

CHAPTER-V

HUMAN RIGHTS AND ROLE OF NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission is an expression of India's concern for the protection and promotion of human rights. It is a unique expert body, which is created under the Protection of Human Rights Act, 1993, for examining and investigating the complaints relating to violations of human rights, as also the negligence on the part of any public servant in preventing such violation.

In India, the National Human Rights Commission can play a vital role in influencing the policy 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 struggle for protection and promotion of human rights is long and arduous. It is important that we constantly remain engaged in devising structures and institutions, which can make us all more sensitive and responsive towards protection and promotion of human rights. It is to be

noted that the wide comprehension of human rights indicates that the judiciary alone is not equipped to perform the entire task of promotion and protection of human rights. There is a need of a similar institution to complement the judiciary by monitoring the functioning of the institutions of the State, which most often are responsible for violation and neglect in prevention of violation of human rights. The National Human Rights Commission is an institution acts as a catalyst to improve the quality of governance, on which depends the state of human rights in a country.

The proposal for a Commission as originally contained in a Human Rights Commission Bill which was introduced in the Lok Sabha on 14th May, 1993. When the same was considered by the Parliamentary Standing Committee on Home Affairs, it was extensively criticised with regard to powers, functions and manner of functioning of the proposed Commission. After certain modifications in the light of comments made on the original Bill, the Commission was initially constituted on 12th October, 1993 under the Protection of Human Rights Ordinance on 28th September, 1993, which was later presented to the Parliament on 25th November, 1993 to replace the Ordinance and became 'The Protection of Human Rights Act, 1993 (hereinafter referred to as PHRA)¹. The Act is extended to the whole of India, but applies to the State of Jammu and Kashmir only of the matters pertaining to or relatable to any of the Entries enumerated in List I and List III of the Seventh Schedule to the Constitution as applicable to the State. Subsequently, the PHRA, 1993, has amended in the year 2006 for effective implementation of human rights.²

¹ Singh Sehgal .B.P. '*Human Rights in India: Problems and Perspectives*' Deep & Deep Publications, 1995, p.548

² Act, 43/2006, Received the assent of the President on September, 13, 2006 , and published in the Gazette of India, Extra., Part II, Section I, dated 14th September, 2006, pp. 1 to 7, Sl. No. 50

5.1 Important Features of the Protection of Human Rights Act:

The PHRA envisages the establishment of a National Human Rights Commission and the State Human Rights Commissions and the Human Rights Courts. The Act consists of forty-three sections arranged under eight chapters.

The Protection of Human Rights Act, 1993 defines the term 'human rights'³ to mean 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, or embodied in the International Covenants and enforceable by the Courts in India. In this definition 'human rights' have been given a wider ambit than those embodied in the Indian Constitution so as to include the rights listed in International Covenants.⁴

The role of judiciary has been remarkable to interpret the various enactments and the provisions giving brighter spectrum and the new dimensions to the various provisions of the Act. Recent important verdicts of Hon'ble Supreme Court, High Courts, and various Commissions and Tribunals have raised the scope of various provisions of the Act.

The enactment of PHRA has empowered the National Human Rights Commission (herein-after referred to as NHRC) to function from New Delhi with jurisdiction all over India. The powers of the Commission are intended to be so wide as to oversee the functioning of the organs of the State, not with a view to interfering with their constitutionally assigned functions, but to highlighting before them the pressing problems endangering human rights in order that the constitution, which the people of this country have given

³ Sec 2 (1) of PHRA, 1993.

⁴ International Covenants on Civil and Political Rights, 1996 and the International Covenants on Economic, Social and Cultural Rights, 1996.

unto themselves to safeguard a true democratic system of administration, becomes a meaningful instrument of justice and equity and an invigorating force to carry the nation forward. The Commission completes 13 years of its existence on October, 12, 2006. Over the past 13 years, the Commission has endeavoured to give a positive meaning and content to the objectives set out in the PHRA, 1993 for better protection of human rights. The Commission has worked vigorously and effectively all these years to create awareness and sensitising public authorities for promoting and protecting human rights in the country.

Apart from redressal of individual complaints and *suo-moto* actions of human rights violations, the NHRC undertakes various programmes to address societal issues, systematic reforms of police setup, prisons and to spread in promoting a culture of human rights in a country which has varied kinds of problems stemming from its size and population. The PHRA also embodies provisions with regard to the establishment of State Human Rights Commissions all over India to supplement the efforts of NHRC. Besides, Human Rights Courts are also being set up in the Districts to deal exclusively with the proven cases of human rights violations.

5.2 Characteristics of the Commission:

The establishment of the National Human Rights Commission was the result of criticism against India, both at National and International level, regarding human rights situation in Kashmir and Punjab. Several India watchers thought at that time that, the creation of the NHRC was a tactical move on the part of the Government of India to take some of the pressure off, so far as the alleged violation of human rights in Kashmir and Punjab were concerned. Due to this background that the Commission needs is the

credibility and acceptance, which will ultimately come from the work it does, its stand on human rights issues and the fate of its recommendations. Its advocacy for abolition of TADA, its stand on custodial deaths, rights of women and children, and the police atrocities have all led to an atmosphere where the NHRC has made its presence felt. Its recommendations have generally been accepted by the Governments on various matters.

Despite all this, and taking into account the vastness and variety of human rights issues in India, the Commission faces a gigantic task. The question is whether the arrangements envisaged under the National Human Rights Commission Act, 1993 are sufficient to meet the challenge? It may be mentioned that the Act is a very comprehensive piece of legislation which, apart from the Commission, it also envisages State Human Rights Commissions at State level and Human Rights Courts at District level for 'better protection of human rights'. Therefore, the Commission happens to be the only institution operational under the Act. An attempt here is made to analyse and assess 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. Credibility or acceptance of any institution created by the State such as a National Human Rights Commission depends at least upon three factors i.e. autonomy and transparency⁵.

5.2.1 Autonomy:

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

⁵ Supra Note 1 at p.532

position of its members, security of their tenure and unconditional financial grants to carryout its activities. All these matters have been adverted to in the Act. The Commission consists of five members including its Chairperson.⁶ While the Chairperson has to be a person, who has been the Chief Justice of the Supreme Court, the other two members have to be respectively the Judge of the Supreme Court and the Chief Justice of a High Court. Two members have to be appointed from amongst those persons who have knowledge of, or practical experience in, matters relating to human rights. So far, only Judges have been appointed as the members of the Commission.

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 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 Members of the Commission, including its Chairperson are appointed for a five years term⁷ 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.⁸

⁶ Sec.3(3) of PHRA, 1993, For the performance of some functions specified in clauses (b) to (f) of Sec.12, the Chairperson of the National Commission for SC and National Commission for ST and National Commission for Women are deemed to be the member of NHRC.

⁷ Sec.6 of the PHRA, 1993.

⁸ Sec.5 of the PHRA, 1993.

The Members of the Commission, including its chairperson are appointed by the President of India after recommendations by a nominating Committee chaired by the Prime Minister and consisting of Speaker of the Lok Sabha, Minister in-charge of the Ministry of Home Affairs in the Government of India, Leader of Opposition of Lok Sabha, Leader of Opposition in Rajya Sabha, and Deputy Chairmen of Rajya Sabha as Members.⁹ The Constitution nominating committee is such that the persons of stature and integrity will be appointed by the Commission.

