

ROLE OF NATIONAL HUMAN RIGHTS COMMISSION IN PROTECTION OF HUMAN RIGHTS IN INDIA

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“Give to every human being every right that you claim for yourself” –Robert Ingersoll

I. Introduction

Human beings are rational beings. By virtue of being humans they possess certain basic and inalienable rights which are commonly known as human rights. They are inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. More or less people are aware about their rights but the question is how these rights will be protected. Yes, we have various mechanisms to protect our rights. In this assignment, an attempt has been made to discuss about one of such mechanisms, i.e. the role of National Human Rights Commission (NHRC) in protection of human rights. After introducing the topic with the meaning of human rights, next part of the assignment deals with the importance of national institutions of human rights in a country and further discussed the various stages at the international level towards establishment of such institutions. After that position in India has been discussed with the enactment of Protection of Human Rights Act. In addition to that the structure and functioning of NHRC has been discussed in brief and how far it has been effective in protecting human rights in India.

II. Importance of National Institutions

The setting up of national institution is one of the most effective means to perform the various functions relating to the implementation of human rights. Such an institution raised human rights awareness through education, training, research and conduct impartial investigation into alleged violations. It may also prove or secure effective redress either by negotiation with the

government concerned or may assist the victims by providing relief through a court of law. The domestic institution of human rights may also influence the legislators to preserve human rights in the widest sense of the term and may also monitor government compliance with treaty commitments.¹

III. Phases towards establishment of National Institutions- International Attempts

III.1 First Phase

The idea of the creation of an impartial institution of human rights in the States was initiated by the UNESCO in as early as in 1946. In the Memorandum ‘Supervision and Enforcement of Human Rights’ in 1947, the Secretariat had suggested for the creation of such a body in the States.²

III.2 Second Phase

In 1966, the General Assembly adopted a resolution for considering the advisability of the proposal for the creation of a national commission on human rights to perform certain functions pertaining to the observance of ICCPR and ICESCR. The resolution invited the Economic and Social Council to ask the Commission of Human Rights to examine the question in all its aspects.³

III.3 Third Phase

The Commission in 1970 considered the question and agreed that the question of the establishment of the national commission on human rights should be decided by each government in the light of traditions and institutions of its own country.⁴

¹H.O Agarwal, *International Law & Human Rights* 954 (Central Law Publications, Allahabad, 16thedn., 2009).

²*Ibid.*

³Jai S. Singh, “Protection and Promotion of Human Rights and Fundamental Freedoms by National Human Rights Commission, State Human Rights Commission in States and Human Rights Court”, 45 (1&2) *Journal of Constitutional and Parliamentary Studies* 92 (2011).

⁴*Supra* note 1.

III.4 Fourth Phase

The Commission in 1978 again emphasized the need for the creation of a national institution. But all these attempts went in vain. States paid little heed towards them. Their attitude towards creation of the national institution was not encouraging perhaps in view of the fear that such an institution may condemn the action of the State's executive and judiciary if the occasion would demand.⁵

III.5 Fifth Phase

The first international Workshop on National Institutions for the protection and promotion of human rights and fundamental freedoms was held in Paris in October, 1993. Its conclusions were endorsed by the Commission on Human Rights in resolution 54 of 1993 as the principles relating to the status of National Institution (the Paris Principles). Further, it was endorsed by the General Assembly in 1993. The principles affirmed that national institutions are to be vested with competence to protect and promote human rights and given as broad a mandate as possible, set forth clearly in a constitutional or legislative text. It also includes guidelines on the composition of National Institutions and the appointment of members.⁶

III.6 Sixth Phase

The World Conference on Human Rights in 1993 realising the importance of such an institution or commission, stated that the World Conference on Human Rights urges Governments to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights. The Conference also recommended for strengthening the United Nations activities and programmes to meet request for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.⁷ It also recommended for strengthening of cooperation between national institutions particularly through exchange of information and experience as well as co-

⁵*Supra* note 3 at 93.

