



HUMAN RIGHTS: PROTECTION AND MONITORING MECHANISMS

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ABSTRACT

Since the inception of the United Nations, the promotion and protection of human rights have been at its very core. Over the years the United Nations has created a wide range of mechanisms for human rights protection, and the Indian government has set up several special Institutions at the National level and at the State level under the different acts of parliament to give effect to the constitutional provisions of human rights of all persons.ⁱ

KEYWORDS: *promotion and protection of human rights , Indian government , fundamental.*

INTERNATIONAL MECHANISM

United Nations Human Rights Bodies

Human Rights are recognized as fundamental by the United Nations and, as such, feature prominently in the preamble of the charter of the United Nations: "To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The organizations prominent role in this area is carried out by a number of human rights bodies.ⁱⁱ The General Assembly is the main deliberative body of the United Nations. Respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world", the General Assembly declared three years later in the Universal declaration of Human rights. Over the years a whole network of human rights instruments and mechanisms has been developed to ensure the primacy of human rights and to confront human rights violations wherever they occur. The General assembly review and takes action on human rights matters referred to it by its third committee and by the economic and social council.ⁱⁱⁱ The General Assembly promotes and encourages the observation of human rights for all. The Security Council is the principal organ of the United Nations. The main function of the Security Council is to maintain International peace. In discharging its duties, the security council is required to act in accordance with the purposes and principles of the United nations, one of these purposes is "to achieve International co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". The Economic and Social Council (ECOSOC), works under the authority of the General Assembly and co-ordinates the Economic and social work of the United Nation. ECOSOC makes recommendations to the General Assembly on human rights matters and review reports and resolutions of the commission on human rights and transmits them with amendments to the General Assembly. It also works closely with agencies of the United Nations system which have a special interest in human rights matters.^{iv}



The United Nations (UN) system for the protection and promotion of human rights consists of two main types of body: bodies

created under the UN charter, including the UN commission on Human Rights and sub-commission, (Charter bodies) and bodies created under the international human rights treaties (Treaty bodies). Most of these bodies receive secretariat support from the treaties and commission branch of the Office of the High Commissioner for Human Rights (OHCHR).^v

U. N. High Commissioner for Human Rights

In a landmark decision on 20th Dec. 1993 the General Assembly created the position of U.N. High commissioner for Human Right by passing a resolution.^{vi} It can be reckoned as a turning point in U.N. action in the Human rights.

The responsibilities of the High commissioner includes (i) strengthening and streamlining existing Human rights Mechanisms; (ii) Engaging in dialogue with all governments to secure respect for all human rights; (iii) coordinating human rights; promotion and protection activities throughout the UN system, including UN education and public information programmes; (iv) to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights; (v) To provide advisory services, technical and financial assistance in respect of the human right to states at their request and to take steps for the enhancement of international co-operation for the promotion and protection of human rights.^{vii}

Over the years the United Nations has created a wide range of mechanisms for Human rights protection. UN special rapporteurs representatives, experts and working groups have been established in order to monitor compliance of state parties with the varies human rights instruments and to investigate allegations of human rights abuses. In recent years a number of field offices have been opened at the request of Governments inter alia, to assist in the development of national institutions for the promotion and protection of Human Rights and to conduct education campaigns on Human Rights.^{viii}

NATIONAL MECHANISM

National Human Rights Commission

In pursuance of a resolution of the General Assembly adopted in 1966, the Economic and social council asked the Human rights commission of U.N. to consider the question of creation of National commission of Human Rights to perform certain functions relating to the observance of the International covenant on Human Rights. This question was also considered by the commission in 1970 and the commission recommended that the question of establishment of National Commission of Human rights in each member state of the U.N. Ought to be decided by each government of the member state keeping in view the traditions and institutions of each country. Since then the Human rights commission has several times stressed the need of the creation of National commission of Human rights in each member state.^{ix} Vienna Declaration and programme of action adopted by the Vienna conference on Human Rights on June 25, 1993 recommended that every state ought to provide on effective framework of machinery or institution to provide remedies in case of violations of Human Rights.^x

It was after that several states including India have established National commissions of Human rights to redress Human rights grievances or violations on 28th Sep 1993, the president of India promulgate an ordinance which established a National commission of Human rights.^{xi}

Thereafter, of a bill on human rights was passed in the Lok Sabha on Dec 18, 1993 to replace the ordinance earlier promulgated by the President. This bill received the assent of the President on Jan. 8, 1994 and was published in the Gazette of India, Extraordinary part II, section 1, on Jan 10, 1994 .Thus the protection of Human rights Act (No. 10 of 1994) came in to force.^{xii}

But since the National commission of Human Rights has already been established and certain acts in pursuance of ordinance had already been performed, Article 1 (3) provided that the Act shall be deemed to have come into force on 28 September, 1993.