Financial autonomy is also very crucial for the Commission. Section 32 of the said Act¹⁰ requires the Central Government to pay the Commission by way of grants such sums of money as the Government 'may think fit for being utilised for the purposes of the Act' after due appropriation made by the Parliament. Thus, the actual amount to be handed over to the Commission depends upon the goodwill of the Government.

5.2.2 Transparency:

In the functioning of the Commission, transparency is another factor crucial for its creditability 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.¹¹ The Commission either proceeds to inquire into the matter itself or it may hand over the case for further investigation for which it maintains its own investigative machinery headed by a person not below

⁹ Sec.4 of the PHRA, 1993.

¹⁰ Id., Sec.32(1) says that the Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grant such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

¹¹ National Human Rights Commission (Procedure) Regulation, 1993.

the rank of a Director General of Police.¹² 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 complainant,¹³ make its decision public¹⁴ and place its Reports before the Parliament.¹⁵ The Act and the Regulations made there under, thus ensure openness as well as fairness of the proceedings.

5.3 Composition of the Commission:

The Commission shall consist of -

- i) a Chairperson who has been a Chief Justice of the Supreme Court;
- ii) one Member who is, or has been, a Judge of the Supreme Court;
- iii) one Member who is, or has been, the Chief Justice of a High Court;

¹² See, Regulation 18: The investigation team consists of one Deputy Inspector General of Police, 2 Superintendents of Police, 6 Deputy Superintendents, 24 Inspector of Police and Others appointed by the Commission as and when required.

¹³ Sec. 18(4)

¹⁴ Sec. 18(6)

¹⁵ Sec. 20

- iv) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.¹⁶

Apart from this, the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes [and the National Commission for Scheduled Tribes]¹⁷ and National Commission for Women, shall be deemed to be Members of the Commission for the discharge of functions enumerated in clauses (b) to (j) of Sec.12 of the Act.¹⁸

5.3.1 Appointing Authority:

Every appointment shall be made by the President on a warrant under hand and seal appoints the Chairperson and other members, after obtaining the recommendations of a committee composed of¹⁹ –

- | | | |
|---|-------|-------------|
| a) The Prime Minister | | Chairperson |
| b) Speaker of the House of the People | | Member |
| c) Minister-in-charge of the Ministry of Home Affairs | | Member |
| 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 |

5.4 Terms and Removal of the Chairperson and Other Members of the Commission:

The terms of the office of the Chairperson and other nominated Members is five years, from the date on which he enters upon his office or

¹⁶ See United Nations Commission on Human Rights, 48th Sers; UN DocE/ CN.4/1992/43 (1992). Sec. 3(2)

¹⁷ Sec. 2(i-a) was added by Act 43 of 2006

¹⁸ Supra Note 9; Sec.3 (3).

¹⁹ Ibid. Sec.4(1)

until he attains the age of seventy years, whichever is earlier. A member of the Commission is eligible for reappointment provided he had not attained the age of seventy years, but the Chairperson is not eligible for a second term.²⁰

The Chairperson or any Member of the Commission can be removed from his office only by Order of the President of India on the ground of proved misbehavior or incapacity after an inquiry by the Supreme Court, on reference being made to it by the President. Further, in any one of the following cases, the President may by order remove the Chairperson or any other Member who –

- i) is adjudged an insolvent; or
- ii) engages during his term of office in any paid employment outside the duties of his office; or
- iii) is unfit to continue in office by reason of infirmity of mind or body; or
- iv) is of unsound mind and stands so declared by a competent court; or
- v) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.²¹

5.5 Functions and Powers of the Commission:

The Commission has been envisaged as an activist body for creating a human rights 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

²⁰ Ibid. Sec 6.

²¹ Ibid. at Sec 5(3).

adjudicating complaints regarding human rights violations, it acts as an overseer of the human rights situation in the country with the help of its *suo motu* initiations. The functions that are to be discharged by the Commission are

a) inquire, *suo motu*, or on a petition presented to it by a victim or any person on his behalf, [or on a direction or order of any court]²² into complaint 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 institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government]²³

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

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

²² Subs. by Act, 43 of 2006

²³ Subs. by Act, 43 of 2006

- 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 organizations and institutions working in the field of human rights;
- j) such other functions as it may consider necessary for the promotion of human rights.²⁴

According to Section 29 all the above provisions except clause (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. The Commission proceeds either *suo motu* or on the receipt of a complaints. The procedure adopted in both the cases is the same. However, the complaints of violations of human rights by Members of the Armed Forces are kept outside the purview of inquiry and investigation.

It is also incumbent upon the Commission to submit an Annual Report and also Special Reports to the Central Government and State Governments concerned. 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.

²⁴ Sec.12 of the Protection of Human Rights Act, 1993.

The Commission is authorized to utilize the services of any officer or investigating agency of the Central or the State Governments for the purpose of conducting any investigation pertaining to the enquiry. It is also to be noted that, the functions are enumerated in Section 12, which encompasses a wide area to enable the Commission not only to enquire into the violations or negligence in prevention of violation of human rights but also to promote the human rights culture and perform any function necessary for the promotion of human rights.²⁵

The main function of the National Human Rights Institutions is to promote and protect human rights in its widest perspective. It is important to note that the Paris Principles²⁶ lay down the minimum standards to be observed in setting up any National Human Rights Institutions, even though no single model is prescribed. Variations in the mechanism consistent with the national ethos are permissible so long as the essence of Paris Principles is observed. The National Institutions must be strong and effective which can contribute substantially to the realization of human rights and fundamental freedoms. It is no longer doubted that effective enjoyment of human rights requires the existence of national infrastructures for their promotion and protection. The Paris Principles affirm that National Institutions are to be vested with competence to promote and protect human

²⁵ Verma J.S, *'The Universe of Human Rights'* Universal Law Publishing Corporation Pvt., Ltd., New Delhi, at p.47

²⁶ Paris Principles are the conclusions reached in 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. These are known as "*Principles relating to the status of National Institutions*" Recently, at the 10th Workshop of Regional Co-operation for promotion and protection of human rights in the Asia-Pacific Region at Lebanon on 4-6, March, 2002, suggestions were made for spreading awareness of Paris Principles; incorporation of Paris Principles into the mandate of Institutions;

rights and given as broad a mandate as possible which must be set forth clearly in a Constitutional and Legislative text.²⁷

The Paris Principles contain guidelines for the composition of National Human Rights Institutions, dealing with the mode of appointment of its members ensuring pluralism guarantees for operational independence, including the nature of its responsibilities and methods of operation. The Vienna Declaration and Programme of Action adopted by the 1993 World Conference of Human Rights confirmed the principles and encourage the establishment and strengthening of National Institutions having regard to the Principles, in addition to Office of United Nations High Commissioner for Human Rights. The Paris Principles relating to the status of National Institutions are an important step in the evolutionary process. Governments continue to avoid strict adherence to Paris Principles apprehending interference by an autonomous body. For this reason, the nature of constitution of the National Human Rights Institution and the manner in which it functions determines its efficacy.

