Role of the National Human Rights Commission of India in Protection of Human Rights

Manoj Kumar Sinha*

1. Introduction

Respect for the dignity of an individual and striving for peace and harmony in society, has been an abiding factor in Indian culture. The Indian culture has been the product of assimilation of diverse cultures and religions that came into contact in the enormous Indian sub-continent over time. The international community has recognised the growing importance of strengthening national human rights institutions. In this context, in the year 1991 a UN-sponsored meeting of representatives of national institutions held in Paris, a detailed set of principles on the status of national institutions was developed, these are commonly known as the Paris Principles. These principles, subsequently endorsed by the UN Commission on Human Rights¹ and the UN General Assembly² have become the foundation and reference point for the establishment and operation of national human rights institutions.³

2. Establishment of National Human Rights Commission

The Government of India did realise the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights Commission (Commission) by the Government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments. The Commission is the first of its kind among the South Asian countries⁴ and also few among the National Human Rights

---

*Visiting Professor, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund, Sweden, Assistant Professor (on leave), Indian Society of International Law, New Delhi, My sincere thanks to my wife Preet Kumar Sinha for her support and encouragement. Dr. Noëlle Quénivet for her valuable suggestions.


institutions, which were established, in early 1990s. The Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993. Fourteen Indian States have also set up their own human rights commissions to deal with violations from within their states. The Act contains broad provisions related with its function and powers, composition and other related aspects.

Section 2 (d) of the Act defines human rights as rights relating to life, equality and dignity of the individual guaranteed by Constitution or embodied in the international covenants and enforceable by Courts in India. The Indian Constitution provides certain rights for individuals in Part III of the Constitution, which are known as the fundamental rights. Part IV sets out the Directive Principles of State Policy. While the former guarantees certain rights to the individual, the latter gives direction to the State to provide economic and social rights to its people in specified manner. The word fundamental means that these rights are inherent in all the human beings and basic and essential for the individual. However, the rights guaranteed in the Constitution are required to be in conformity with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a party to these Covenants by ratifying them. The justiciability of fundamental rights is itself guaranteed under the Indian Constitution. The responsibility for the enforcement of the fundamental rights lies with the Supreme Court by virtue of Article 32 and by Article 226 to the High Courts.

5 The Commission was constituted by an Act of Parliament. The Act is divided into eight Chapters consisting of 43 Articles. Special powers conferred to the Commission under Article 10 (c) which says, “the Commission shall regulate its own procedure.” There are 19 Articles under Procedural Regulations.

6 The fourteen States are: Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. See http://www.nhrc.in, visited on 12 April 2005.


9 Articles 38 to 51-A contain the Directive Principles of State Policy. The idea to have such principles in the Constitution has been borrowed from the Irish Constitution. The Directive Principles are not enforceable by the Court.

10 India ratified both instruments on 10th April 1979.


12 Manoj, note 8, pp. 201-208.
2.1. Constitution of the National Human Rights Commission

The Constitution of the Commission dealt with in Chapter II of the Act. Section 3 of the Act says: “the Central government shall constitute a body to be known to the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

2. The Commission shall consist of
   (a) A Chairperson who has been a Chief Justice of the Supreme Court;
   (b) One Member who is, or has been a judge of the Supreme Court;
   (c) One Member who is, or has been the Chief Justice of the High Court;
   (d) Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

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

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

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

The appointment of the Chairperson and other Members are elaborately discussed under Section 4 of the Act.\(^\text{13}\) The other provisions relate to the removal of a member of the Commission,\(^\text{14}\) the term of office of Members,\(^\text{15}\) a member to act as a

---

\(^\text{13}\) According to Section 4 of the Act, “Selection of Chairperson and members of the Commission is made on the recommendations of a committee consisting of the Prime Minister, Speaker and leader of the opposition in the House of the People (Lok Sabha) and Deputy Chairman and leader of the opposition in the Council of States (Rajya Sabha).”

\(^\text{14}\) Section 5 of the Act.
Chairperson or to discharge his functions in certain circumstances, the terms and conditions of service of members, vacancies, etc., not to invalidate the proceedings of the Commission, the procedure to be regulated by the Commission, the officers and the other staff of the Commission.

