



CHAPTER

5(B)

Human Rights Violations - Complaint Mechanism (Quasi - Judicial Bodies)

Learning Outcomes :

Students will be able to:

- name the various Human Rights Commissions in India
- identify the functions and powers of various Human Rights Commissions in India
- discuss the complaint mechanism of these Human Rights Commissions

The focus of this chapter is on the Human rights commissions and their complaint mechanisms.

A. What are Quasi-judicial Bodies?

The quasi-judicial bodies typically are public administrative agencies under the realm of the executive branch and are largely bestowed with authority similar to courts. These bodies have the power to resolve disputes and also impose punishments.

Examples of quasi-judicial institutions include:

- national and state human rights commissions,
- central and state information commissions,
- consumer redressal forums and commissions,
- income tax tribunals, and so on.

The most fundamental human rights bodies are the national human rights institutions that include the following:

- National Human Rights Commission (NHRC)
- National Commission for Minorities
- National Commission for Women (NCW)
- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes, and
- National Commission for Protection of Child Rights (NCPCR)

These commissions are **independent or autonomous and transparent bodies** that are created under specific legislations to promote and protect human rights.

For example, the **National and State Human Rights Commissions** are governed by the **Protection of Human Rights Act, 1993**.

National commissions have jurisdiction over the entire nation whereas the parallel state commissions take matters of human rights violations from the respective states.

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B. Various Human Rights Commissions

1. NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

1.1 Introduction

The specific legislation called the Protection of Human Rights Act was enacted by the Parliament in 1993, which in turn established the National Human Rights Commission as an independent institution with powers and functions to promote and protect human rights.

This act also provides for the constitution of State Human Rights Commissions at state levels for access to complaint mechanisms at the state level.

1.2 Constitution

The National Commission is headed by the Chairperson who is a former Chief Justice of the Supreme Court. The other members of Commission are:

- ◆ one member who is a former judge of the Supreme Court, another member who is present or former Chief Justice of a High Court, and two other members with knowledge or experience in matters relating to human rights.
- ◆ Besides, there is a Secretary-General who is the Chief Executive Officer of the Commission who largely discharges administrative duties of the Commission.
- The Chairperson and the members are appointed by the President of India on recommendation of a committee consisting of the Prime Minister, the Speaker of the House of the People (Lok Sabha), Minister of Home Affairs at the center, Leader of Opposition in the Lok Sabha, Leader of Opposition in the Council of States (Rajya Sabha), and Deputy Chairman of the Rajya Sabha.
- The committee is required to consult the Chief Justice of India whenever a sitting judge of the Supreme Court or sitting Chief Justice of a High Court is appointed to the Commission.
- The government also appoints police officers and investigative staff and other administrative, technical and scientific personnel for the efficient functioning of the Commission.

The National Commission is based in New Delhi. The State Commissions also complement the working of the National Commission.

1.3 Functions of the Commission

The Commission is vested with the functions as given below.

Inquiry and Investigation - One of the Commission's roles is to conduct inquiry and investigation into the **alleged violation of human rights or abetment (aiding or supporting) or negligence in the prevention of such violation by a public servant.**

The complaint can be filed by the victim or his or her representative, or the court may direct the Commission with a complaint, and at times the Commission may initiate inquiry and investigation on its own (**Suo motu**).

Suo Motu means 'on its own motion' and relates to an action taken by a court of its own accord, without any request by the parties involved.

For example, the Commission may inquire suo motu based on some human rights violations news or report published through the media.



Suo motu inquiry is especially useful when the victims belong to weaker sections of the society and have limited access to justice delivery mechanisms.

1.4 Powers of the Commission

The Commission has the powers of a civil court.

In conducting an inquiry or investigation, the commission can utilize various powers including the following:

- summon and enforce the attendance of witnesses and examine them on oath;
- ask for production of any document before itself;
- receive evidence on affidavits;
- request public record from any court or office; and
- examine witnesses or documents.

On completion of Enquiry:

Once the inquiry is completed, the Commission can make recommendations to governmental authority in cases where **any public servant is the perpetrator of human rights violation**.

- The recommendation may include **payment of compensation to the victims** or suggest **initiation of proceedings for prosecution of the public servant**.
- The Commission can also **approach the Supreme Court or the High Court for directions and orders**.
- The Commission may also ask the State authority to provide **immediate interim relief to the victim**.