It is relevant to mention here that ever since the constitution of the National Human Rights Commission, in accordance with the Paris Principles, the Supreme Court of India has been facilitated considerably in the performance of its task of the protection of human rights. The NHRC has been constituted for the better protection of human rights. The complementarities developed between the Supreme Court and the NHRC has been enabled the better protection of human rights and promotion of human rights culture in the country.²⁸

²⁷ Lecture on "Role of National Institutions in the Protection of Human Rights: Indian Experience at the Institute of Commonwealth Studies, London on 9-4-2002, Supra note 21 at. P. 183

²⁸ Supra Note 25 at p.83.

The NHRC has been discharging its role as a catalyst to improve the quality of governance, which helps in greater respect for human rights. In short, the 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 obligation under the United Nation Charter and the National Democratic Constitution of protecting human rights.

5.6 Implementation Mechanism:

The important implementation mechanisms that can be made use of by the National Human Rights Commission in the process of dealing with violation of human rights are as follows:

- a) Individual Complaints
- b) Intervening in Court proceedings

5.6.1 Individual Complaints:

The procedure for dealing with the complaints comes under *Regulation 8* of the National Human Rights Commission (Procedure) Regulations, 1994 which stipulates that “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 cannot 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. Besides this, the NHRC or the State Commissions shall not inquire into any matter after the expiry of one year, from the date on which the act constituting the violation of human rights is alleged to have been committed.²⁹ This provision or inhibition of the Commission contained in Section 36(2) of the Act came for consideration before the Supreme Court in *Paramjit Kaur v. State of Punjab*³⁰. One of the main questions for consideration before the Court was whether the inhibition contained in Section 36(2) would apply to the Commission even when the Supreme Court under Article 32 of the Constitution referred a matter of alleged violation of human rights to the Commission?

In the instant case, *S.Saghir Ahmad and S. Rajendra Babu, JJ.* observed that the provisions of the Act, do not bind or limit the powers of the Supreme Court in exercise of its powers under Article 32. It is, therefore, reasonable to hold that the Supreme Court designated the Commission as a body *sui generis* to carry out the functions and determine issues as entrusted to it by the Supreme Court. This Court in exercise of the jurisdiction under Article 32 of the Constitution entrusted the National Human Rights Commission to deal with certain matters in the manner indicated in the course of its order. All authorities in the country are bound by the directions of this Court and have to act in aid of this Court. National Human Rights Commission is no exception. The Commission would function pursuant to the directions issued by this Court and not under Act under which it is constituted. In deciding the matters referred by the Supreme Court, the

²⁹ Sec.36(2)

³⁰ A.I.R. 1999 SC at p.340; In this case, Union of India filed the petition for clarification of the order dated 12-12-1996, passed by the Supreme Court in W.P.No. 447/1995 and 497/1995.(Criminal)

NHRC is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by NHRC in these matters is of a special nature not covered by enactment or law, and thus acts *sui generis*.

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 Act. If the Supreme Court can exercise that power unaffected by the prohibition contained in Sec. 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 within its rights to investigate the matter referred to it by this Court.³¹

5.6.2 Intervening in Court Proceedings:

Comprehensive powers have been given to the Commission for the performance of its functions. The Commission either proceeds to inquire the matter itself or it may hand over the case for further investigation for which it maintains its own investigative machinery.³² While inquiring into the complaint, the Commission has all the powers of a civil court trying a suit under the Code of Civil Procedure and particularly in respect of the following matters:

- i) summon and enforce the attendance of witnesses and examining them on oath ;
- ii) discovery and production of any document;
- iii) receiving evidence on affidavits ;

³¹ Ibid. at para 10

³² NHRC (procedure) Regulation, 1994:Reg.46

- iv) requisitioning any public record or copy thereof from any court or office;
- v) issuing Commission for the examination of witnesses or documents ;
and
- vi) any other matter which may be prescribed ;³³

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 any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code. The Commission may authorise any officer, not below the rank of a Gazetted Officer to enter into 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.

The Commission shall be deemed to be civil court and when any offence as is described in Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall

³³ Sec. 13(1) of PHRA

proceed to hear the complaint against the accused as if the case has been forwarded to him under Sec. 346 of the Cr.P.C., 1973.³⁴

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

5.7 Powers of Investigation:

The Commission has enormous powers of investigation. The Commission either proceeds to inquire into the matter itself or it may hand over 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.³⁵ 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 the 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 within such time as may be specified by it: Provided that --

³⁴ Sec. 13(4) of PHRA

³⁵ Supra Note 32 at Regulation 17

- 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 complainant accordingly;
- ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of complaint, initiate an inquiry.³⁶

A complaint may be dismissed *in limine*. However, once a complaint is admitted for hearing, the Commission may either set down the matter for inquiry or investigation, as it may deem proper. To ensure fairness, the regulations require the Commission to afford, in its discretion, a personal hearing to the petitioner or to 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 Protection of Human Rights Act and the regulations made there-under, thus ensure openness as well as fairness of the proceedings. The Commission is thus one of the most powerful Commissions of inquiry.

³⁶ Sec.17 of PHRA, 1993

5.8 Powers of the Commission subsequent to Inquiry:

Sec. 18 deals with the steps to be taken by the National Human Rights Commission [during and]³⁷ after conducting an inquiry. If an inquiry conducted under the Act either *suo-moto* or on the basis of a petition reveals that the violation of human rights has occurred, the Commission cannot by itself take any step to get the wrong undone, but may take any of the following steps :

- a) 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;
- b) approach the Supreme Court or the High Courts concerned for such directions, orders or writs, as that Courts may deem necessary ;
- c) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members for his family as the Commission may consider necessary ;
- d) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government, or authority, and the concerned government or authority shall, within a period of one month, or such 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.

³⁷ Ins. by Act 43 of 2006 { w.e.f..13-9-2006 }

5.9 Limitations on the jurisdiction of the Commission:

Sec. 19 deals with the special provisions when the members of the Armed Forces violate the human rights. 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. It may then make its recommendations to the Central Government. The Government is required to inform the Commission ordinarily within three months, of the action taken on its recommendations. There may be some justification to follow a different procedure and to bar an inquiry or investigation against the armed forces on the ground 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.

The Act does not specifically confer upon the Commission, a jurisdiction to inquire or investigate human rights violations by organised groups in the society. The focus of the Act is violation of the human rights by the public servants. Certain organised groups such as terrorists, religious fundamentalists, caste and communal groups are now perceived 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 check. They are supposed to adhere to rules of media, citizens and NGO's. Organised groups work under no such constraint. The Act should appropriately focus upon these groups.

5.10 State Human Rights Commissions:

According to the stipulation of the Protection of Human Rights Act, 1993, there should be a State Human Rights Commission in every State. The State Government shall specify the place for headquarters of the State Commission. The Chairperson shall hold office for a term of five years, or until he attains the age of 70 years, whichever is earlier.

[The State 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.]³⁸

The Chairperson and Members shall be appointed by the Governor by Warrant under his hand and seal, provided that every appointment shall be made after obtaining the recommendation of a Committee consisting of:

- a) the Chief Minister as the Chairperson;
- b) Speaker of the Legislative Assembly as Member
- c) Minister in charge of the Department of Home in that State as Member
- d) Leader of the Opposition in the Legislative Assembly as Member

The Chairperson is appointed for a term of five years or till he attains the age of seventy years, whichever is earlier. The other members are

³⁸ Ins. by Act 43 of 2006 {w.e.f..13-9-2006}

appointed for five years and they are eligible for reappointment for another term of five years. But no member shall hold office after attaining the age of seventy years. 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 National Human Rights Commission.

