotion of Human Rights in our country. Regarding the work and effectiveness of the NHRC, it should be undoubtedly acknowledged that the work has been both qualitatively and quantitatively at a high level. The fact that the number of complaints reaching the commission, doubled and trebled year after year shows that the people started looking at NHRC as an effective institution for the promotion and protection of Human Rights. During the last few years, the NHRC has laid emphasis on the Economic, Social and cultural Rights along with civil and political rights on the premise that all rights are interrelated and inter-dependent.

Apart from the working for the eradication of bonded labour and child labour, rights of the Women, Dalits, Minorities and other Marginalized Groups, the commission has also undertaken projects in other fields such as public health, right to food and many more. Workshops and seminars on HIV/AIDS, nutritional deficiencies, access to health care, tobacco control and many more have been conducted, yielding useful recommendations for implementation by the Government. The NHRC has been engaged in prison and penal reforms and training of personnel to sensitise them to Human Rights.
The NHRC has vigorously undertaken the issue of protection of civil liberties and has proposed systematic reforms in police, prisons and criminal justice system. The NHRC has intervened in a case on police reforms. The Indian experience has already established the importance and pre-eminence of the NHRC in its complementary role to the judiciary in areas concerning Human Rights. The NHRC has also been co-ordinating the commendable work being done by many NGOs in the field of Human Rights, particularly to that of improving prison administration and penal reforms. Thus the NHRC can and does play an important role in coordinating and monitoring efforts of both civic and public bodies and agencies.

The success of the NHRC can be gauged from the fact that while it received 496 complaints in its first year (1993-1994) to an impressive 100,616 complaints during the financial year 2007-2008. The NHRC has tried to devise an efficient system of handling these complaints through digitisation. It also provides the complainant, information about the status of his compliant on the web. The NHRC has made significant contributions to bring a Human Rights approach to legislation, policy and programmes in our country. The role of the NHRC and the impact of its intervention are too well known to require elaboration. The commission’s intervention did help to build confidence among different sections of the plural society, which is essential in a democracy. The true role and efficacy of the commission has to be appreciated which is to facilitate human governance. The Nation’s commitment to Human Rights is judged in the International community from the support the government gives to the institution set up for the promotion and protection of Human Rights.

6.3.9 Functions of the National Human Rights Commission: An Assessment

The establishment of the National Human Rights Commission in 1993 under the PHRA, 1993 becomes significant in the context, for the promotion and protection of Human Rights. Since its inception in 1993, the NHRC has focussed to a fairer extent on violation of Human Rights by the organs of the state, the police and the paramilitary forces. The better effective capacity of the NHRC to directly monitor the

50 Prakash Singh and other vs. Union of India and other (2006) 8 SCC
performance of institutions in certain situations, has been utilised by the supreme court to aid its functions of issuing directions in appropriate cases like mental homes, protective homes, child labour, bonded labour and many more. The complementary between these institutions has considerably improved the mechanism for the protection of Human Rights in the country, which is primarily a state responsibility.

The nature and extent of states responsibility for the protection of Human Rights was indicated by the NHRC in its orders, made in the case of recent Gujarat Communal Riot, the commission observed. “It is the primary and inescapable responsibility of the state to protect the right to life, liberty, equality and dignity of all of those who, constitute it. It is also the responsibility of the state to ensure that such rights are not violated either through overt acts or through abetment or negligence. It is clear and emerging principle of Human Rights jurisprudence that the state is responsible not only for the acts of its own agents but also for the acts of non-state players acting within its jurisdiction. The state is, in addition responsible for any action that may cause or facilitate the violation of Human Rights.”

Basing upon the above principles, the government was held accountable on the principle of “Resipsa loquitur” and on its failure to satisfactorily discharge the burden of proving performance of its duty, the NHRC found the Government responsible for the violation the violation of Human Rights within its jurisdiction. The State of Gujarat illustrates the importance of the NHRC in enforcing accountability; and the efficiency of the complementary between the Supreme Court and the NHRC, which has developed over the years in the protection and enforcement of Human Rights.