⁶*Ibid.*

⁷*Supra* note 1.

operation with regional organisations and the United Nations. Periodic meetings of the representatives of such institutions under the auspices of the Centre for Human Rights to examine ways and means of improving their machinery and sharing experiences were also recommended. Thus, the World Conference attached great importance to national institutions for the protection and promotion of human rights.⁸

The Fourth International Workshop of National Institutions held at Merida (Mexico) and regional meetings in Asia and Pacific (1997) and Africa (1998) highlighted the role of national institutions in dealing with complex human rights problems.⁹

The United Nations High Commissioner for Human Rights in its Final Report on the Implementation of the Vienna Declaration and Programme of Action of September 12, 1998 stated that States should consider establishing and/or strengthening National Human Rights Structure and Institutions. They should also take assistance from existing programmes of technical assistance to support this process. The world community should provide sufficient resources to that purpose and ensure their optimum use at the regional and national levels.¹⁰

IV. Human Rights Commission- Attempts at National Level (India)

India has shown keen interest in the past in establishing or strengthening a national institution for the promotion and protection of human rights before the Third Committee of the General Assembly. It introduced a draft resolution wherein it emphasized the importance of the integrity and independence of such national institutions. In the draft resolution it also requested the Secretary-General of the United Nations to submit a report to the General Assembly in two years regarding the functioning of the various kinds of national institutions and their contribution towards implementing human rights instruments. The interest shown by India in the establishment of a national institution for the protection and promotion of human rights was laudable. The interest shown in the international forum implied that it was in favour of establishing such an institution. However, at that time no such institution was established.¹¹

⁸*Id.* at 955.

⁹*Ibid.*

¹⁰*Supra* note 3 at 94.

¹¹*Supra* note 1.

In early 1990s, India felt the need of establishing a Commission as a positive response to the criticisms of the foreign governments in the context of political unrest and violence in Punjab, Jammu & Kashmir, North-East and Andhra Pradesh. Pressure was added from the domestic front as well for the creation of such commission because of the awareness among the people for the protection of human rights. All this led the Government to decide to enact a law to establish a Human Rights Commission. Government's proposal to establish the Commission was of course sudden and without due deliberations.¹²

V. Protection of Human Rights Act

The Protection of Human Rights Act was enacted in the year 1993. It provides for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights. Section 2(d) of this Act defined human rights by stating that human rights means the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.¹³

VI.1 National Human Rights Commission- Composition

The Commission shall consist of a Chairperson and seven other members. A person who has been a Chief Justice of the Supreme Court is alone eligible to become the Chairperson. The other members are appointed from the following categories:-

- One member may be sitting or retired judge of the Supreme Court of India;
- One member may or retired Chief Justice of any High Court;
- Two members are appointed on the basis of their special knowledge or experience in the field of human rights and;
- The Chairpersons of the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, National Commission for Minorities, and the National Commission for Women are the members.¹⁴

VI.2 Appointing Authority

¹²Y.P Chibbar, "Foreign Agents" to National Human Rights Commission", 39 *The Administrator* 136 (1994).

¹³*Ibid.*

¹⁴Section 3 of the Protection of Human Rights (Amendment) Act, 2006.

The Chairperson and the members of the Commission are appointed by the President of India upon the recommendation of a committee consisting of the Prime Minister as the Chairperson and five other members as specified in the Act.¹⁵

VI.3 Tenure

The Chairperson and the members of the Commission shall continue to hold office for a period of five years from the date on which they assume the office or until they attain the age of seventy years, whichever is earlier. The members of the Commission alone are eligible for reappointment of one more term, provided if they have not attained the age of seventy years. After relinquishing the office, the Chairperson and the members of the Commission are barred from taking up any appointment either under the Central or any of the State governments.¹⁶

VI.4 Vacancy

If any vacancy occurs in the office of the Chairperson by reason of his being on leave, resignation, death or otherwise, such other member as may be directed by the President of India shall act as Chairperson, until the Chairperson resumes office or a new incumbent is appointed.¹⁷

VI.5 Removal

The Protection of Human Rights (Amendment) Act, 2006 provides that the Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office. The Chairperson or any of the members of the Commission shall only be removed from office by the President of India on the grounds of proved misbehaviour or incapacity in accordance with a report submitted by the Supreme Court after conducting a due inquiry upon a referral by the President of India. However, the above provision has no bar on the President

¹⁵*Supra* note 3 at 97.