The State Commission shall submit an Annual Report to the State Government, which shall cause the report to be laid before the House of State Legislature along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

It is to be noted that the powers and functions of the State Commissions and the procedure of inquiry and investigation are similar to that of National Human Rights Commission. Though, the Protection of Human Rights Act provides for the subject matters to be dealt with exclusively by the National or State Commissions, in practice these divisions are rarely adhered to. In effect, the complainant is free to seek redress from the National or State Commission irrespective of the subject matter of his complaint. The only restriction is that once either of the Commission takes cognizance of a case, the other commission must hand over the case to that Commission and close it, at its own end.

The ideal remedy would be the establishment of a hierarchical relation whereby, cases reach the National Human Rights Commission after having been dealt with by the State Commission or alternatively, the implementation of the subject division format whereby the Commission have a clear demarcation of issues to be considered by each. For this purpose, the

National Human Rights Commission has been actively advocating for the setting up of State Commissions in all States.

Following the appeals by the NHRC and discussions with it so far, some States have set up State Human Rights Commissions which include, Assam, Andhra Pradesh, Chhatisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal.

Most of the states are yet to constitute State Human Rights Commissions. Therefore, all the complaints of human rights violations are being referred to the NHRC. In India, because of its size, territory-wise as well as population-wise, it is difficult for any single institution to meet the growing demand of the protection of human rights of all persons, especially in the context of increasing violations of human rights. Thus, there is a work load on the part of NHRC regarding the receiving of complaints has increased beyond proportion. Therefore, it is the need of the hour that every State must constitute its own Human Rights Commission so as to provide speedy justice to the people and to protect them from the violation of their human rights.

5.11 Human Rights Courts at District Level:

Prior to enactment of the Protection of Human Rights Act, through which the NHRC has been established, 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 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 common man.

Sec. 30 of the PHRA which provides for the establishment of Human Rights Courts at District level is as follows:

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

- a) a Court of Session is already specified as a special court ; or
- b) a Special Court is already constituted, for such offences under any other law for the time being in force.

In pursuance of the power given in Sec.30, some of the State Governments have notified the establishment of Human Rights Courts at District level in their States. The provisions contained in this section are very weak, for it uses the word 'may' which indicates that it is not mandatory for the State Governments to establish Human Rights Courts at District level. That's why only few States, i.e. Andhra Pradesh, Assam, Tamil Nadu, Sikkim have established Human Rights Courts and recently Uttar Pradesh has also notified the establishment of such courts.

In fact, in some of the States where the Human Rights Courts are being established, the jurisdiction of such courts and procedure to be adopted, while dealing with the petitions of violation of human rights has not been expressly specified. Therefore, the non-availability of any clear cut jurisdiction and procedure regarding these courts while dealing with violation of human rights is making these courts ineffective.

The very fact that, the majority of the States have not yet established the Human Rights Courts in their States even after the lapse of more than ten years from the date of commencement of the Protection of Human Rights Act, which shows the States casual attitude towards the protection of human rights.

Further, if the assumption is that the powers of these courts while dealing with the cases involving violation of human rights will be same as that of Supreme Court or of High Courts, under Articles 32 and 226 of the Constitution of India respectively. It is also not clear whether these Courts can hear the petition brought before them by the complainant or will duly hear those cases which have been directed by the National or State Human Rights Commission to these Courts for prosecution.

Therefore, the repent provision under Section 30 of the PHRA is inadequate, defective and requires modification without which, Human Rights Courts at the District level, even if formed, cannot function properly and effectively. The National Human Rights Commission has recommended in its Annual Reports repeatedly an amendment to Section 30 so as to impose mandatory obligation on every State to establish Human Rights Courts at District level properly defining their jurisdiction and the procedure to be followed in dealing with the human rights cases.

5.12 Working of the Human Rights Commission:

The NHRC at New Delhi and several of the State Human Rights Commissions started on their sensitive task with great enthusiasm. To set right some of the inadequacies of the law, a seven Member Advisory

Committee was set up by the National Human Rights Commission headed by the former Chief Justice of the Supreme Court of India *Justice A.M. Ahmadi* and this Committee made the following significant recommendations for the effective functioning of the NHRC AND SHRC's:³⁹

- a) The NHRC and the SHRC's should be granted financial autonomy to facilitate more effective functioning.
- b) The composition of the NHRC should be changed to consist of two judicial and three non-judicial members, one of whom should be a woman.
- c) The definition of 'Armed Forces' should be changed to bring human rights violations by Para-Military personnel under the purview of the NHRC.
- d) The NHRC and the SHRC's should be further empowered to enquire into any matter after the expiry of one year from the date when the Act constituting violation of human rights is alleged to have been committed, if there is sufficient reason for not filing the complaint within the said period. At present, the NHRC can investigate human rights violations only within one year of their occurrence.
- e) 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.

Regarding the work and effectiveness of the NHRC, it should be undoubtedly acknowledged that the work has been both qualitatively and

³⁹ Khanna, D.P., '*Reforming Human Rights*', Manasa Publications, New Delhi, at p.115

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 inter-related 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 etc, workshops and seminars on HIV/AIDS, nutritional deficiencies, access to health care, tobacco control, etc., have been conducted, yielding useful recommendations for implementation by the Government. The Commission has been engaged in prison and penal reforms and training of personnel to sensitize them to human rights.⁴⁰

It is also to be noted that the Commission has vigorously undertaken the issue of protection of civil liberties and has proposed systematic reforms in the police, prisons and criminal justice system. The Commission has intervened in a case on police reforms pending before the Supreme Court.

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 coordinating the commendable work being done by many NGO's 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

⁴⁰ Supra Note 25 p.176.

coordinating and monitoring efforts of both civic and public bodies and agencies.⁴¹

It is also to be noted that in 2004-2005, the Commission in 45 cases, recommended interim relief under Sec.18(3) of the Act, to the extent of Rs. 23,27,000/-. Since 1993, the Commission has recommended more than Rs. 10 corers by way of interim relief in 632 cases.

The role of the NHRC and the impact of its intervention is 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 an inclusive 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 promotion and protection of human rights.⁴²

5.13 Functions of National Human Rights Commission: An assessment

Today, we are witnessing some kind of an incremental growth in the human rights movement all over the world. Since the NHRC came into being, during the last few years, it 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 capacity of the NHRC to directly monitor the performance of institutions in certain situations, has been utilised by the Supreme Court to aid its function of issuing directions in appropriate cases like mental homes, protective homes, child labour, bonded labour, etc., The complementarities

⁴¹ Ibid. at p.136.

⁴² Ibid. at p.203

between these institutions has considerably improved the mechanism for the protection of human rights in the country, which is primarily a State responsibility.⁴³

The nature and extent of State's responsibility for the protection of human rights was indicated by the NHRC in its orders, made in the case of recent Gujarat communal disturbances. The Commission observed:⁴⁴ "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 a 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 inaction that may cause or facilitate the violation of human rights".

On this basis, the Government was held accountable on the principle of *res ipsa 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 of human rights within its jurisdiction. State of Gujarat illustrates the importance of the NHRC in enforcing accountability; and the efficacy of the complementary between the Supreme Court and the NHRC, which has developed over the years, in the protection and enforcement of human rights.