2.2 Functions and Powers of the Commission

Wide powers and functions have been given to the Commission under section 12 of the Act. The paragraph (a) of section 12 provides, that the Commission can enquire *suo motu* action against any public servant against whom a complaint has been registered for violation of human rights. Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court. Section 12(c) empowers the Commission to visit any jail or other institution prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to State Governments on the basis of such visits. The Commission found after visiting many jails that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to a lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons. The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison.

---

15 Section 6 of the Act.
16 Section 7 of the Act.
17 Section 8 of the Act.
18 Section 9 of the Act.
19 Section 10 of the Act.
20 Section 11 of the Act.
Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation. Under Section 12(e) there is a separate provision to review the causes of terrorism, which inhibits the enjoyment of human rights, and to recommend appropriate remedial measures. Section 12(f) provides for the study of all treaties related with international human rights instruments and the making of recommendations for their effective implementation. Section 12 (g) provides for promotion of research in the field of human rights. Section 12(h) empowers the Commission to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means. Section 12(i) empowers the Commission to encourage the efforts of Non- governmental organisations (NGOs) working in the field of human rights. Lastly, Section 12(j) provides, such other functions as it may consider necessary for the promotion of human rights.

3. Functional Approach of the Commission

The responsibility entrusted to the Commission under the Act of 1993 cannot be adequately fulfilled without the development of close ties between the Commission and NGOs. For the Commission, it is not just a matter of Statutory obligation under Section 12(i) of the Act. The Commission recognised that the cause of human rights has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship.\(^\text{24}\) The Commission from very beginning associated NGOs with the inquiry of complaints. In several places, during visits by the Commission, NGOs have boldly come forward with evidence of wrong-doing in relation to specific complaints addressed to the Commission.\(^\text{25}\)

The Commission acknowledged that the promotion and protection of human rights requires the courage and commitment that NGOs bring to bear in their endeavours


\(^{25}\) Second Report, note 12, p.27.
and that it is for this reason that the country has much to gain by encouraging their efforts, whether the NGOs are national or international.

3.1. Investigation Division
There is a well organised investigation division within the Commission. The primary duty of this investigation division is to look into complaints received by the Commission. For this purpose the investigation team makes on the spot investigations. The Act outlines the investigative role of the Commission. Subsection 1(b) of Section 11 provides, “Such police and investigative staff under and officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.”

3.2. Inquiry into Complaints
A considerable increase in public awareness of the work of the Commission has been observed. This is reflected in the vast increase in the number of the complaints of human rights violations received by the Commission over the years. Many of the cases received by the Commission were of great poignancy, but they could not be entertained by the Commission because of the Regulation 8 of the Commission. The Commission broadly divides the cases in these following categories: (1) Custodial deaths; (2) Police excesses (Torture, Illegal detention, unlawful arrest, false implication etc.; (3) Fake encounters; (4) Cases related to Women and Children; (5) Atrocities on Dalits\Members of Minority community\ Disabled (6) Bonded labour (7) Armed forces\ para military forces and (8) other important cases.

Once the Commission accepts a complaint, it seeks comments from the concerned government or authority regarding complaint. After receiving the comments of the concerned authority a detailed note on the merits of the case is prepared for the

---

26 The Investigation Division of the Commission is headed by an officer of the rank of Director General of Police(DIG). The Director General(Investigation) is assisted by a DIG, three senior Superintendents of Police and 20 other investigators of various ranks.

27 Under this Regulation, the Commission has decided not to entertain cases relating to (a) events which happened more than one year before the making the complaint (b) matters which are sub judice (c) those are vague, anonymous or pseudonymous (d) those that are frivolous in nature, or (e) matters which are outside the purview of the Commission.