¹⁶*Ibid.*

¹⁷T. SuryanarayanaSastry, "The Structure, Functions and Powers of the National Human Rights Commission of India", 37 *Indian Journal of International Law* 96 (1997).

to remove the Chairperson or the members of the Commission on any of the grounds if they are

1. Adjudged as an insolvent; or
2. Engaged in any paid employment outside during their term of office;
3. Unfit to continue in office by reasons of infirmity of mind or body;
4. Declared as of unsound mind by a competent court of law; or
5. Convicted or sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.¹⁸

VI.6 Officers and other staff of the Commission

The Commission, in addition to the Chairperson and the members, shall consist of a Secretary-General, Police and investigative, administrative, technical and scientific staff to support it in its effective functioning. The Secretary-General is the Chief Administrative Officer of the Commission. The Government of India is empowered to appoint any officer holding a post not below the rank of the Secretary to the Government of India as the Secretary-General of the Commission. The Police and other investigative staff are also provided by the Central Government and placed under an officer not below the rank of a Director-General of Police. The administrative, technical and scientific staffs are appointed by the Commission to suit its need in accordance with the rules framed by the Central Government. The Commission is empowered to frame its own rules and regulations for its effective functioning.¹⁹

VI.7 Headquarters of the Commission

The Commission shall normally conduct its meetings and sittings in its office in New Delhi. However, with the prior permission of the Central government, and if in its discretion it is necessary and expedient in its functioning it can hold meetings or sittings outside its seat of place as decided by it. The Commission shall ordinarily have its regular meetings in the first and third weeks of every month excepting holidays. However, the Chairperson by himself or

¹⁸*Ibid.*

¹⁹*Id* at 96.

at the instance of one or more of the members may have a special sitting to deal with any specific matter if it requires immediate action.²⁰

VII.Functions of the Commission

1. To inquire into the violation of human rights or abatement thereof either on its own or on a petition submitted by an affected party or on his behalf by any person, or negligence shown by a public servant in the prevention of such a violation.
2. To intervene in any of the proceedings pending before a court with the permission of such a court on any complaint of violation of human rights.
3. To visit any jail, or any other institutions where persons are detained or lodged for purposes of treatment reformation or protection under the control of a State government with an advance notice to study the living conditions of the inmates and to make recommendations.
4. To review the safeguards for the protection of human rights provided by the constitution or any of the existing law and to suggest measures to the Central and State governments for their effective implementation.
5. To review all the aspects that inhibits the enjoyment of human rights including the acts of terrorism and recommends the remedial measures to the Government.
6. To study the treaties and other international instruments on human rights and make recommendations to the Central government for their effective implementation.
7. To undertake and promote research in the field of human rights
8. To propagate the concept of human rights and to promote the awareness for their protection among the various sections of the society, it can undertake publication of books or pamphlets or conduct seminars, or use the media or any other means available to it.
9. To promote and support the non-governmental organisations and institutions in the field of human rights.²¹

VIII.1Powers of the Commission

²⁰*Supra* note 3 at 97.

²¹Section 12(1) of the Protection of Human Rights Act, 1993.

The Commission exercises the following powers while inquiring into the violation of human rights

1. The Commission while inquiring in the violations of the human rights exercises the same powers of a Civil Court trying a suit under the Civil Procedure Code, 1908. They are especially in respect to:
 - a. Summoning and enforcing the attendance 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
2. The Commission if in its opinion arrives at a conclusion that any information may be useful for or relevant on any such aspects or matters under its consideration it can direct any person to submit such information required to it. Any such person directed by it, in whatever capacity he may be, is legally bound to furnish such information as directed by it within the meaning of Sections 176 and 177 of the Indian Penal Code.
3. The Commission or any other officer authorised by it can enter into any building or place, wherein, if in the opinion of the Commission that any document relating to the subject matter of inquiry may be found and to seize such a document or to take extracts of copies therefrom subject to the provisions of Section 100 of CrPC to the extent it may be applicable.
4. The Commission is though empowered to exercise the powers of a civil court only during the course of inquiring into the complaints, it can also record the facts constituting the offence and the statement of an accused person as is described in Sections 175, 178, 179, 180 or 228 of the IPC. The Commission after recording the facts constituting the offence and the statement of the accused as specified in CrPC has to transmit the case to a Magistrate having jurisdiction to conduct the trial. Since all the proceedings before the Commission are considered as judicial proceedings, the Magistrate to whom the case is referred bound to conduct the trial.²²

²²Section 13 of the Protection of Human Rights Act, 1993.