⁴³ Ibid, p.35

⁴⁴ In the context of the communal violence in Gujarat commencing with the train burning of Godhra on 27th February, 2002 and continuing thereafter.

Believing firmly in the value of Indian secularism and deeply moved by any incident of religious intolerance and resulting violence anywhere, the Commission acted swiftly and steadfastly. In the recent outbreak of violence in State of Gujarat, the Commission taking *suo-moto* cognizance of new reports of the communal flare up 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 the measures being taken, and in contemplation to prevent any further escalation of the situation in the State.

The Commission decided that *Verma J.S.*, former Chairperson of the National Human Rights Commission, along with the senior officials of the Commission pay a visit to the State to develop an, on the spot understanding of the 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 accommodation amongst the different sections of the plural society. Such engagement provides strategic and moral support to those working for ensuring tolerance and respect for human rights.⁴⁵ The promptness with which the administration responded to the NHRC's observations and recommendations for Gujarat is an index of the efficacy and utility of the institution in improving the quality of governance.

A number of precise recommendations have been made by the Commission to bring the justice to those responsible for the violations of the rights that have occurred and to ameliorate the suffering of those, who are the victims. The Gujarat example illustrates the role of independent the National Human Rights Institutions in enforcing accountability. Though the

⁴⁵ *Supra* Note 25 p.189

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 Commissions Agenda of protecting and promoting human rights. The Commission also took up with the police administration the setting 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 Courts judgement which laid down the guidelines and gave directions in regard to release of under-trial prisoners on bail, as the majority of them are from disadvantages sections of society, having rural background.

The Commission has taken the issue of custodial violence seriously. It firmly believes that, all cases of custodial deaths, rapes, etc., including those involving the army and para-military forces should be reported to the Commission as early as on 14th December, 1993, issued instructions all States asking them to direct all District Magistrates and Supertendants 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 directives that the States have continued to comply with these instructions.⁴⁶

⁴⁶ Ibid. at p.187

It is pertinent to note that the Commission did not remain silent in the wake of miseries, torture and deprivation caused by natural calamity in recent years in which thousands of lives were lost, many others became handicapped lost their property and became shelter less. In order to ensure that the rights of affected population, particularly the most vulnerable groups were protect in the aftermath of the widespread destruction caused by the Orissa Super Cyclone in October, 1999, the Commission took *suo-moto* cognizance of the situation and based on the spot study, by its own officials made number of recommendations to the State Government to ensure that the human rights of marginalized groups, widow and orphans, the destitute, dalits and tribals were not ignored, but kept in the centre of the focus of all involved. Again the Commission took *suo-moto* cognizance of calamity arising from the devastating earthquake in January, 2001 which hit large areas of State of Gujarat.

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 jurisdiction of the Supreme Court under Article 32 ‘cannot be curtailed by any Statutory limitation’ including those contained in the various provisions of National Human Rights Commission Act. The court has emphasised that all authorities in the country are bound by the directions of the Supreme Court and have to act in aid of the court (Article 144).

In addition to above, the Commission has also been involved in guiding policy formulation on issues of national importance. It has recommended a major policy approach on issue of HIV/AIDS. The policy approach has been evolved after a very wide national consultation spread over a time of more than two years and involving expertise drawn from

medical and health profession, health workers, NGO's and human rights activists engaged on health issues, academics and others concerned.

Expanding non-governmental organisation movement on issues of human rights has also come to the support and aid of the Commissions endeavours. NGO's are the ears and eyes of the Commission and no field of Commission's activity remains insulated from NGO's, Ties with NGO's have continued to expand all over the country, in fields as varied as matters relating human rights complaints, to human rights education, research, counselling and practical programmes for groups whose human rights were in jeopardy or needing promotion and protection. It has also worked towards networking of the NGO's to make their role efficacious. The support of the civil society has been the most important source of strength of the judiciary and the NHRC, and this due to the faith of the Indian citizenry in these institutions.

The Commission believing in 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 the curriculum agenda and the life of educational institutions.

5.14 The Role of Non-Government Organisations in the Protection of Human Rights:

No study of human rights in independent India can complete without specific mention of the role of the Non-Government Organization's (herein after referrers as NGO's) in exposing instances of human rights violation for

suitable action by the Government.⁴⁷ Since the end of the Second World War and most especially since the end of the 1970's, there has been an explosive emergence of local, national and international voluntary organizations working for the promotion and protection of human rights on every continent and in almost every country in the world. These NGO's vary enormously in their membership, leadership and purposes, in the scope of their activities and programmes and in the influence or impact they have in domestic, regional or international arenas.

Now a days, there is a wide range of NGO's working in India in various fields relating to human rights, specifically in the field of child welfare, environment, bonded labour, women rights, health, disabled rights, education, labour welfare, welfare of indigenous people and the rehabilitation of manual scavengers. Besides the groups which are specifically involved to respond to the lawlessness of the State, there are hundreds of groups struggling for distributive justice. There are also advocacy and support groups.

The exceptional role of Non-Governmental Organisations in furthering human rights is given appropriate and special recognition in the Protection of Human Rights Act, 1993. Sec.12 (i) of the said Act, expressly charges the Commission to 'encourage the efforts of non-governmental organisations and institution as working in the field of human rights'. This is a responsibility which the Commission readily assumes, for the cause has much to gain both from the practical help and from the constructive criticisms that NGO's and the Commission can bring to bear in their mutual interaction and growing relationship.

⁴⁷ Supra Note 39 at p124

There are many ways in which the relationship of the National Human Rights Commission with NGO's can be further strengthened. As the Commission increasingly begins to concentrate on specific human rights problems i.e. child labour or bonded labour, it is normal that it should turn to NGO's having specialised knowledge in such fields. The Commission has already had the benefit of interacting with a large number of NGO's, both Indian and foreign, certain of them have brought complaints that are under consideration by the Commission. Yet others have helped the Commission by their reports and publication and by their vigilance in the defence of human rights.

In the development of the working relationship, the Commission is particularly grateful to NGO's for coming forward with complaints regarding the violations of human rights. Analysis of the complaints received by the Commission indicates that over 200 NGO's were involved in the submission of such complaints which were received from all parts of the country. The Commission would like to further rationalise and expand its arrangements of co-operation with NGO's. It firmly believes that the promotion and protection of human rights require the courage and commitment that NGO's bring to their endeavours and it is for this reason that the Commission has consistently taken the position that the country has much to gain by encouraging their efforts, whether the NGO's be national or foreign.⁴⁸

Frequently, the NGO's provided the impetus for the Commission's efforts in regard to the special problems of dalits, tribals, child labour, child prostitution, the conditions of refugees and other vulnerable groups. The issue of jail reforms, too, attracted major NGO participation, as did their

⁴⁸ NHRC Report 1995-96, Para 7.2 and 7.3

concern with issues of human rights areas of insurgency or terrorism. The work of Non-Governmental Organisations is central to the spread of human rights awareness and the articulation and the defence of human rights. Indeed, the efforts of NGO's and the Commission are complementary, in a relationship that is at once both constructive and critical.⁴⁹

No field of activity of the Commission now remains insulated from NGO's, whose advice has also been sought on ways to make the Commission more effective. The Commission receives number of public interest complaints from NGO's and they have often been associated with aspects of investigations undertaken by the Commission. Further, in respect of projects and programmes, the list grows of NGO's working closely with the Commission, particularly in respect of serious societal issues relating, *inter alia*, to matters such as child labour, bonded labour, child prostitution, literacy and human rights education, health care, malnutrition, the rights of women, and of vulnerable and marginalised groups, the problems of Dalits and Tribals.

