



- A Commission is an authority or body established to act in a prescribed manner & perform specified acts.
- It also implies an act of commissioning or granting power to perform various acts.
- Some such "commissions" are Pay Commission, Labour Commission, Finance Commission, Human Rights Commission, Education Commission etc.
- While Constitution of India gives powers to courts to check violation of Fundamental Rights, there has been felt a need for specific bodies to protect & promote Human Rights both of individuals and vulnerable groups.
- In response to demands from Human Rights movement & the commitments of union & State governments have set up several special institutions under different acts to give effect to the constitutional provisions of human rights of all persons.
- The central govt constituted the National Human Rights Commission to exercise powers & perform assigned functions, regarding enforcement of human rights in India.
- It has been constituted under the Protection of Human Rights Act, 1993.

CONSTITUTION OF NHRC

- The NHRC consists of the following:
 - A Chairperson who has been a Chief Justice of the Supreme Court.
- Members
 - one member who is or has been, a Judge of the Supreme Court;
 - one member who is, or has been, the Chief Justice of a High Court; .
 - two members to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights
- Ex-officio Members
 - The Chairperson of the National Commission for Minorities;
 - Chairperson of the National Commission for Scheduled Tribes; &
 - Chairperson of National Commission for the Scheduled Castes;
 - Chairperson of the National Commission for Women
- The term of office of chairperson is five years or till he attains the age of 70 years, whichever is earlier.
- The term of a member is also five years but every member is eligible for reappointment upto the age of 70 years

- Both the chairperson & the members are ineligible for further employment under govt.
- In the absence of the chairperson and because of his inability to discharge his functions for any other reason, the president may authorize one of the members of the commission to act as chairperson.
- Secretary General – The NHRC has a Secretary-General to act as its chief executive officer & to exercise such powers and discharge functions as may be delegated to him.
- The headquarters of the NHRC are at Delhi but it may, with the previous approval of the central government, establish offices also at other places in India.

APPOINTMENTS

- The Chairperson & other Members are appointed by the President by warrant under his hand & seal after obtaining the recommendations of a committee consisting of :
 - The Prime Minister- Chairperson
 - Speaker of the House of the People - Member
 - Minister in-charge of the Ministry of Home Affairs in the Govt of India Member.
 - Leader of the Opposition in the House of the People (Lok Sabha) - Member
 - Leader of the Opposition in the Council of States (Rajya Sabha) - Member
 - Deputy Chairman of the Council of States - Member
- The appointment of any sitting Judge of the Supreme Court or sitting Chief Justice of a High Court, as a member of NHRC can be made only after consultation with the Chief Justice of India.

FUNCTIONS OF THE COMMISSION

- Inquire into violation/abetment of such violations of human rights or negligence in the prevention of such violation by a public servant; either suo motu or on a petition by a victim or any person on his behalf, or on a direction or order of any court;
- Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- Visit, under intimation to state govt, any jail or any other institution of state, where persons are detained or lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates & make recommendations in that regard;
- Review the constitutional & legal safeguards related to protection of human rights & recommend measures for their effective implementation;

- Review the factors, including acts of terrorism that inhibit the enjoyment of human rights & recommend appropriate remedial measures;
- Study treaties & other international instruments human rights and make recommendations for their effective implementation;
- Undertake & promote research in the field of human rights;
- Spread human rights literacy among various sections of society & promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; and
- Encourage the efforts of non-governmental organizations & institutions working in the field of human rights.
- The NHRC can perform any such other functions as it may consider necessary for the protection of human rights.
- Such Magistrate has to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973 as a case based on police report.
- Section 175 IPC deals with the offence of omission to produce documents to public servant; section 178 deals with refusing of oath or affirmations; section 179 deals with refusal to answer a question; section 180 deals with refusal to sign a statement; and section 228 deals with intentional insult or interruption to public servant sitting in judicial proceedings.
- Every proceeding before the NHRC is deemed to be a judicial proceeding.
- If the NHRC considers necessary or expedient, it may transfer for disposal any complaint filed or pending before it to the State Commission of the State concerned which has jurisdiction to entertain the same.