VIII.2 Investigation

The Commission exercises the following investigative powers while inquiring into the complaints:-

- a. It may utilise the services of any officer or any of the investigative agency of the Central or State government with their prior approval.
- b. The officer or agency whose services are utilised by it shall be under the control and direction of the Commission. Further, the Commission may-
 - i. Summon and enforce the attendance of any person and examine him; or
 - ii. Direct such person to discover or produce any document before it;
 - iii. Requisition any public record or copy therefrom from any office.
- c. Any statement made by a person before any officer or agency whose services are utilised or a statement made by a person in the course of giving evidence before the Commission shall not be used against him in any civil or criminal proceedings; except for the purpose of prosecution for giving false evidence by such statement. However, the Commission is empowered to use such statement if it is made in reply to a question asked by the Commission or relevant to the subject matter of inquiry.
- d. If the Commission is not satisfied about the correctness of the facts stated and any conclusion arrived at in the report submitted by such person, it may conduct an inquiry or examine such person or persons assisted the investigation.²³

VIII.3 Inquiry into Complaints

The Commission while inquiring into the complaints of the violations of human rights may adopt the following procedure:

- a. It can call for information or report either from the Central or any of the State government concerned or any other Authority, or organisation subordinate to them within the time frame fixed by it. However, it may proceed to inquire into the complaint on its own if it does not receive the information or report within the time frame. But the Commission shall not proceed further if it is satisfied upon the report submitted by the concerned government or authority along with the action initiated.

²³Section 14 of the Protection of Human Rights Act, 1993.

- b. If in the opinion of the Commission a matter requires immediate action, it can initiate an inquiry even without asking the relevant government or authority for their report or information.²⁴

VIII.4 Procedure with respect to Armed forces

In accordance with the provisions of the Act while dealing with the complaints of the armed forces it adopts the following procedure:-

- a. It may, either on its own or upon receipt of a petition, can ask the Central Government to submit a report. After receiving the report from the Central government it may not either proceed further, or may make recommendations to that effect.
- b. From the date of the receipt of the recommendations the Central Government is bound to inform the Commission of the action taken by it within three months, or within the period of extension as permitted by the Commission.
- c. The Commission has to publish a report on its recommendations and the action initiated by the Central government upon them.
- d. The Commission transmits copy of the published report to the petitioner or his representative.²⁵

If the Commission at any stage of inquiry considers it necessary to inquire into the conduct of any person it may do so. But if in the opinion of the Commission such an inquiry may prejudicially affect the reputation of the person, it has to give a reasonable opportunity to that person to produce evidence in his favour during such inquiry. However, the Commission cannot conduct an inquiry if it affects the reputation of the person in any manner.

IX. Divisions of the Commission

There are six divisions in the Commission. Each of these divisions has been entrusted with some specific tasks. They work in close consultation and coordination with each other.²⁶

²⁴Section 17 of the Protection of Human Rights Act, 1993.

²⁵Section 19 of the Protection of Human Rights Act, 1993.

²⁶NHRC, available at <http://www.nhrc.nic.in/Documents/Publications/NHRCIndia.pdf> (Visited on September 5, 2013).

IX.1 Administration Division

This Division is headed by a Joint Secretary, assisted by a Director, under-secretaries, section officers and other secretarial staff, and functions under the overall guidance of the Secretary General. This Division looks after the administrative, personnel, establishment and cadre matters of the staff and officers of the Commission.²⁷

IX.2 Law Division

The Division is headed by Registrar (Law). The post has a scale of Additional Secretary to the Government of India. The Division services the Commission in the receipt and disposal of complaints relating to human rights violations. The Registrar (Law) is assisted by a Joint Registrar, Deputy Registrars, Assistant Registrars and others. Besides, there are four Presenting Officers, coming from the subordinate judiciary, who assist the Commission in dealing with the complaint cases.²⁸

The inquiry into complaint is dealt by the Law Division. When the complaint is received by the Complaint Registry (CR) section after giving the diary number it is segregated or sorted out into fresh complaints and urgent complaints.

For the sake of convenience, the Law Division has been divided in two classes. One is **Scrutiny Branch 1** which deals with the cases which comes from **Uttar Pradesh and Uttarakhand** and another branch, i.e. **Scrutiny Branch 2** which deals with rest of India and foreign related complaints.²⁹

Urgent cases are those where immediate action needs to be taken by the Commission. The inquiry depends on the various factors such as nature of the complaint.³⁰

If the complaint is not in English or Hindi language then in that case the complaint is handed over to translators who translate the complaint and then it is scrutinized by the Law Division.³¹

²⁷*Ibid.*

²⁸*Ibid.*

²⁹Sundeep Kashyap Das, Neeraj Kumar Gupta, ThotreingamTungshangnao, Nikhil Pradeep Dubey, *Complaint Handling in National Human Rights Commission of India* (2011) (Project submitted to NHRC as part of Winter Internship Programme).