29 Section 8 (7) of Procedural Regulation.
consideration of the Commission.\(^{30}\) After this, directions and recommendations of the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

Since its establishment in October 1993, the Commission has directed compensation in the amount of Rs. 9,76,68,634\(^\)\ be paid in 559 cases.\(^{31}\) In year 2002-2003 the Commission recommended that compensation amounting to Rs. 31,40,000\(^\)\ be paid in 39 cases.\(^{32}\) The Commission during the period beginning from 1 April 2002 to 31 March 2003 registered 68,779 cases and in the same period for 2001 to 2002 the Commission registered 69,083 cases in year 2001-2002.\(^{33}\) Out 68,779 cases registered in the year 2002 to 2003, 67,354 complaints were of human rights violations, 1340 related to custodial deaths, 2 concerned custodial rapes and 83 related to police encounters were found.\(^{34}\) As on 31 March 2003, the total number of cases before the Commission was 43,010, which included 9763 cases awaiting preliminary consideration and 33,247 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and are pending further consideration within the Commission.\(^{35}\)

In some of the cases the Commission may opt for a personal hearing with the petitioner or any other person on behalf of petitioner for appropriate disposal of this matter. This personal hearing will provide an opportunity for examining any witnesses, if any, in support of the complaint and hearing evidence in support of the petitioner’s stand.\(^{36}\) Once the Commission or any other person under its authority undertakes an investigation, the report of the investigation should be submitted within a week of its completion. In some cases, the Commission may allow further time for the submission of reports. If the Commission is not satisfied with any report it may direct fresh investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the Commission on its own motion, or if

---

\(^{30}\) Section 8 (8) of Procedural Regulation


\(^{32}\) Ibid., p.170.

\(^{33}\) Ibid., p.168.

\(^{34}\) Ibid., p.169, para.13.4.


\(^{36}\) Section 8 (10) of Procedural Regulation
moved in the matter, may direct inquiry to be carried out by it and receive evidence in
the course of such inquiry.  

Lastly under Section 8(12), the Commission or any of its members when requested by
the Chairperson may undertake visits for on-the-spot study and where such a study is
undertaken by one or members, a report thereon shall be furnished to the Commission
as early as possible.

4. Steps After Inquiry
On the completion of inquiry, the Commission may take any of the following steps
under Section 18 of this Act, namely:

(1) Where the inquiry discloses, the commission of violation of human rights
or negligence in the prevention of violation of human rights by a public
servant, it may recommend to the concerned Government or authority the
initiation of proceedings for prosecution or such other action as the
Commission may deem fit against the concerned person or persons;
(2) approach the Supreme Court or the High Court concerned for such
directions, orders or units 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 provisions of clause (5) provide a copy of the inquiry report
to the petitioner or his representative;
(5) the Commission shall send a copy of its inquiry report together with its
recommendations to the concerned government 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 concerned government or authority, if any, and the action
taken or proposed to be taken by the concerned government or authority on
the recommendations of the Commission..

37 Section 8 (11) of Procedural Regulation
The Commission in several cases recommended prosecution of the public servant responsible for violation of human rights, under section 18(1) of the Act. In the case of violation of human rights, the Commission may recommend under Section 18 (3) of the Act that the concerned State to grant immediate interim relief to the victim or members of the family.

The Commission incorporated elaborate provisions under Section 18(5) of procedural regulations, to make its inquiry more transparent and impartial. After the completion of its inquiry the Commission generally sends report along with recommendations to the concerned government to report and comment within a period of one month, or such further time as the Commission may allow. This recommendation also includes what action should be taken in a particular case.

Lastly, Section 18(6) stipulates that the Commission should publish its report in detail. In must include the comments of the Government or authority. The report should also include what action the concerned government or authority is going to take in a particular case.

However, the Commission has been deprived of the similar power while dealing with armed forces. Section 19 restricts the power of NHRC to initiate investigation on its own in the case of violation of human rights by armed forces. According to Section 19 (a) (1) of the Act the Commission has to seek a report from the Central Government and after receiving of the report from Central Government, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government. The power to make recommendations, when necessary, in section 19 must be read along with subsections (1) and (3) of section 18 which deal with the nature of recommendations on conclusion of the inquiry, when closure of the complaint is not considered appropriate. There is nothing restrictive in section 19 to

---

38 Section 19(1) (b) of the Act.
39 In the case of Mohd. Tayab Ali, husband of the complainant who was taken in custody the 17 Assam Rifles, and the custodian has been unable to prove satisfactorily the lawful termination of custody, when he was alive. This case falls within the ambit of the second part of section 19(1)(b) since on receipt of the report from the Central Government the Commission found this is a fit case for making recommendations in terms of subsection (1) and (3) of section 18 of the Act. The Commission therefore, made recommendations. The complainant has lost her husband at a young age. At the time of
curtail this power of the Commission and the express power to make recommendations leads necessarily to this conclusion. Jurisdiction of the NHRC to deal with the complaints against armed forces is subject only to a restrictive procedure.