POWERS OF THE COMMISSION

- Powers relating to inquiries
 - For effective conduct of inquiries into complaints on human rights violations, the NHRC has all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, particularly in respect of
 - 1) Summoning & enforcing the attendance of witnesses & to examine them on oath;
 - 2) Discovery & production of any document;
 - 3) Receiving evidence on affidavits;
 - 4) Requisitioning any public record or copy thereof from any court or office
 - 5) Issuing commissions for the examination of witnesses or documents;
 - 6) Any other matter which may be prescribed.
- The NHRC has power to require any person, to furnish information on such points or matters as it may deem useful for, or relevant to the subject matter of the inquiry.
- Any such person is legally bound to furnish such information as is required under sections 176 & 177 of the Indian Penal Code which make non-furnishing or wrong-furnishing of information a punishable offence, She can, however, refuse such information on the ground of a privilege available to her under any law.
- The NHRC or any other authorized officer is empowered to enter any building or place & cease any document or take extract or copies of any documents relating to the subject matter of the inquiry if believed to be found there. Section 100 of the Code of Criminal Procedure, 1973, is applicable.
- The NHRC is deemed to be a civil court.
- When any offence as described in sections 175, 178, 179, 180 or 228 of the Indian Penal Code is committed, the case is forwarded to a Magistrate having jurisdiction to try the same.
- The State Commission has to deal with the complaint as if a complaint initially filed before it.
 - Powers relating to Investigation
 - To conduct any investigation pertaining to any inquiry, the NHRC can utilize the services of any officer or investigating agency of the central or state government with the concurrence of such government,
 - The officer or investigating agency can : a) summon & enforce the attendance of any person & examine him; b) require the discovery & production of any document; and c) requisition any public record or copy thereof from any office.
 - Statements made by any person before the investigating officer/ agency cannot be used against him in any civil or criminal proceedings except in prosecuting for giving false evidence.
 - The officer or agency whose services are utilized to investigate into any matter has to submit a report to the Commission within a period specified by it for that purpose.
 - Then the Commission has to satisfy itself about the correctness of the facts stated & the conclusion, if any, arrived at in the report submitted to it. For this purpose the Commission may make any further inquiry as it thinks fit
 - Any statement made by a person in the course of giving evidence before the Commission cannot be used against him or subject him in any civil or criminal proceeding except a prosecution for giving false evidence by such statement: Provided that the statement - a) is made in reply to the question which he is required by the Commission to answer; or b) is relevant to the subject matter of the inquiry.
 - If, at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person; or is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry; it has to give to that person a

reasonable opportunity of being heard in the inquiry and to produce evidence in his defence.

- This provision would not apply where the credit of a witness is being impeached.

INQUIRY INTO COMPLAINTS

- While inquiring into the complaints of violations of human rights, the commission may call for information or report from the central or any state governments or any other authority or organization within specified time.
- 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.
- 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.
- However, if it considers necessary, having regard to the nature of the complaint, to initiate an inquiry the same should be done.
- Where the inquiry shows that the violation of human rights or negligence in the prevention of violation of human rights or abetment thereof has taken place by a public servant, the NHRC may recommend to the concerned government or authority.
 - To make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
 - To initiate proceedings for prosecution or such other suitable action; or
 - To take such further action as it may think fit.
- The NHRC may approach the Court for necessary directions, orders or writs.
- It may recommend to the concerned government or authority at any stage of the inquiry for the grant of necessary immediate interim relief to the victim or the members of his family.
- The NHRC is required to send a copy of the inquiry report with recommendations to the concerned government or authority for comments to be submitted within a period of one month, or such further time as allowed, including the action taken or proposed to be taken.
- A copy of the inquiry report should be provided to the petitioner or his representative.
- The Commission is bound to publish its inquiry report together with the comments of the concerned government or authority and the action taken report
- The NHRC has power to make regulations regarding the procedure to be followed by it. It has also power to have its own regulation regarding the

returns and statistics to be furnished by the State Commission & any other matter.

- Every such regulation made by the NHRC has to be laid before each House of Parliament, while it is in session, for a total period of thirty days in one session or in two or more successive sessions.
- Any modification or annulment made by both Houses of Parliament determines the final version of the regulations

PROCEDURE WITH RESPECT TO ARM FORCES

- While dealing with complaints of violation of human rights by members of the armed forces, the NHRC may, either on its own motion or on receipt of a petition, seek a report from the central government.
- After the receipt of the report, it may, either not proceed with the complaint or consider it and make its recommendations to that government.
- The central govt has to inform the NHRC about the action taken on the recommendations within three months or such time as the NHRC may have allowed, which then have to be published.
- A copy of the report so published has to be provided to the petitioner or her representative.