³⁰*Ibid.*

³¹*Ibid.*

After sorting out the complaints, the scrutiny branch scrutinizes the complaint whether it is cognizable by the Commission or not. Scrutiny is done by the Assistant Registrar with the help of the legal consultants and it is approved by the registrar and then on the basis of merit. The details are filled in either '**green form**' or '**pink form**' of the complaint is of such a nature that cognizance cannot be taken by the Commission then details of that case are filled in '**pink form**' and with the seal and sign of the Chairperson and it is taken forward by the Commission and only the necessary data entry is done by the Commission.³²

If the complaint has the merit in that case, **green form** is used to fill the details of complaint and other related aspect. It is to be noted that Registrars are the law experts. So they are well equipped person to decide the merits of the complaint.³³

After filling of the form, the form goes for data entry in the data entry section of the Law Division. Here, the complaint is registered in computer and a specific automatic computer generated number is given to the complaint that is called opening of case file or file number is provided to each and every complaint.³⁴

After giving the file number, the complaint comes to the '**Presenting Officer**' who are persons from lower judiciary and they prepare the complaint in a draft form so that it can be presented to the Hon'ble member of the Commission for their direction.³⁵ The member may ask the concerned authority for the information of as provided under Section 17 and for that purpose the file is send to the report branch of the law division.³⁶

Report Branch

After that Report Branch sends the notices as to the concerned authority as directed by the member of the commission in a proper format and report branch also receives the reply of those notices and thereby coordinate with presenting officer.³⁷

IX.3 Investigation Division

³²*Ibid.*

³³*Ibid.*

³⁴*Ibid.*

³⁵*Ibid.*

³⁶*Ibid.*

³⁷*Ibid.*

When the Commission requires an independent inquiry to be conducted, it is done through the Investigation Division, which is headed by an officer of the rank of Director General of Police. The Division also assists the Commission in examining complaints, in scrutinizing reports received from the police and other investigation agencies and in looking into reports of custodial violence or other misdemeanors. It analyses the intimations and further reports from the State authorities regarding deaths in police and judicial custody, encounter deaths and advising the Commission.³⁸

IX.4 Training Division

The Division has been created to disseminate information and focus attention on sensitizing various agencies and NGOs, civil society to heighten respect for human rights by organising human rights training programmes. This Division is headed by a Chief Coordinator, who is a joint secretary rank officer. The Chief Coordinator is assisted by a senior Research Officer and other secretarial staff.³⁹

IX.5 Policy research, Projects and Programmes division

Whenever the Commission, on the basis of its hearings, deliberations or otherwise, arrives at a conclusion that a particular subject is of generic importance, it is converted into a project/programme to be dealt with by this Division. It also undertakes and promotes research in human rights and organised seminars, workshops and conferences on pertinent issues. It is headed by the Joint Secretary and consists of two Directors, a Senior Research Officer and Secretarial staff.⁴⁰

IX.6 Information and Public Relations Division

This Division disseminates information relating to the activities of the Commission through the print and electronic media and is headed by an Information and Public Relations Officer, who also functions as the Editor of the monthly Human Rights Newsletter. This Division is responsible for the website and publications of the Commission. It also has an Assistant

³⁸*Supra* note 20.

³⁹*Ibid.*

⁴⁰*Ibid.*

Information Officer. A Public Information Officer has also been appointed for the purpose of facilitating information under the Right to Information Act. The Appellate Authority is the Joint Secretary.⁴¹

X. Procedure for handling complaints by NHRC

Promoting good complaint handling is a key part of your work if you receive complaints from time to time. Good complaint handling can make the people to have more faith on NHRC.

X.1 MADAD COUNTER

MADAD COUNTER is an important and inevitable part of the administrative structure of NHRC which is functioning effectively as an important “counter” in fulfilling the ‘complaints handling mechanism’ of NHRC. This counter usually receives around 50-100 visitors and 200 calls (in the year 2011) from different parts of the country for help. The working staffs give their best and necessary efforts to ensure that queries and questions are answered according to their utmost potential and ensure satisfactory on the part of the complainants. Currently only 3 Working Staffs are there - UDC, Translator, and data entry operator.⁴²

X.2 Role and Functions of Madad Counter

(1) It acts as a “care center” for the complainants, so that, proper statement of complaints can be made before it is sent (by any means like post, fax, email etc.) or submitted personally to the COMPLAINT REGISTRY SECTION (CR SECTION).⁴³

(2) This counter extends assistance in every possible manner to a person (/s) who seeks help in order to initiate the process of lodging complaints or to address grievances they have regarding matters relating to the violations of human rights.

⁴¹*Ibid.*

⁴²*Supra* note 23.