Intervening in court proceedings - The Commission may with the permission of the court intervene in court proceedings concerning human rights violations.

For example, the Commission can request the Supreme Court to transfer pending riot cases out of a state in which the riots had happened to ensure the witnesses are not threatened in any manner and that evidences are not damaged.

Inspection of jails, etc. - The Commission may also visit any jail or other governmental institutions, where prisoners are lodged or detained, to study the living conditions of the inmates and make recommendations to the government.

Awareness and Sensitization - The Commission can review various human rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation.

The Commission can also evaluate various factors, including acts of terrorism, which prevent the enjoyment of human rights and recommend appropriate remedial measures to the government.

The Commission's role includes studying various international human rights laws and make recommendations for their effective implementation at the domestic level (within the State).

Furthermore, the Commission can undertake and promote research in the field of human rights as well as spread human rights literacy among various sections of society.

It can promote awareness of the safeguards available for the protection of human rights through publications, media, seminars, and other available means.

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Lastly, the Commission can encourage and support the efforts of non- governmental organizations and institutions involved with human rights work.

1.5 Complaint Mechanism

The complaint mechanism procedure with the National Human Rights Commission is easy and straightforward.

Any one aggrieved of human rights violation or their representatives can lodge a complaint with the Commission in any language.

The complaint can be filed online at www.nhrc.nic.in or by paper petition using the complaint format provided on the website.

The complaint can be sent either by Post or Fax or through E-mail.

There is no fee for filing a complaint.

The complaint must be filed within a year of the occurrence of the human rights violation.

Once the complaint is pending before the commission, one can check the status of the complaint online.

In-Class Exercise

National Human Rights Commission of India has prescribed a complaint format as given below. Use the format and prepare a complaint on any human rights violation either hypothetical or real that you may be aware of, or you may have read/heard in the news and so on. The NHRC guidelines given below in row three are for reference purpose. This complaint must be used for classroom exercise only and be submitted to the course instructor for evaluation.

Format for filing a complaint with the NHRC

A. Complainant's Details

1. Name:
2. Sex: Male / Female
3. State:
4. Full Address:
5. District:
6. Pin Code:

B. Incident Details

1. Incident Place(Village/Town/City):
2. State:
3. District:
4. Date of Incident:

C. Victim's Details

1. Name of the victim:
2. No. of victims:
3. State:
4. Full Address:
5. District:
6. Pin Code:
7. Religion:



8. Caste (SC/ST/OBC/General):

9. Sex:

10. Age:

11. Whether Disabled person:

D. Brief summary of facts/allegations of human rights involved:

E. Whether complaint is against Members of Armed Forces/ Para-Military: Yes/No

F. Whether similar complaint has been filed before any Court/State Human Rights Commission:

G. Name, designation & address of the public servant against whom Complaint is being made:

H. Name, designation & address of the authority/officials to whom the public servant is answerable:

I. Prayer/ Relief if any, sought:

Guidelines on how to file complaint with the NHRC

1. Complaint may be made to the Commission by the victim or any other person on his behalf.
2. Complaint should be in writing either in English or Hindi or in any other language included in the eighth schedule of the Constitution. Only one set of complaint needs to be submitted to the Commission.
3. Complaint may be sent either by Post or Fax or E-mail.
4. No fee is chargeable on such complaints.
5. The complaint shall disclose
 - (i) violation of human rights or abetment thereof; or
 - (ii) negligence in the prevention of such violations, by a public servant
6. The jurisdiction of the Commission is restricted to the violation of human rights alleged to have been committed within one year of the receipt of complaint by the Commission.
7. Documents, if any enclosed in support of the allegations in the complaint must be legible.
8. Name of the victim, his/ her age, sex, religion/ caste, State and District to which the incident relates, incident date etc. should invariably be mentioned in the complaint.
9. Please submit the complaint preferably in the enclosed format.
10. Following types of Complaint(s) are not ordinarily entertainable:
 - (i) Illegible
 - (ii) Vague, anonymous or pseudonymous.
 - (iii) Trivial or frivolous in nature.
 - (iv) The matters which are pending before a State Human Rights Commission or any other Commission.
 - (v) 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.
 - (vi) Allegation is not against any public servant.
 - (vii) The issue raised relates to civil dispute, such property rights, contractual obligations, etc.
 - (viii) The issue raised relates to service matters.
 - (ix) The issue raised relates to labour/industrial disputes.
 - (x) Allegations do not make out any specific violation of human rights.
 - (xi) The matter is sub-judice before a Court/ Tribunal.
 - (xii) The matter is covered by judicial verdict/decision of the Commission.