MATTERS NOT IN THE JURISDICTION OF NHRC

- The NHRC is not supposed to inquire into any matter which is pending before a State Commission or any other Commission.
- Also the NHRC or the State Commission is not supposed to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

ANNUAL OR SPECIAL REPORT

- The NHRC is bound to submit an annual report to the central government & to the state government concerned. It may, however, submit special reports on any matter which, because of their urgency or importance cannot be deferred till the submission of the annual report.
- The annual & special reports of the NHRC are to be laid before each House of Parliament or the State Legislature, as the case may be.
- A memorandum of action taken or proposed to be taken on the given recommendations and the reasons for non-acceptance of the recommendations, if not accepted, should be included in the report

STATE HUMAN RIGHTS COMMISSION

- Like National Human Rights Commissions, under the Protection of Human Rights Act, State governments are also required to establish State Human Rights Commissions to monitor the violation of Human Rights within the States boundaries.

CONSTITUTION OF STATE COMMISSION

- Each State Commission 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 having knowledge of, or practical experience in, matters relating to human rights.
- d) A Secretary as the Chief Executive Officer of the Commission.

APPOINTMENTS

- The Chairperson & Members to State Commissions are appointed by the governor of the state concerned after obtaining the recommendation of a Committee consisting of
 - The Chief Minister - Chairperson
 - Speaker of the Legislative Assembly - Member
 - Minister in-charge of the Department of Home, in that State - Member
 - Leader of the Opposition in the Legislative Assembly - Member
- Where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council are also to be members of the Committee.
- Any sitting Judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court concerned.
- A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.
- Two or more State Governments may, appoint the same person as the chairperson of their respective State Commissions with his consent.
- A member can also be so appointed simultaneously for another commission with his consent

ANNUAL & SPECIAL REPORTS

- Each State Commission has to submit an annual report to the state govt and special reports on any matter which because of urgency or importance cannot be deferred till the submission of the annual report.
- Any such reports have to be laid before each Houses of State Legislature with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance if no action was taken

HUMAN RIGHTS COURT

- For the purpose of providing speedy trial of offences arising out of violation of human rights, a state govt 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.
- However if a Court of Session is already specified as a special court or a special court is already constituted, for such offences under any other law

for the time being in force, then no such further specification is required.

- The state govt may for each human rights court specify a public prosecutor or appoint an advocate with not less than seven years experience as a Special Public Prosecutor to conduct cases in the Court.

CONSTITUTION OF SPECIAL INVESTIGATION TEAM

- The Government may constitute one or more special investigation teams, consisting of such police officers as it may think necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

ROLE OF HUMAN RIGHTS COMMISSION

- The NHRC has made great progress in effectively enforcing human rights. It has had many accomplishments & made many significant recommendations for changes in the laws as well as the Protection of Human Rights Act, 1993
- Within month of its inception on 1 November, 1993, the NHRC, on its own, took cognizance of newspaper reports of the killing of as many as 43 civilians in and around Bijbehara (Near Srinagar) in Jammu and Kashmir (J & K) in firing by the paramilitary force, the Border Security Force (BSF).
- It was due to the constant campaigning by the NHRC against the Terrorist and Disruptive Activities (Prevention) Act (TADA) that the government decided not to revive it when its term expired in May 1995.
- It may be recalled that TADA, which was in force for ten years, was meant to deal with the insurgency situation in Punjab and J & K and was to be a temporary measure.
- Custodial violence and death is another area which had caught the attention of the NHRC. The huge increase in the number of cases/complaints considered by it, showed the awareness among the people
- Although the Commission has a statutory bar not to inquire into cases of incidents of violations of human rights that occurred more than a year ago, its inquiry of mass cremations of more than 2,000 bodies of persons killed by the Punjab police during 1991-93 in fake encounters is worth recording.
- The apex court subsequently ruled that the Commission had jurisdiction not only to deal with the matter, but also added that "any compensation awarded by the Commission (to the dependants of the victims) shall be binding and payable"
- Commission taking up the case of violence in Gujrat in 2002 sue motto and that of Nandigram in 2007 make it clear that the Commission in general is performing its functions in an effective manner