⁴³*Ibid.*

(3)It is a panacea for the illiterate person (/s) because it helps them in ‘dropping down the complaints on paper’, after making proper clarification and communication about the very nature of the complaints they want to make.⁴⁴

(4)It gives about the status of complaints already made when asked by the complainants (usually inquiry is made through phone or email).⁴⁵

(5)Any other assistance relating to “complaint” is made by this counter.

Thus, is very clear that Madad Counter plays an important role in handling complaints by extending necessary assistance to those who seek assistance, before the formal delivery of complaints by any means to CR section. It also works like a “customer relations’ counter”.

X.3 Complaint Registry Section (CR Section)

The complaint handling mechanism of NHRC is a corollary of the roles and functions of all the ‘Divisions’ and ‘Section’. All the sections have their own respective jurisdiction and responsibility over the ‘handling of complaints’.⁴⁶

In this connection CR Section can be considered as a “first input room” of all sections in getting the complaints processed systematically. It is the CR section where all the complaints are entertained first of all, before the complaints are dispatched to various sections for further procedural “handling”. CR section is one of the most important sections that deals with the complaints it received (by any means such as post, fax, email etc.) from the complainants, so as to undertake the responsibility of forwarding all the complains of different nature to respective sections, as for instance, for scrutinisation, complaints are sent to Scrutiny Branch (SB1) and Scrutiny Branch 2(SB 2) respectively.⁴⁷

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.*

This section is headed over by Section Officer. There are at present 19 staffs including Section officer. The section receives around 600 to 1000 complaints every day and forwarded the same day to concerned sections.⁴⁸

X.4 Role and Functions of the CR Section

Before the complaint letters are distributed to different sections for necessary actions, files are first treated in the CR section. The working system and procedures being followed by the CR section in handling the complaints can be regarded as the roles and function of the CR section which are given below.

Procedures

- A. Receive of complaints (by any means)
- B. This is followed by ‘Sorting of Complaint letters’ to identify whether they are “fresh complaints” or “reports”. Making of complaint letters is done to indicate “fresh complaints” or “reports”. Sorting of complaint letter also means, identifying those letters which are addressed directly to the Chairperson or other members of the Commission and forwarded the same to Chairperson or members directly.
- C. Diarisation (diary number is automatically generated in the computer) of the complaint letters separately for “fresh complains” and “reports” in CMIS (complaint management information system)
- D. Again, sorting for the second time of the complaint letters is to be done after ‘Diarisation’ of the same. This is for the purpose of indicating the complaint letters certain “code” (example SB1, SB2, M1 and so on) meant for different sections
 1. After sorting the complaint letters for the second time, it is followed by ‘grouping of complaint letters into separate files’ meant for different sections based on the nature of complaints or reports.
 2. After ‘grouping of complaint letters into separate files’ is being made, it is followed by scanning of the same.

⁴⁸*Ibid.*

3. Finally, complaint letters which are segregated into different files are then forward to respective concerned sections.⁴⁹

XI. Illustrative Cases

XI.1 National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1234

The Commission under article 32 of the Constitution of India has filed a writ petition as a public interest petition before the Supreme Court of India. The Commission filed this petition mainly for the enforcement of fundamental rights of about 65,000 *Chakma\ Hajong* tribals under article 21 of the Constitution. In this case a large number of refugees from erstwhile East Pakistan were displaced in 1964 due to *KaptainHydel* Project. These displaced *Chakmas* had taken shelter in North-Eastern States of India, namely, in Assam and Tripura. There were two main issues involved in this case;

1. conferring of citizenship;
2. fear of persecution by certain sections of the citizens of Arunachal Pradesh. Largely to these two issues NHRC was approached by two different NGOs.

In this case the Commission contended before the Court that the Commission found serving of quit notices by All Arunachal Pradesh Students Union (AAPSU) to *Chakmas* and their attempted enforcement appeared to be supported by the officers of Arunachal Pradesh. The State government deliberately delayed the disposal of the matter by not furnishing the required response to NHRC and infact assisted in the enforcement of eviction of the *Chakmas* from the State through its agencies. The Court after hearing the argument directed the government of Arunachal Pradesh to ensure the life and personal liberty of each and every *Chakma* residing within the State. The significance of this judgement also lies in clearing the doubts regarding the applicability of fundamental rights to refugees. This decision rules that foreigners are entitled to enjoy the protection of right to life and liberty under article 21 of Constitution. Timely intervention by the Commission has saved the life of thousands of innocent *Chakma* refugees from AAPSU.⁵⁰

⁴⁹*Ibid.*

⁵⁰Manoj Kumar Sinha, "Role of National Human Rights Commission of India in Protection of Human Rights", available at: <http://www.rwi.lu.se/pdf/seminar/manoj05.pdf> (Visited on September 25, 2013).