As far as possible complainants are encouraged to make use of the format given above to file their complaints. The guidelines indicate the kind of information, which would facilitate in processing a complaint.



2. NATIONAL COMMISSION FOR MINORITIES

2.1 Introduction

National Commission for Minorities Act, 1992 was enacted by the Parliament to create the National Commission for Minorities to safeguard the human rights of minorities including protection against inequality and discrimination.

Minorities' human rights are enshrined in the Constitution as well as other laws enacted by Parliament and the State Legislatures.

The minorities here are referred to religious minorities of :

Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis).

Many states also have instituted the State Minorities Commissions and are located in the respective state capitals.

Persons who belong to the minority communities can approach the State as well as National Minorities Commission for remedying human rights violations.

2.2 Constitution

The National Minorities Commission consists of a Chairperson, a Vice-Chairperson and five other members who are nominated by the Central Government from amongst the minority communities who are persons of eminence, ability and integrity.

2.3 Functions of the Commission

The functions of the Commission include the following -

- evaluating the progress of the development of Minorities;
- monitoring the working of the safeguards provided in the Constitution and in other laws enacted by Parliament and the State Legislatures;
- making recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments;
- looking into specific complaints regarding deprivation of rights and safeguards of the Minorities and taking up such matters with the appropriate authorities;
- initiating studies on problems arising out of any discrimination against Minorities and recommending measures for their removal;
- conducting studies, research, and analysis on the issues relating to socio- economic and educational development of Minorities;
- suggesting appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments; and
- making periodical or special reports to the Central Government on any matter pertaining to Minorities and in particular the difficulties confronted by them.

2.4 Powers

Like the National Human Rights Commission, the National Commission for Minorities is vested with powers of a civil court.



When the Commission tries any suit or hears a complaint, it has the powers to:

- 1) summon and enforce the attendance of any person and examine him or her on oath,
- 2) require the discovery and production of any document,
- 3) receive evidence of affidavits,
- 4) request any public record or copy from any court or office, and
- 5) issue commissions for the examination of witnesses and documents.

2.5 Complaint Mechanism

There are many grounds on which the Commission typically declines admitting the complaint.

Firstly, it does not entertain or admit cases or complaints that do not relate to Minority status or rights.

Secondly, the complaint should not be pending before another court or commission, i.e., matters that are sub judice.

Sub judice

Sub judice in Latin stands for 'under a judge'. It means that a particular case or matter is under trial or being considered by a judge or court.

Thirdly, where the complainant has not availed of other ordinary judicial/quasi-judicial/administrative institutions that are available for redressal, the Commission does not admit such matters unless the complainant has reasonable justification.

Fourthly, the complaint should not relate to events that are more than one-year old.

Fifthly, complaint should not be vague, anonymous, pseudonymous or frivolous.

Lastly, Commission does not entertain complaints that are not directly addressed to it.

Like, the NHRC, the National Commission for Minorities can also take action *sou motu* based on newspaper reports or other findings.

Applications of complaints are required to be sent to the Commission and addressed directly to the Secretary, National Commission for Minorities, New Delhi.

It does not charge any fee for lodging a complaint.

The updated contact details are available on the Commission's website at www.ncm.nic.in.

3. NATIONAL COMMISSION FOR WOMEN (NCW)

3.1 Introduction

In 1992, the National Commission for Women was established under the National Commission for Women Act, 1990.

3.2 Constitution

The Commission consists of a Chairperson and five Members who are nominated by the Central Government from amongst persons of ability, integrity, and standing who have had experience in



any one of these areas -law or legislation, trade unionism, management of an industry potential of women, women's voluntary organizations (including women activist), administration, economic development, health, education, or social welfare.

At least one member each belongs to the Scheduled Castes and Scheduled Tribes communities.

The member-secretary takes care of the administrative matters.