Secularism is the basic feature of the constitution. If any act of religious intolerance occurred and resulting violence anywhere, the commission acted swiftly and effectively. In the recent outbreak of violence in the state of Gujarat, the commission taking suomoto cognizance of reports of the communal riot and alleged inaction by the police and other high functionaries of the state, issued notices to the Chief Secretary and Director General of Police of the state calling for detailed report about measures being taken and in contemplation to prevent any further escalation of

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51 In the context of the Communal violence in Gujarat commencing with the train burning of Godhra on 27th February 2002 and continuing thereafter
the situation in the state. A team of the commission had visited Gujarat for assessing the practical situation. Such engagements and involvements of the commission are important not only for ensuring accountability and efficiency of the administration but also to build confidence and security amongst the different sections of the plural society. Such involvement provides strategic and moral support to those working for ensuring tolerance and respect for Human Rights. The promptness with which the administration responded to the NHRCs observations and recommendations for Gujarat is an index of the efficacy and utility of the institution in improving the quality of governance.

The NHRC has made number of precise recommendations for preventing Human Rights violations and to ameliorate the suffering of those, who are victims. The Gujarat example illustrates the role of independent National Human Rights Institutions in enforcing accountability. Though the protection of Human Rights is the primary responsibility of the judiciary, the NHRC of India and the judiciary in India have worked in ways complementing each other in securing and enforcing accountability.

Intervention by the NHRC is a strategic use of inviting judicial power to the aid of the commission’s agenda of promoting and protecting Human Rights. The Commission also took up with the police administration the standing up of a police complaints authority in the office of the Director General of Police in each state in order to have a general oversight of the conduct of the police officials. The commission has given its serious attention in improving the conditions prevailing in the jails. The commission has been insisting that the state government should effectively implement the supreme court judgement which laid down the guidelines and gave directions in regard to release of under-trial prisoner on bail, as the majority of them are form disadvantaged sections of society, having rural background.

The NHRC has taken the issue of custodial violence seriously. It believes firmly that all cases of custodial deaths, rapes etc., including those involving the army and paramilitary forces should be reported to the commission as early as possible. On 14th December 1993 the NHRC issued instructions to all states asking them to direct all District Magistrates and Superintendents of Police to report directly to the
commission on any instance of death or rape in police custody within 24 hours of its occurrence, failing which there would be a presumption that efforts were being made to suppress the truth. It reflects the credibility and force for the directive that the states have continued to comply with these instructions.

It is important to mention that the NHRC did not remain silent in the wake of miseries, torture and loss caused by natural calamity in recent years in which thousands of lives were lost, many others become handicapped, lost their property and became shelterless. The commission had intervened to oversee proper distribution of relief material in the areas that were hit by a cyclone in Orissa in 1999-2000 and to provide aid to the victims of the catastrophic Gujarat earthquake of 2001.

The commission has handled a wide range of Human Rights issues in the field of social, economic and cultural rights. The task of enforcing Visakha guidelines for the prevention of sexual harassment of women at the work place fell on the commission. It succeeded in getting complaint committees established in a large number of government departments and public sector under takings and in persuading the Government to treat such harassment as misconduct. The court has described the commission as a unique expert body in itself. Fundamental Rights guaranteed by the constitution represent the basic Human Rights possessed by every human being.

The commission has examined proposed legislations that affect Human Rights. The opinions sent by the NHRC include those on the Child Marriage restraint Act, Domestic Violence Act and Land Acquisition Act. In the latter, the commission has recommended the inclusion of rehabilitation of the displaced as a condition precedent to dispossessing them of land. Its important opinions on the legislation on terrorist and disruptive activities resulted in the repeal of TADA.

The NHRC continues to have contact both at home and abroad with a number of Non-Governmental Organisations concerning with Human Rights. These include Amnesty International, Human Rights watch, The International Committee of the jurists etc., which welcomed and encourage their efforts in the promotion and protection of Human Rights. The commission sees a most positive role for NGOs in bringing the complaints to its notice. The commission has from time to time invited
leading Human Rights Activists and NGO representatives for discussion and advice and sought their help in practical ways. Since its in 1993 the NHRC has participated with enthusiasm in number of events, discussions and workshops that NGO’s have organized around the country. The NHRC has been maintaining and updating the list of NGO’s working in the Human Rights field. The list, which is growing fast, has facilitated networking among like-minded NGO’s, strengthening their capacities in the progress.

The commission recognised the importance and significance of Human Rights education believing that the education in Human Rights is the key to promote a culture of Human Rights has encouraged various educational agencies such as NCERT, NCTE, UGC, Universities and colleges to bring in Human Rights education in their curriculum.