The major problem with the Indian NGO's is that there is a lack of co-ordination of their activities in terms of their fields, territorial areas and target groups. Hence, to co-ordinate and channalise the efforts of NGO's working in the field of human rights and to make known their contribution to the outside world, the National Human Rights Commission has compiled a National Register of NGO's working in human rights area.

To encourage the efforts of NGO's, working in the field of human rights is a statutory responsibility of the Commission. The promotion of

⁴⁹ NHRC Report 1997-98, Para 12.1

protection of human rights cannot possibly gather the momentum it requires without the fullest co-operation between the Commission and NGO's. NGO's are closely involved with the Commission through the complaints they submit to it and through seminars and work shops in human rights related matters.

5.14.1 The Function of NGO's in the Human Rights Arena:

NGO's in the human rights arena perform a wide variety of functions. These will vary with the differing political, social, economic and cultural situation in which NGO's find themselves. The strategies and tactics the NGO's will employ, will be different from the issues of NGO's in situation of intense political repression, or of NGO's in the third world countries facing such multiple crisis as famine, ecological degradation, foreign debt, ethnic violence, lawlessness and corruption.

5.14.1.1 Information Gathering, Evaluation and Dissemination:

One of the most important functions performed by NGO's engaged in human rights work is that of monitoring the behavior of the State and of other power elites of gathering, evaluating and dissemination of information. In the process of exposing human rights violation, the importance of information emerges in part from the paradox that is central to the human rights struggle.

In the recent years, the information or fact-finding function of NGO's has under serious scrutiny, especially from the Governments charge with committing violations and from their supporters. As a consequence, many in the human rights community have been sensitized to the need for their data, to pass tests of validity and reliability. NGO's have monitored the behavior of armed opposition or terrorists.

Finally, with respect to information, it is important to recognize that often in a better position than Government agencies both to collect and to assess information with respect to the observance of economic, social and cultural are critical preconditions for effective action in the area of human rights to have a policy impact that information needs to be disseminated.⁵⁰

5.14.1.2 Advocacy to stop Abuses and Secure Redress:

Advocacy means actively taking up the case of those, whose rights are violated. For a human rights organization, advocacy may speaking out for the voiceless and it entails expanding and making more visible what may be only a blatant conflict.

5.14.1.3 Legal Aid, Scientific Expertise and Humanitarian Assistance:

Organization concerned with human rights has also been engaged in a broad range of activities which can be grouped under the heading of humanitarian assistance. This may involve sending food, clothes or reading material to political prisoners, extending material to aid to the families of such prisoners providing emergency relief to refugees and internally displaced persons, providing shelter for the homeless for street children.

More generally, physicians and other health workers have provided treatment to torture victims. They have investigated the medical consequences of the use of tear gas and plastic bullets and they have conducted research into the health impact of disasters such as Bhopal and Chernobyl.⁵¹

⁵⁰ Ibid. at p.154.

⁵¹ Ibid. at p.156.

5.14.1.4 Keeping open the Political System:

On the whole, human rights NGO's are not mass based organization. Human Rights NGO's are very much involved in political struggle in as much as the struggle for human rights, struggle about power and its control. The human rights organization is different because its purpose is largely to keep the political process open and to keep the Government accountable so that the power is not inordinately centralized or abused.⁵²

5.14.1.5 Building Solidarity:

NGO's and People's organization on the front line in human rights struggle are often both highly vulnerable and highly isolated. Building solidarity across the different sectors of society between workers and peasants, women organization, organizations of indigenous peoples and across ethnic and religious groups is a task taken on, by much organization working in the human rights arena. In heterogeneous societies, many NGO's recognize that change will come only by a radical restructuring of the social order. Hence, efforts are directed towards information sharing and networking as a first step by such creating solidarity.⁵³

5.14.1.6 Education, Concretization or Empowerment:

NGO's have come to realize that people cannot defend their rights unless they know their rights. It is increasingly felt that human rights can play a significant role in the empowerment of the impoverished. The educational efforts that engage NGO's in the human rights area, tend to be at the non-formal level, rather than the formal school setting and involve consultations, workshops and seminars and training courses for women, trade unionist, peasants, and the indigenous or church people. New

⁵² Ibid. at p.161.

⁵³ Ibid.at p.159.

methodologies have been developed, especially for reaching the illiterate, including street theatre, comic books, film poster competitions, folk music.

In case of repression cases, it is possible to consider long-range objectives, education, conscientization and empowerment move to a priority position in the human rights agenda as the best hope for the future.⁵⁴

5.14.1.7 Legislation to Incorporate or Develop Human Rights Standards:

At the International and regional level, the burden of legislative drafting has fallen to international human rights NGO's which have been playing an increasingly important in this area. The NGO's are often engaged in drafting legislative proposals, preparing position papers on pending legislation and testifying before Parliamentary or other Government Committees. Today, NGO's working groups closely follow the drafting of new international human rights, legislation- treaties, declaration, and guidelines and make major inputs into the process. They play an equally important role in identifying defining new issues and areas requiring the legislation.

5.14.1.8 Lobbying National and International Authorities:

Within the International Organizational context, NGO's will lobby expert members of key human rights bodies, or governments, or officials of the organization in order to get the votes necessary to pass a resolution, have an item inscribed into the agenda, establish a rapporteur, or commit the organization to a pro-human rights course of action. Yet, the human rights struggle is clearly a political struggle and there is nothing inherently wrong

⁵⁴ Ibid;

with the human rights NGO supporting or opposing specific policies on human rights grounds.

Predisposed to utilize democratic tactics and strategies, many national NGO's concerned with human rights have become as professional as other private interest groups in lobbying within their own country. Some have also learned how to take their case to international arenas and forums when domestic remedies are exhausted e.g., to the UN Human Rights Committee, the UN Commission on Human Rights, its Sub-Commission, or the Sub-Commission's Working Groups on Indigenous Populations or on Slavery. Individuals and Organizations have learned how to petition within regional arenas before the European Commission or Court of Human Rights, the Inter-American Human Rights Commission or Court or the African Commission on Human and People's Rights.⁵⁵

5.15 Amnesty International:

The London-based Amnesty International has been playing an important role in monitoring the implementation of human rights in different countries of the world. In its first annual report published countries of the year 1972-73, the Amnesty International drew the attention of the Indian Government towards the detention of 17,000 people under prevention in West Bengal and sought their release.

It is to be noted that the large-scale arrests during the National Emergency imposed on 20th June 1975, of members of all opposition parties in India, was the most significant event of the post-independence period of

⁵⁵ Ibid. at p155.

Indian history. On 27th June, 1975, the AI made public appeal to the Indian Prime Minister to free all political prisoners arrested under MISA.⁵⁶

After 1980, the AI showed its deep concern about the deaths of people in police or jail custody, by writing to the Chief Ministers of the States of Karnataka, Madhya Pradesh., Uttar Pradesh and West Bengal where such incidents of human rights were mostly noticed. The imposition of the National Security Ordinance on 23rd September, 1980 was objected by AI on grounds that it was opposed to the fundamental and legal safeguards as laid down in the Universal Declaration and the Covenant on Civil and Political Rights.