3.3 Functions

The commission has been charged with the following functions -

- to investigate and examine matters relating to the safeguards provided for women under the Constitution and other laws;
- to present annual and other reports to the Central Government about the working of the safeguards;
- to make recommendations to Central and states for the effective implementation of safeguards for improving the conditions of women;
- to review provisions of the Constitution and other laws affecting women and make recommendations about remedial legislative measures required to address inadequacies or shortcomings in the laws;
- to take up cases with the appropriate authorities about violation of women human rights as provided in the Constitution and other laws;
- to look into complaints and also take *suo moto* notice of matters on deprivation of women's rights; non-implementation of laws required to achieve equality and development; and non-compliance of policy decisions, guidelines or instructions pertaining to women welfare;
- to initiate special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and to identify the constraints and to recommend strategies;
- to undertake promotional and educational research and to suggest ways for ensuring due representation of women in all spheres and to identify factors responsible for impeding women's advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards, and for increasing their productivity;
- to participate and advice on the planning process of socio-economic development of women;
- to evaluate the progress of the development of women under the Union and any State;
- to inspect a jail, remand home, women's institution, or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- to fund litigation involving issues affecting a large body of women; and
- to make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.

3.4 Powers

The Commission has investigating powers similar to that of a civil court; in that, the Commission can do the following -



- summon and enforce the attendance of any person and examining him or her on oath;
- require the discovery and production of any document;
- receive evidence on affidavits;
- request any public record or copy from any court or office; and
- issue commissions for the examination of witnesses and documents.

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Class Activity

Go to www.ncw.nic.in Write a report about the working of national commission for women. Examine the role of NCW in eradicating social evils against women and steps it has taken towards women empowerment.

4. NATIONAL COMMISSION FOR SCHEDULED CASTES & SCHEDULED TRIBES

4.1 Introduction

Article 338 of the Constitution of India provides for establishing a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and report to the President.

The two commissions instituted in fulfillment under Article 338 are:

- the National Commission for Scheduled Castes, and
- the National Commission for Scheduled Tribes

These are instituted to protect the human rights of Schedule Castes and Scheduled Tribes, prevent their exploitation, and to encourage and defend their social, educational, economic and cultural securities as provided in the Constitution and other legislations.

For example, State provides reservation or affirmative action programs for government jobs to backward classes like Schedule Castes and Scheduled Tribes who because of historical and continued disadvantages based on caste status and otherwise have not been adequately represented in the services under the State.

Examples of special laws for protection of minorities include the:

- Protection of Civil Rights Act, 1955, and
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4.2 Functions

Both Commissions have similar powers and functions as provided in Art. 338- to investigate and monitor all matters relating the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and other laws;

- to evaluate the working of the safeguards;
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;



- to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- to present to the President, annually and periodically, reports on the working of the safeguards and recommendations for the effective implementation of the safeguards and protection, as well as welfare, and socio-economic development of the Scheduled Castes and Scheduled Tribes.

4.3 Powers

Just like the other human rights commissions, the two commissions for Scheduled Castes and Scheduled Tribes have the powers of a civil court in trying a suit and commissions can do the following-

- summon and enforcing the attendance of any person from any part of India and examining him on oath;
- require the discovery and production of any document;
- receive evidence on affidavits;
- request any public record or copy from any court or office; and
- issue commissions for the examination of witnesses and documents.

Art.338 also mandates the Union and every State Governments to consult the Commissions on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

4.4 Complaint Mechanism

The Commissions receive complaints from an individual or group of persons alleging denial of the safeguards provided in the Constitution by an authority or an organization.

The Commissions follow up with the authorities and organizations against whom the complaint is lodged.

The websites of the Commissions are www.ncsc.nic.in for the Scheduled Castes and www.ncst.nic.in for the Scheduled Tribes.

5. NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

5.1 Introduction

The National Commission for Protection of Child Rights is an Indian statutory body established by an Act of Parliament, the Commission for Protection of Child Rights Act, 2005.

The National Commission for Protection of Child Rights (NCPCR) emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child related policies of the country.

For the Commission, protection of all children in the 0 to 18 years age group is

Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances, and so on.

NCPCR logo





The NCPCR believes that while in addressing only some children, there could be a fallacy of exclusion of many vulnerable children who may not fall under the defined or targeted categories.

In its translation into practice, the task of reaching out to all children gets compromised and a societal tolerance of violation of child rights continues. This would in fact have an impact on the program for the targeted population as well. Therefore, it considers that it is only in building a larger atmosphere in favour of protection of children's rights, that children who are targeted become visible and gain confidence to access their entitlements.