As a means of accomplishing its mission, the Act empowered the National Human Rights Commission to depose witnesses, conduct discovery, evaluate evidence, issue reports and recommendations, and ask the central government and/or the judiciary to enforce its opinions.^{xiii}

FUNCTION OF THE COMMISSION

The National Human rights Commission has a wide mandate including Civil and Political rights economic, Social and Cultural and group rights.^{xiv}

1. Asking

Suo Moto, or on appeal to displayed to it by casualties or any people for their benefit in to protests of

- (a) Violation of human rights or abetment thereof or
- (b) Negligence in the avoidance of such infringement by an open Worker.

2. Mediating

In any procedure including any assertion of infringement of human rights pending under the watchful eye of a court with the endorsement of such courts.

3. Visiting

Under implication to the state government concerned any fall flat or other establishment under the control of the state Government where people are kept or ledged for motivation behind treatment, reconstruction or assurance to consider the living states of the security of human rights and prescribing measures for their viable actualize.

- 4. Evaluating the elements, including demonstrations of psychological oppression that repress the pleasure in human rights and suggesting suitable medicinal Measures.
- 5. Examining Treaties and other universal instruments on human rights and making proposal for their compelling execution.
- 6. Undertaking and advancing examination in the field of Human rights.
- 7. Spreading human rights proficiency among different areas of society and advancing consciousness of the shields accessible for the insurance of these rights, through productions, through media, classes and other accessible means.
- 8. Empower the endeavors of NGO's (Non Governmental Organizations) and foundations working in the field of Human Rights.

PROCEDURE FOR DEALING WITH COMPLAINTS

1. 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 two weeks of receipt thereof ordinary complaints of the following nature are NOT entertainable by the commission: (a) In regard to events which happened more than one year before the making of complaints.^{xv} (b) With regard to matters which are sub-judice. (c) Which are vague, anonymous or pseudonymous (d) Which are of frivolous Nature; or (e) Those which are outside the purview of the commission.^{xvi}

2. No fee chargeable on complaints.

3. Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable to commission to take immediate action.

To facilitate the filing of the complaints the commission shall, however, entertain complaints in any language included in Eighth Schedule of the constitution. It shall be open to the commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

4. The commission may, in its discretion, accept telegraphic complaints and complaints conveyed through Fax.

5. The commission shall have the power to dismiss a complaint in limini.
6. Upon admission of a complaint the chairperson / commission shall direct whether the matter would be set down for inquiry by it or should be investigated into.
7. On every complaint on which a decision is taken by the chairperson/ commission to either hold an inquiry or investigation, the secretariat shall call for report/comments from the concerned Government/authority giving the latter a reasonable time therefore.
8. On receipt of the comments of the concerned authority, a detailed note on the merits of the case shall be prepared for consideration of the commission.
9. The directions and recommendations of the commission shall be communicated to the concerned Government / authority and the petitioner as provided for in sections 18 and 19 of the Act.
10. The commission may, in its discretion afford a personal hearing to the petitioner or any other person on his behalf and such other person or persons as in the opinion of the commission should be heard, for appropriate disposal of the matter before it and , where necessary call for records and examine witnesses in connection with it. The commission shall afford a reasonable hearing, including opportunity of cross – examining witnesses, if any, in support of the complaint and leading of evidence in support of his stand to a person whose conduct is required into by it or where in its opinion the reputation of such person is likely to be prejudicially affected.
11. Where investigation is undertaken by the team of the commission or by any other person under its discretion, the report shall be submitted within a week of its completion or such further time as the commission may allow. The commission may, in its discretion, direct further investigation in a given case if it is of the opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the commission on its own motion, or if moved in the matter, may direct inquiry to be carried by it and receive evidence in course of such inquiry.
12. The commission or any of its members when requested by the chairperson may undertake visits for an on the spot study and where such study is undertaken by one or more members, a report thereon shall be furnished to the commission as early as possible.

KINDS OF ISSUES ON WHICH COMPLAINTS HAVE BEEN RECEIVED IN NHRC

Since its inception, the commission has handled a variety of types of complaints. In the latest period the major types of complaints have been (a) in respect of police administration, (b) Unlawful detention (c) False implications (d) Custodial violence (e) illegal arrest (f) other police excesses (g) Custodial deaths (h) Encounter deaths (i) Harassment of prisoners; Jail conditions (j) Atrocities on SC's and ST's (k) Bonded Labour (L) Child labour (m) Child Marriage (n) Communal violence (o) Dowry death or its attempt, dowry demand (p) Abduction; rape and murder (q) Sexual harassment and indignity to women; exploitation of women (r) Numerous other complaints which cannot be categorized have also been taken up.^{xvii}

STEPS TO BE TAKEN BY NHRC AFTER INQUIRY

After completion of the inquiry the National Human Rights Commission may take any of the following steps.^{xviii}

1. Where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons.
2. Approach the Supreme Court or the concerned High Court for such directions orders or writes, as the court may deem necessary.
3. Recommend to a concern Government or authority for the grant of such immediate interim relief to the victim or the members of its family, as the commission may consider necessary.
4. Provide copy of the inquiry report to the petitioner or his representative.