While the 1981 report of Amnesty International drew attention towards the killing of sympathizers of the Naxalites in encounters in Tamil Nadu and the main stories in the next few reports were related to the detentions and killings of Punjab Sikhs and Akali Dal leaders. In some subsequent reports, the AI attacked the amended National Security Act, which allowed detention without trial, the Terrorist And Disruptive (Prevention) Act, 1985 and unlawful killings and fake encounters by the police and security forces, referred to by AI as “extra judicial executions”.⁵⁷

5.16 Human Rights Watch:

Human Rights Watch began in 1978 with the founding of its Helsinki division. Today it has many divisions covering a major part of the globe, in the continent of Africa, the America, Asia, the Middle East as well as the signatories of the Helsinki accord. It is an independent, non-governmental organization supported by contributions from private individuals and

⁵⁶ Bajwa,G.S, '*Human Rights in India: Implementation and Violations*', Anmol Publications, New Delhi, 1995, p.389

⁵⁷ Amnesty International, International Secretariat, 1 Easton Street, London, U.K.

foundations worldwide. It has its offices in New York, Washington, Los Angeles, London, Brussels, Moscow, Dushanbe, Rio de Janeiro and Hong Kong.

Human Rights Watch conducts regular systematic investigations of human rights abuses in some seventy countries of the world including India. Its latest report on women's human rights violations for the period 1990-1995 contains the work of research done by staff members and consultations around the world. This report contains an account of cases of rape committed in Jammu and Kashmir by the Armed Forces as well as Armed Militants. As per this report, 'rape has been used as a weapon to punish, intimidate, coerce, humiliate and degrade.'⁵⁸

The increase in reports of rapes by militant groups in Kashmir has coincided with the rise in violent crimes against civilians by these groups. The extremist militant groups seeking to enforce the 'Islamic Code Behavior' have launched other violent attacks on women.⁵⁹

Despite the enormous diversity among NGO's working for the promotion and protection of human rights in the Commonwealth and the despite the radically different situations they confront-modern industrial society verses third world poverty, stable democracy verses military rule, peace verses civil strife- it is nonetheless possible to generalize to some extent about the problems they face. These problems can be clustered under as survival relevance, legitimacy and efficiency.⁶⁰

⁵⁸ The Human Rights Watch, Global Report on Women's Human Rights Oxford University Press. 1998, p.57

⁵⁹ Ibid p.71.

⁶⁰ Put Our World to Rights Towards a commonwealth Human Rights Policy: A Report by a Non-Government Advisory Group chaired by Hon'ble Flora Mac Donald, (Aug, 1991), p.161.

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5.17 ANNEXURE - 1**Year-wise position of Complaints before the NHRC from 1999-2000 to 2004-2005**

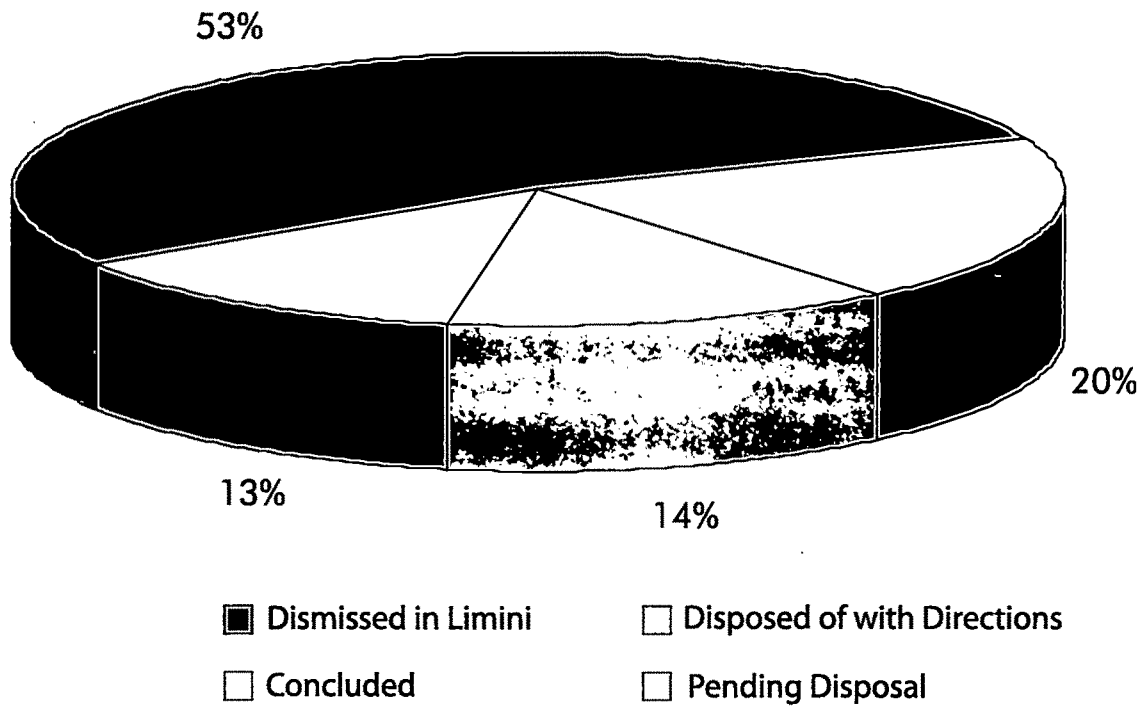
[Number of Cases Registered, dismissed *in limini*, disposed off with directions, taken cognizance of pending disposal at the end of every year by 31st March.]

S.No.	Year From 1 st April to 31 st March	Cases Regd.	Dismissed In limini	Disposed off with Directions	Taken cognizance of cases pending
1.	1999 – 2000	28,598	20,934	5,941	19,538
2.	2000 – 2001	46,444	23,886	19,248	15,904
3.	2001 – 2002	69,083	30,350	16,439	21,998
4.	2002 – 2003	68,779	26,128	17,262	33,247
5.	2003 – 2004	72,990	28,064	57,694	45,512
6.	2004 – 2005	74,401	38,448	21,465	49,548

Source : NHRC's Annual Reports from 1990 – 2000 to 2004 – 2005.