Therefore the creation of a NHRC in India can be an important mechanism to strengthen Human Rights protection but it should neither replace nor should it anyway diminish the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial and accessible judiciary. In India the creation of such Human Rights commission should go hand in hand with a though review of existing institutions and mechanisms including legal aid programmes in order to make these more effective instruments of Human Rights protection. These initiatives should be accompanied by a determined Government policy aimed at holding the perpetrators of Human Rights violations fully accountable, thus ending the impunity now effectively granted to virtually all those who violated Human Rights.

6.4. The State Human Rights Commissions (SHRCs)

According to section 21(1) of the protection of Human Rights Act, 1993, a state Government may constitute a body to be known as the state Human Rights commission to exercise the powers conferred upon, and to perform the functions assigned, to state commission under chapter V of the Act. The working of this provision, especially the word may indicate that it is not compulsory for the states to establish state Human Rights Commission. Thus it depends upon the discretion of the state. While under section 3 uses the words “shall constitute”, it is simply optional
under section 21 (1) for the state to constitute a State Human Rights Commission. This is a great defect and weakness of the Act, since most of the violations of Human Rights takes place in state territories, it should be compulsory and mandatory for the states to establish State Human Rights Commissions. Only a few states namely Andhra Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Kerala, Karnataka, Madhyapradesh, Mahararastra, Manipur, Orissa, Punjab, Rajasthan, Tamilnadu, Uttarpradesh, West Bengal, Chattisgarh, Gujarat and Bihar established Human Rights Commissions by the end of September 2010. It is to be noted that some states have failed to constitute state Human Rights commission even after seventeen years of the enactment of the Act. Hence an amendment therefore is required to be made to section 21(1) of the PHRA, 1993, by imposing mandatory responsibility on the state to constitute state Human Rights commission for better promotion and protection of Human Rights.

6.4.1 Constitution of State Human Rights Commission

The State Human Rights Commission shall consists of

(a) A chairperson who has been a chief justice of a High Court
(b) One member who is, or has been, a judge of a High Court 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\(^{52}\).

The chairperson shall hold office for a term of 5 years or until he attains the age of seventy years, whichever is earlier\(^{53}\). A person appointed as a member shall hold office for a term of five years and shall be eligible for reappointment for another term of five years, provided that no member shall hold office after he has attained the age of seventy years\(^{54}\).

\(^{52}\) Section 21(2) of the PHRA, 1993
\(^{53}\) Section 24(1) of the PHRA, 1993
\(^{54}\) Section 24(2) of the PHRA, 1993
6.4.1 (a) Appointing Authority

The chairperson and other member of the commission shall be appointed by the governor on the recommendation of a committee consisting of:

a. The Chief Minister Chairperson
b. Speaker of the legislative Assembly Member
c. Minister incharge of the Department of Home in that state Member
d. Leader of the opposition in the legislative Assembly Member

The chairperson or any other member of the state commission may be removed from his office in the same manner and on the same ground as in the case of the chairperson and members of the National Human Rights Commission. A chairperson or a member of a state commission may, by notice in writing addressed to the governor, resign his office.

6.4.2 Jurisdiction of the State Human Rights Commissions

The State Human Rights Commission is empowered to perform all those functions, which have been entrusted to the National Human Rights Commission. However, para C of section 29 of the PHRA, 1993 excludes the study of treaties and other International instruments on Human Rights from the purview of state Human Rights commissions as the study of such treaties and the eligibility to make recommendations for their effective implementation has been made as the exclusive domain of the NHRC.

The State Human Rights Commission may inquire into violations of Human Rights only in respect of matter relatable to any of the entries enumerated in list II and list III in the seventh schedule to the constitution. This is however subject to a proviso that if any such matter is already being inquired into by the commission (i.e. NHRC) or any other commission duly constituted under any law for the time being in

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55 Section 22(1) of the PHRA, 1993
56 Section 23 of the PHRA, 1993
57 Section 21(5) of the PHRA, 1993
force, the state Human Rights commission shall not inquire into the said matter\textsuperscript{58}. But according to the second proviso in relation to Jammu and Kashmir Human Rights Commission, this sub-section (i.e. sub-section (5) of section 21) shall have effect as if that the words and figures “list 11 and list 111 in the seventh scheduled to the constitution”, the words and figures “list 111 of the seventh schedule to the constitution as applicable to the state of Jammu and Kashmir in respect of matters in relation to which the legislature of that state has power to make laws” had been substituted\textsuperscript{59}.