- For the Commission, every right the child enjoys is seen as mutually-reinforcing and interdependent. Therefore the issue of gradation of rights does not arise.
- A child enjoying all her rights at her 18th year is dependent on the access to all her entitlements from the time she is born. Thus policies interventions assume significance at all stages. For the Commission, all the rights of children are of equal importance.

5.2 Functions

The Functions of the National Commission for Protection of Child Rights are laid out in the Commission for Protection of Child Rights (CPCR) Act, 2005. The Commission shall perform all or any of the following functions:

1. Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
2. Present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;
3. Inquire into violation of child rights and recommend initiation of proceedings in such cases;
4. Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;
5. Look into the matters relating to the children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
6. Study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
7. Undertake and promote research in the field of child rights;
8. Spread child rights literacy among various section of society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminar and other available means;
9. Inspect or cause to be inspected any juveniles custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organization; Where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;
10. Analyse existing law, policy and practice to assess compliance with Convention on the rights of the Child, undertake inquiries and produce reports on any aspects of policy or practice affecting



children and comment on proposed new legislation related to child rights.

11. Present to the Central Government annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards.
12. Undertake formal investigation where concern has been expressed either by children themselves or by a concerned person on their behalf.
13. Promote, respect and serious consideration of the views of children in its work and in that of all Government Departments and Organisations dealing with Child.
14. Produce and disseminate information about child rights.
15. Compile and analyse data on children.
16. Promote the incorporation of child rights into the school curriculum, training of teachers or personnel dealing with children.

5.3 Powers

Inquire into complaints and take suo moto notice of matters related to:

1. Deprivation and violation of child rights.
2. Non implementation of laws providing for protection and development of children.
3. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities.

Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

The Commission shall not enquire 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.

5.4 Complaint Mechanism

One of the core mandates of the Commission is to inquire into complaints of violations of child rights. The commission is also required to take suo moto cognisance of serious cases of violation of child rights and to examine factors that inhibit the enjoyment of rights of children.

Complaints may be made to the Commission in any language listed in the 8th Schedule of the Constitution.

- a. No fee shall be chargeable on such complaints.
- b. The complaint shall disclose a complete picture of the matter leading to the complaint.
- c. The Commission may seek further information/affidavit as may be considered necessary.

While making a complaint, please ensure that the complaint is:

- Clear and legible, not vague, anonymous or pseudonymous.
- Genuine, not trivial or frivolous.
- Not related to civil disputes such as property rights, contractual obligations and the like.
- Not related to service matters.



- Not pending before any other commission duly constituted under the law or sub-judice before a court/ tribunal.
- Not already decided by the Commission.
- Not outside the purview of the Commission on any other grounds.

Complaints may be addressed to:

National Commission for Protection of Child Rights

5th Floor , Chanderlok Building, 36 Janpath, New Delhi-110001

Phone: 011-23478200

Fax: 011-23724026

For Complaint: www.ebaalnidan.nic.in

Source:

<https://www.ncpcr.gov.in/about-commission>

<https://vikaspedia.in/education/child-rights/national-commission-for-protection-of-child-rights-ncpcr>

Exercise

Based on your understanding, answer the following questions:

1. Explain any one power or function of the National Human Rights Commission.
2. Who are minorities whose interest the National Commission for Minorities intends to protect?
3. Ms. Bagchee is a Jewish woman who has married outside her community, because of which she is disallowed to perform certain religious customs. What could be the grounds of disqualification of her complaint to the National Commission for Minorities?
4. Ms. Nisha Joseph is a Christian and her services were terminated by a school managed by State run non-governmental organization without any substantial reasons. What is the remedy available to her for redressal of this issue?
5. Smt. Savitri is troubled by the exploitation that is being faced by her deaf and dumb daughter who has been abandoned by her husband and in laws, allegedly due to her disabilities. Which forum can she approach for redressal of issues being faced by her? State its powers and functions.
6. Why were the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes created?
7. Ravi avails benefits of being a member of scheduled caste in his service under the Central Government. In a matter of promotion with his department he moved to the Central Administrative Tribunal. As the matter is pending for a long time, he decides to obtain a speedier redressal of his cause and moves to the National Commission for Scheduled Castes. Decide if the matter will be entertained by the Commission. Also set out the various grounds on which the Commission can reject a complaint made to it.



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