5.18 ANNEXURE - 2

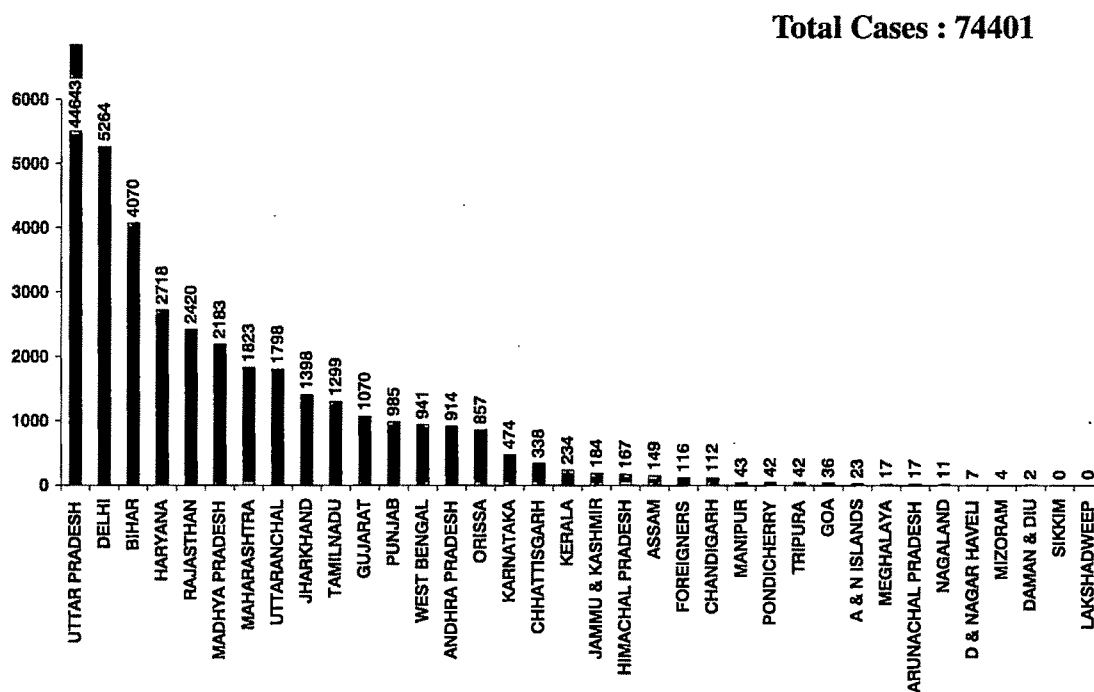
Cases Disposed off / Pending Disposal by the NHRC during the period of 2004 - 2005



Source : NHRC's Annual Report 2004 – 2005.

5.19 ANNEXURE - 3

State wise list of cases Registered by the NHRC

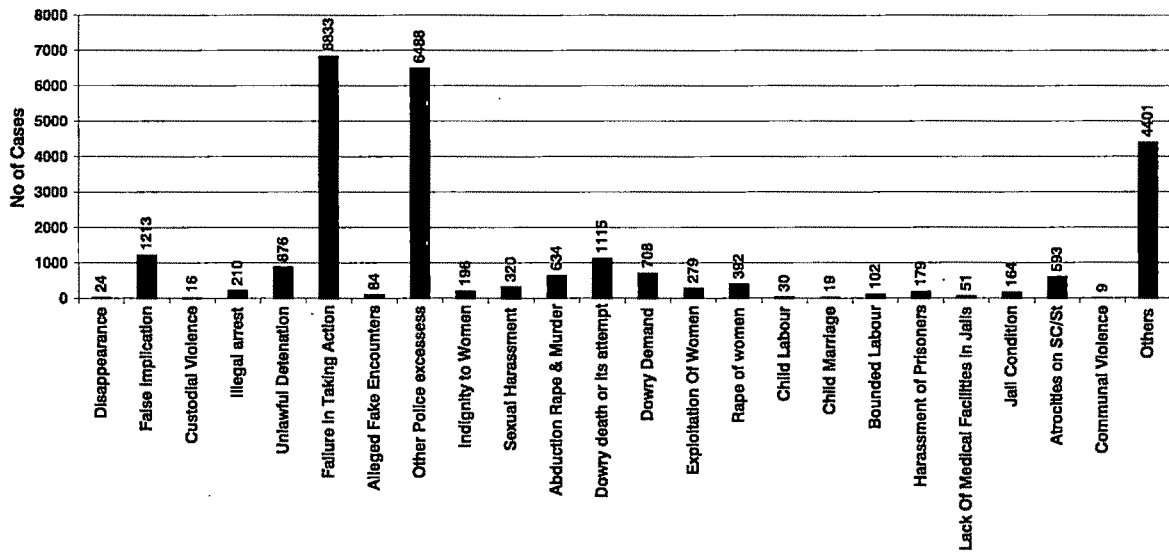


Source : NHRC's Annual Report 2004 – 2005.

5.20 ANNEXURE - 4

Nature and categorisation of the cases disposed off by the NHRC during the period of 2004 - 2005

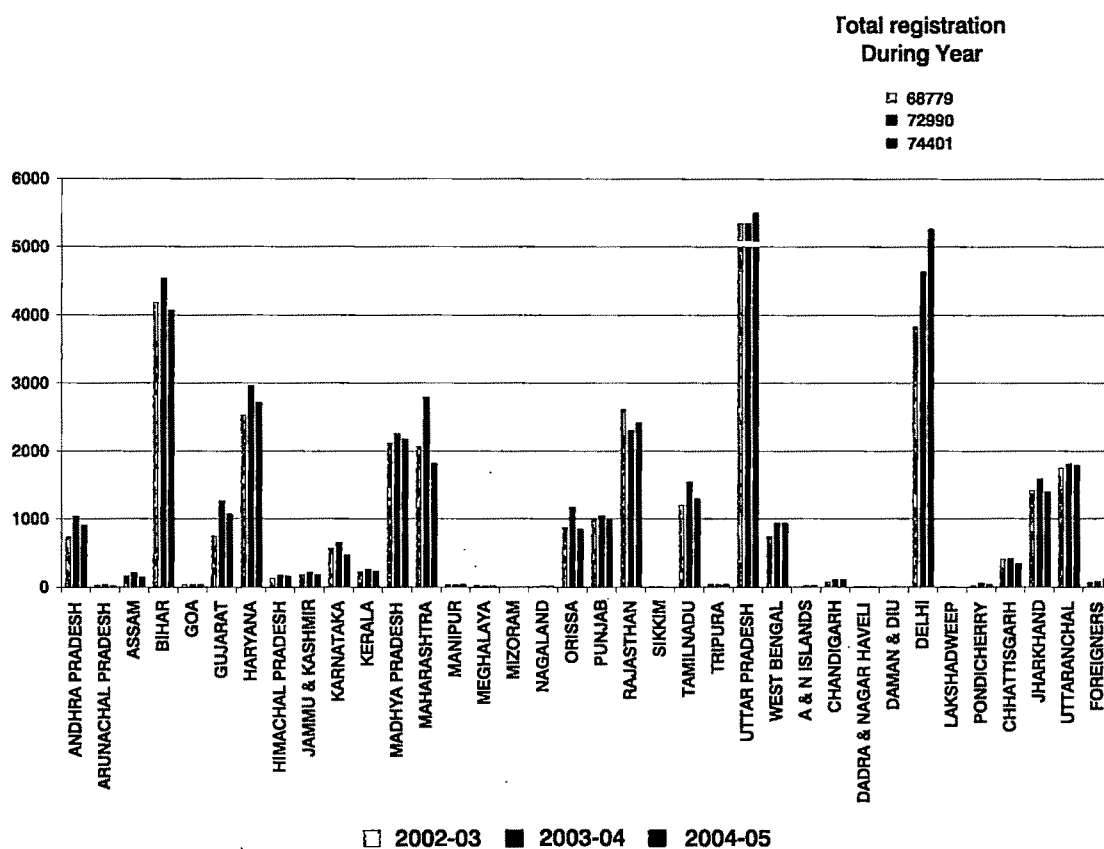
Total Cases : 24936



Source : NHRC's Annual Report 2004 – 2005.

5.21 ANNEXURE - 5

List of Cases Registered in various States by the NHRC during the period of 2002 - 2005



Source : NHRC's Annual Report 2004 - 2005.