5. Send a copy of an inquiry report together with 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 National Human Rights Commission may allow, forward to National Human Rights Commission, its comments on the report, including the action taken or proposed to be taken.

6. Publish its inquiry report together with the comments of the concerned Government or authority, if any and the action taken or proposed to be taken by the concerned Government or authority on the recommendation of the commission.^{xix}

ANNUAL AND SPECIAL REPORTS OF THE COMMISSION

The National Human Rights Commission is required to submit an annual report to the Central Government and to the State Govt. concerned and may at any time submit special reports on any matter which, in its opinion is of such urgency or importance that it should not be deferred till submission of the annual report.^{xx} After the annual report is submitted by the commission, the Central Govt. and the state Govt. as the case may be, shall cause the annual and special reports of the commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the commission and the reasons for non-acceptance of the recommendations, if any.^{xxi}

STATE MECHANISM

According to A.S. Anand, who was the Chief Justice of India between October 1998 and November 2001, who became the Chairperson of the National Human Rights Commission in February 2003, "Strong State Human Rights Commissions would go a long way in the better promotion of human rights".^{xxii}

According to section 21 (1) of the protection of Human Rights Act 1993, a state Government may constitute a body to be known as the (the name of the state) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned, to state commission under chapter V of the Act.^{xxiii} The wording of this provision, especially the word 'may' indicates that it is not compulsory for the states to establish State Human Rights Commission. Thus it depends upon the discretion of the state.

The establishment of the National Human Rights Commission after that and the constitution of State Human Rights Commissions are definitely the positive development in the history of Human Rights.

ⁱ Edward H. Lawson, Mary Lou Bertucci, *Encyclopedia of Human Rights*, (London: Taylor & Francis, 1996), p.688.

ⁱⁱ Humbery, *The U.N. Charter and the Universal Declaration of Human Rights*, (London: Oxford University Press, 1967), p.47.

ⁱⁱⁱ *Human Rights – A Completion of International Instrument, United Nations*, (New York and Geneva: 1994), p.4.

^{iv} Mahendra P. Singh, Helmut Goerlich and Michael Von Hauff, *Human rights and Basic needs - Theory and Practice*, (New Delhi: Universal Law Publishing Co. Pvt. Ltd, 2008), p.28.

^v Carol Devine, Carol Rae Hansen, Ralph Wilde, Hilary Poole, *Human Rights: the essential reference*, (London: Greenwood Publishing Group, 1999), p.134.

^{vi} U.N. General Assembly Resolution 48 / 141 of December 20, 1993.

^{vii} S.K. Kapoor, *Human Rights Under International Law and Indian Law*, (Allahabad: Central Law Agency, 1999), p.20.

^{viii} P.C. Sinha, *Global Source Book on Human Rights*, (New Delhi: Kanishka Publishers Distributors, 2000), p.46.

^{ix} S.K. Kapoor, *Human Rights Under International Law and Indian Law*, (Allahabad: Central Law Agency, 1999), p.267.

^x Linda C. Reif, *The ombudsman, good governance, and the International Human Rights System*, (London: Martinus Nijhoff Publishers, 2004), p.97.

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- ^{xi} Edward Lawson, *Encyclopedia of Human Rights*, (Washington D.C: Published by Taylor and Francis, 1996), p.713.
- ^{xii} Jagannath Mohanty, *Human Rights Education*, (New Delhi: Deep and Deep Publications Pvt. Ltd, 2003), p.275.
- ^{xiii} Jayanth Krishnan, "Journal of the National Human Rights Commission, India", *Human Rights Quarterly*, Vol.26, No.2, May, 2004, p.542.
- ^{xiv} Syed Mehertaj Begum, *Human Rights in India: Issues and Perspectives*, (New Delhi: APH Publishing, 2000), p.210.
- ^{xv} *Ibid.*, Section 36 (2).
- ^{xvi} *Ibid.*, Section 36 (1).
- ^{xvii} Sabine Nierhoff, *The Complaints Handling Mechanism of the National Human Rights Commission of India*, (Madurai: People's Watch Publication, 2005), p.212.
- ^{xviii} Asish Kumar Das, A. Kumar Das P.K. Mohanty, *Human rights in India*, (New Delhi: Sarup & Sons, 2007), p.57.
- ^{xix} Human Rights Act 1993, Section. 18.
- ^{xx} Human Rights Act 1993, Section 20 (1).
- ^{xxi} *Ibid.*, Section 20 (2).
- ^{xxii} *The Hindu*, 14 December, 2005.
- ^{xxiii} S.K. Kapoor, *Human Rights Under International Law and Indian Law*, (Allahabad: Central Law Agency, 1999), p.283.