It seems from the above provisions that the Commission is fully equipped to handle any situation, but in practice the Commission is powerless, when a State government refuse to comply with its recommendation. The Commission is endowed with only recommendatory power, and recommendations of the Commission are not legally binding. However, in most of the cases recommendations of the Commission have been complied with by the concerned government or authority, as is apparent from the prosecutions of several police officials, and the compensation awarded to victims in various cases.

5. Illustrative Cases

5.1 National Human Rights Commission v. State of Arunachal Pradesh
The Commission under Article 32 of the Indian Constitution 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 Kaptain Hydel 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

her husband’s disappearance, she had five children and she was pregnant. The loss of the sole breadwinner rendered the family destitute. Since the violation of human rights in the present case is by members of the armed forces, the Commission, in exercise of its powers under section 19 of the Protection of Human Rights Act recommended immediate interim relief of Rs.3 lakhs to the complainant and her children. The Commission had made this recommendation to the Ministry of Defence and the Ministry of Home Affairs, Government of India for compliance. The Ministry of Defence complied with the Commission's directions and made payment of the amount of Rs. 3 Lakks.

41 Article 21 of the Indian Constitution provides, “No one shall be deprived of his life or personal liberty except according to procedure established by law.
42 East Pakistan got independence in 1971, presently known as Bangladesh.
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.\textsuperscript{43}

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 the Indian Constitution. Timely intervention by the Commission has saved the life of thousands of innocent Chakma refugees from AAPSU.

**5.2. 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\textsuperscript{44} was filed on 23 December 1996 by the \textit{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.\textsuperscript{45} The Supreme Court of India on 26th July 1997 t directed that since matter is seized with the NHRC and is expected to deliver some order, the petitioner can approach to the Commission. Realising 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


\textsuperscript{44} Writ petition (civil) No.42/97. Sanjay Parikh, a public-spirited lawyer on behalf of the Indian Council of Legal Aid and Advice and others, filed this petition.

\textsuperscript{45} Author has personally seen the file and appeared before the Commission couple of occasions along with Sanjay Parikh advocate.
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 justiciability of economic, social and cultural rights.

5.3. Punjab Mass Cremation Order

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

46 http://nhrc.nic.in/HRIssue.htm#Right%20to%20Food, visited on 19 April 2005.
47 Ibid.
48 Ibid.
49 Ibid.
50 Writ Petition (Crl.) No. 497/95, Paramjit Kaur v. State of Punjab and others and Writ Petition (Crl.) No. 447/95, Committee for Information and Initiative on Punjab v. State of Punjab.
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.

5.4. Gujarat Communal Riot

The commission took *suo motu* action on communal riot which took place in Gujarat in early 2002, the decision to take action was based of media reports, 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 latter 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

52 Ibid.
53 Manoj, note 8, pp. 322-330.
54 Note 48.
55 Ibid.
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. Recently the US government has revoked visa to Chief Minister Narendra Modi because of the Commission’s report on Gujarat.

### 6. Conclusion

From its inception the Commission attracted much suspicion because of its status as a government institution. However, in twelve years period it was able to establish its integrity and commitment. The Commission was able to demonstrate its ability to work independently and impartially, which is borne out by its recommendations. Even if the Commission is a very small step in the daunting task of the implementation of human rights at the national level, it remains a very significant step. Considering India’s extensive territorial domain, the vastness of its population and the complexity of social structure, cases of violation of rights, whether attributable to the agencies of the State or to the private individuals or groups, may occur despite its best efforts.

---

58 Ibid.
59 Ibid.
60 Ibid.
61 Ibid.