XI.2 Indian Council of Legal Aid and Advice and others

On 3rd December, 1996, the Commission took cognizance of a letter from Chaturanan Mishra, then Union Minister for Agriculture regarding starvation deaths due to the drought in *Bolangir* district of Orissa.

In similar matter a writ petition was filed on 23 December 1996 by the Indian Council of Legal Aid and Advice and others before the Supreme Court of India under article 32 of the Constitution. The petition alleged that deaths by starvation continued to occur in certain districts of Orissa.

The Supreme Court of India on 26th July 1997 directed that since matter is seized with the NHRC and is expected to deliver some order, the petitioner can approach to the Commission. Realizing the urgency of the matter the Commission acted quickly and initially prepared an interim measure for the two years period and also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts.

A Special Rapporteur has been regularly monitoring the progress of implementation of its directions. The Commission observed that as starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant. The Commission strongly supported the view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right. The Commission organized a meeting with leading experts on the subject, in January, 2004 to discuss issues relating to Right to Food. The Commission has approved the constitution of a Core Group on Right to Food that can advise on issues referred to it and also suggest appropriate programmes, which can be undertaken by the Commission. By this decision it is firmly established in the context of India that economic, social and cultural rights are treated par with the civil and political rights before the India Courts and the Commission. India is amongst the view countries in the world, which have accorded justifiability of economic, social and cultural rights.⁵¹

XI.3 Punjab Mass Cremation Order

⁵¹*Ibid.*

Two writ petitions were filed before the Supreme Court of India containing serious allegations about large-scale cremations resorted to by the Punjab Police of persons allegedly killed in what were termed as “encounters”.

The main thrust of the Writ Petitions was that there were extra-judicial executions and hasty and secret cremations rendering the State liable for action.

These petitions were largely relied on a press note of 16th January 1995 by the Human Rights Wing of the *Shiromani Akali Dal* under the caption “Disappeared” “cremation ground”. The note alleged that the Punjab Police had cremated a large number of human bodies after labelling them as unidentified.

The Supreme Court after examining the report submitted to the Court by Central Bureau of Investigation (CBI), relating to cremation of dead bodies observed that report indicates 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. The report discloses flagrant violation of human rights on a large scale.

On 12 December 1996 the Court requested the Commission to have the matter examined in accordance with law and determine all the issues related with the case. Though matter is still pending before the Commission for final consideration, however, the Commission granted in some cases compensation amounting of Rupees Two Lakh Fifty thousand (Rs. 2,50,000/-) to the next of kin of the 89 deceased persons. While granting the compensation the Commission relied on the laws developed by the Courts in India in the field of evolving legal standards for remedial, reparatory, punitive and exemplary damages for violation of Human Rights.

The Commission observed, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life of a citizen by the public servants and the State. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation.⁵²

XI.4 Gujarat Communal Riot

⁵²Punjab Mass Cremation Orders, available at <http://nhrc.nic.in/dispatchive.asp?fno=855> (Visited on September 10, 2013).

The Commission took *suomotu* action on communal riot which took place in Gujarat in early 2002, the decision to take action was based of media reports, and both print and electronic. The Commission also received an e-mail communication requesting the Commission to intervene. A team of the Commission had visited Gujarat between 19 to 22 March 2002 and prepared a confidential report, which is later made to the public. The release of the confidential report was initially withheld to provide an opportunity to the Gujarat government to comment on its contents, given the sensitivity of the allegations contained in it. Unfortunately, the State government did not bother much about this report. The Commission observed that the State has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it. The principle of *res ipsa loquitur* (the affair speaking for itself) applies in this case in assessing the degree of State responsibility in the failure to protect the Constitutional rights of the people of Gujarat. The responsibility of the State extended not only to the acts of its own agents, but also to those of non-State players within its jurisdiction and to any action that may cause or facilitate the violation of human rights.⁵³

XII. Shortcomings of National Human Rights Commission

Though the NHRC is in existence since 1993, millions of people suffer from violations of human rights everyday. Due to some glaring defects and lacunae in the Protection of Human Rights Act, 1993, role and functioning of NHRC in protecting and promoting human rights is seriously affected. There is a dire need for certain radical modifications in the 1993 Act in order to make it more effective and so as to achieve the desired objectives in true manner.