The complex web of NHRC and several state Human Rights commissions (SHRCs) creates a host of confusion regarding jurisdiction for the common man. This is because the Act does not delineate jurisdiction, between National and State Human Rights Commissions clearly and no hierarchical relationship has been mandated. The State shall not inquire any matter, which is already being inquired into by the commission, or any other commission, In the same way the commission shall not inquire into any matter which is pending before a state commission or any other commission\textsuperscript{60}. It also results in competitiveness between National and state commissions because of jurisdiction overlap. Besides, the experience has shown that section 36 of the PHRA, 1993\textsuperscript{61} has lent itself to efforts to thwart the purposes of the Act. On occasion, this has been done by bringing the matter before a SHRC or some other commission in similar, or slightly modified manner, in order to seek to block the jurisdiction of the NHRC\textsuperscript{62}. This situation arose, for example, when the NHRC took up a complaint alleging that serious Human Rights violations had been committed in respect of the manner in which the state of Tamil Nadu police had arrested the former Tamil Nadu Chief Minister Mr. M. Karuna Nidhi, union minister Mr. M. Maran and Mr. T.R. Balu and some others. In respect to a notice from the commission, the state government of Tamil Nadu contended, inter-alia, that since a commission of inquiry

\textsuperscript{58} ibid
\textsuperscript{59} Ibid
\textsuperscript{60} Section 21(5) and 36(1) of the PHRA, 1993
\textsuperscript{61} Section 36(1) of the PHRA, 1993 the commission shall not inquire 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.
had been set up by the Government to look into the matter, the jurisdiction of the NHRC to inquire into the matter was barred by section 36(1) of the PHRA, 1993\(^\text{63}\).

Unfortunately, there is no cooperation and coordination between the commission and state commissions. Neither of the commissions utilise the other’s potential or expertise, thus losing the opportunity for a mutually beneficial relationship\(^\text{64}\). There can be adhoc coordination between the NHRC and the SHRCs. There is potential for cooperation in the areas of training in the investigative expertise of higher order and norms setting. To avoid the conflicts and increase the efficiency, complaints of that specific state should be mandated to be dealt at the state level and the state commission orders and directions should be open to challenge before the commission by way of revision. In this way state Human Rights commission shall be subject to the judicial control of the commission.

The State Human Rights Commission cannot be established on the pro-rata basis because of inherent difficulties, for example financial constraints, because of non-availability of retired chief justice or justices of the high court or district judge in the state with a minimum of seven years experience whose presence is essential for the composition under the Act. A formula may need to rectify these difficulties, for effective promotion and protection of Human Rights.

\textbf{6.4.3 Annual and special reports of state commission;}

The State Human Rights 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\(^\text{65}\). Then 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, or where such legislature consists of one house, before that house along with a memorandum of action taken or proposed to be taken on the

\(^{63}\) NHRC, Human Rights News letter (New Delhi, November 2001

\(^{64}\) South Asian Human Rights Documentation Centre (SAHRDC), Judgement Reserved: The case of the National Human Rights Commission of India, September 2001, P. 122

\(^{65}\) Section 28(1) of the PHRA, 1993.
recommendations of the state commission and the reasons for non-acceptance of the recommendations, if any.\textsuperscript{66}

### 6.5 Human Rights Courts at District Level

Prior to the enactment of the protection of Human Rights Act, 1993, most of the Human Rights violations were to be redressed either by the supreme court under Article 32 or by the High Courts under Article 226 of the constitution of India through their writ jurisdiction. The remedy provided under the constitution is expensive and beyond the reach of the common man. But now, with the establishment of Human Rights courts at district level, a laudable attempt has been made to bring justice within the reach of the common man. Chapter VI of the protection of Human Rights Act, 1993 comprising of section 30 and 31 makes the provision relating to creation of Human Rights courts in each district.

Section 30 of the protection of Human Rights act, 1993 provides that Human Rights courts may be set up by the state government, with the concurrence of the chief justice of the High Court, by notification, specifying for each district a court of session to be a Human Rights Court to try the offences arising out of the violation of Human Rights. For every Human Rights court, the state government in accordance with section 31 of the Act shall appoint a public prosecutor or an advocate who has been in practice as an advocate for not less than seven years for the purpose of conducting cases in the Human Rights Courts. Such a person shall be called a special public prosecutor.

It is however to be noted that it is not mandatory for the States to create Human Rights courts in each and every district as section 30 of the Act expressly uses the words the State Government “may” set up the courts. That is why, only a few states, namely Andhra Pradesh, Assam, Sikkim, Tamilnadu, Uttar Pradesh, Madhya Pradesh, Meghalaya, Himachal Pradesh, Goa and Tripura established. Tamilnadu and Assam have constituted Human Rights courts in Chennai and Guwahati respectively; section 30 of the Act, which provides for establishment of

\textsuperscript{66} Section 28(2) of the PHRA, 1993.
District Human Rights courts does not lay down the jurisdiction of such courts. Also it does not lay down as to what procedure shall be followed by such courts. This ambiguity will create problems when the cases for alleged violation of Human Rights are actually conducted in such courts.

The National Human Rights Commission in its 1998-1999 report has drawn attention to the ambiguity regarding the precise nature of offences, that could be tried by these courts. It has recognized that substantive amendments to section 30 of the Act are necessary to enable the courts to execute a speedy trial of the offences arising out of the violations of Human Rights. These courts cannot serve any fruitful purpose until a comprehensive legislation is passed to that effect.

6.6 Other Specific National Commissions in India for the welfare of the weaker sections of the Nation

To monitor the implementation of the constitutional objectives for the welfare of the weaker sections of the nation, the central government has appointed a National Commission for Minorities\(^{67}\); a National commission for women\(^{68}\), a National Commission for Backward Classes\(^{69}\); a National Commission for Safai Karamcharis\(^{70}\); a National Commission for protection of Child Rights\(^{71}\); a National Commission for Scheduled castes\(^{72}\); and a National Commission for Scheduled Tribes\(^{73}\). In addition to that number of NGO’s has contributed signal service for better protection and promotion of Human Rights in India.

\(^{67}\) It is a statutory body set up by the central government under the National Commission for Minorities Act, 1992
\(^{68}\) It was constituted in pursuance of the National Commission for Women Act, 1990
\(^{69}\) It was constituted under the National Commission for Backward Classes Act, 1993
\(^{70}\) It was constituted under pursuance of the National Commission for Safai Karamcharis Act, 1993
\(^{71}\) It was constituted in accordance with the mandate of the Commission for protection Child Rights Act, 2005
\(^{72}\) Article 338 of the constitution of India. Consequent upon implementation of the provision of the constitution (Eighty-ninth Amendment) Act, 2003, as per Notification dated 19-02-2004, the erstwhile National Commission for Scheduled Castes and Scheduled Tribes was replaced by two commissions viz. National Commission for Scheduled castes (NCSC) and National Commission for Scheduled Tribes (NCST)
\(^{73}\) Article 338-A of the constitution of India
6.7 Summary

Independent National Human Rights Institutions play a very active and valuable role in strengthening democratic institutions and building good governance within and across nations. It includes a number of institutions namely Judiciary, such as Supreme Court of India and various High Courts; Human Rights enforcement machinery constituted as per the mandate of the Protection of Human Rights Act, 1993, such as NHRC, SHRC’s and Human Rights courts at district level and other National Commissions constituted for the protection of interest of deprived and weaker sections of the society. In addition to that number of Non-Governmental Organizations (NGOs) has contributed signal service for better protection and promotion of Human Rights.

The NHRC has been entrusted with an All-India role and responsibility of protecting and promoting Human Right of the citizens. However, the law envisaged creation of Human Right Commissions at state level. However it is optional. The role assigned to National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) is participative, supplementary and collaborative, the only difference being in the area of jurisdiction, since their respective functions overlap. Moreover, the protection of Human Rights Act makes a provision for the constitution of Human Rights courts at district level, for better focus at the gross-root levels. Its work in the field of prevention of custodial deaths, rape and torture has been quite praise worthy.

In addition to the above machinery, the central government has constituted various commission for the welfare of the weaker sections of the society namely, Women, Minorities, Child, Backward Classes, Scheduled Castes, Scheduled Tribe and Safai Karamcharis.