- A. The method of selection of the members of the Commission needs attention. The selection of the members is wholly weighed towards the ruling party and the principal opposition, both at the centre and state level. The NHRC does not have power to appoint its own staff.
- B. The composition of NHRC is least balanced as three out of five members must be judges both, in the National as well as the State Commission and all would have to be political appointees. So, at least two members are required to be appointed from among the person having knowledge of, or practical experience in the matters related to human rights.

⁵³Vishwanath. M, "A Decade of National Human Rights Commission", 4 *Journal of Indian Legal Thought* 83 (2006).

Representations should be given to the NGO and human rights activists to instil confidence in the minds of people.

- C. The relation between NHRC and the State Commissions should be made amply clear because sometimes questions arise over jurisdiction and control. The revisional powers over the State Commission should be enumerated as of the powers of NHRC. The essence of the revisional power is to have control by way of supervision, especially the power to call for records. The need is to make special provision to make clear cut demarcation in the areas of their functioning and their administrative relation with each other.
- D. Another major drawback is the lack of independent budget of the NHRC. The present scenario is that the purse of NHRC is totally dependent on the government to meet the expenses of investigation and research apart from the allowance and salaries. Actually there should be provision for drawing the salaries directly from the consolidated funds so as to ensure greater autonomy and transparency. The financial independence will make the NHRC independent in the true sense of the term. It will ensure smooth and effective performance of NHRC.
- E. There is inherent drawback in Section 12(c) of the Act. The necessity of intimation severely inhibits and defeats the investigation of the Commission. It is such a loophole that makes the whole exercise eyewash. It is therefore recommended that the requirement of informing the State government about the Commission's visit to such place should be waived off. This shall certainly help the Commission to make spot inquiries and present the true picture of human rights violation.
- F. Further Section 13 of the Act deals with powers of NHRC relating to inquiries. There is nothing in this section regarding the transfer of cases, it is suggested that NHRC may be given the power to transfer any of the complaints filed or pending before it to the State Commission of the State from where the complaint arises, whenever it considers expedient.
- G. The Commission suffers from the limitation on its own function. It can intervene in any proceedings pending before a court regarding violation of human rights as and when any matter is reported to it but it has to seek prior approval of concerned authority. This hinders its functioning as the concerned authority may linger it unnecessarily to avoid the commission. Therefore in the interest of discouraging the human rights violations, an

amendment should be made in the Act to the effect that the prior approval should be time bound or the requirement of approval should be completely waived off.

- H. Section 36(1) of the Act provides that the NHRC 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. This obstacle should be removed by the amendment in 1993 Act, because many a time government deliberately hands over the case to another Commission for side-lining the Commission. For any reason whatsoever, if the government intends to deprive the Commission of the jurisdiction to inquire into any violation of human rights, it can do so by constituting a separate Commission under any law in force. Another major impediment in the working of NHRC is imposed by Section 36(2) of the Act.
- I. The Commission under the 1993 Act is not empowered to take any punitive action against the violator. It is also not bestowed with any contempt power for defying its order by the government officials. It can only make recommendations for the action to be taken by the concerned authority. For getting better results from the working of NHRC, it should be given wider powers to call for the explanation, initiate the proceedings for prosecution against the violator and take appropriate action including the awarding of compensation to the victim.
- J. Another provision that needs attention is that the Commission under the 1993 Act merely acts as an instrumentality between the victim and the government for lawful solution to the violation of human rights, and make its own recommendations, leaving the results to the government or the courts. The Commission does not have any authority to award compensation or extend any other relief immediately required by victim especially in terms of monetary assistance. The government is also not being obliged to accede to the recommendations made by the Commission. Thus due to lack of effective mechanism recommendations of the Commission are not being taken seriously. This is one of the most glaring drawbacks in the 1993 Act which makes the Commission toothless and non-effective. If the working of the Commission is to be made good and effective, an amendment should be made in the 1993 Act so that the Commission's recommendations must be totally accepted by the Government and implemented accordingly.

XIII. Conclusion

In spite of its glaring defects in the Act, NHRC has made significant contributions to bring a human rights approach to legislation, policy and programs in our country. It would not be out of place to mention that NHRC as a watchdog had done reasonable work in propelling and protection of human rights. 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. It has been pertinent towards strengthening the Human Rights Jurisprudence in our country. NHRC has set the agenda towards a rights based approach at an international level as well. 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. 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 protecting citizens against discrimination and inaction. The objective assessment of the Commission's endeavours must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances. 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.