



## Unit 2

# Protection of Human Rights

### 2.1 Introduction

Human Rights are better protected at the national level with adequate laws, independent judiciary and effective mechanisms. However, they seldom initiate action on their own except in public interest cases and their educational role is very limited. The international community has increasingly realized the importance of Human Rights implementation at the national level and the United Nations started addressing the issue of National Human Rights Institutions since 1946. The United Nations international workshop on National Institutions for [romotion and protection of human rights resulted in drafting of guidelines that were later adopted by the UN commission on human rights as the "Paris principles" in 1992 and adopted by the UN General Assembly in 1993. The Vienna World Conference on human rights and its declaration in 1993 also encouraged the establishment and strengthening of national human rights institutions for effective realization of human rights.

The Paris Principles have become the focal point for development of national human

rights commissions all over the world. They deal with three important areas of national human rights institutions. They are

- Autonomy and responsibility
- Composition and Methods of operations and
- Competence to settle individual complaints

The National Human Rights Commissions are unique independent institutions and play a supportive and supplementary role to the existing institutions. The National Human Rights Commissions do not replace the role of the already existing legal and administrative framework in the form of courts, legislature and executive bodies and other institutions.

The National Human Rights Commission of India was set up in India under the Protection of Human Rights Act, 1993. The then Prime Minister of India convened the Chief Minister's Conference in 1992 to develop modalities of setting up the Human Rights Commissions. The meeting examined the possibility of placing constitutional rights of civil liberties within the ambit of the

Commission, including issues of custodial Justice. The State governments have also set up state human rights commission to deal with

human rights violation within their states. Currently there are eighteen State human rights commissions in India.

### List of State Human Rights Commissions in India

1. Andhra Pradesh State Human Rights Commission
2. Assam State Human Rights Commission
3. Himachal Pradesh State Human Rights Commission
4. Jammu & Kashmir State Human Rights Commission
5. Kerala State Human Rights Commission
6. Karnataka State Human Rights Commission
7. Madhya Pradesh State Human Rights Commission
8. Manipur State Human Rights Commission
9. Orissa State Human Rights Commission
10. Punjab State Human Rights Commission
11. Rajasthan State Human Rights Commission
12. Tamil Nadu State Human Rights Commission
13. Uttar Pradesh State Human Rights Commission
14. West Bengal State Human Rights Commission
15. Chhattisgarh State Human Rights Commission
16. Gujarat State Human Rights Commission
17. Bihar State Human Rights Commission
18. Maharashtra Human Rights Commission

## 2.2 Objectives

After understanding the first unit on Human Rights, this unit will

- Introduce you to the mechanisms for implementation of Human Rights
- Enable you to understand the role and function of the National Human Rights Commission
- Help you to learn about the contribution of the National Human Rights Commission in the protection and promotion of Human Rights

In this unit, we will examine in detail the working of NHRC and its contributions towards the protection and promotion of Human Rights. We will also learn about the various functions of NHRC and how it enquires into the complaints of Human Rights violations, including the processes, methods and guidelines developed by NHRC for protection of Human Rights.

### 2.3 Composition of NHRC

NHRC is an autonomous institution consisting of:

1. (a) A Chairperson who has been a Chief Justice of the Supreme Court;  
(b) One Member who is or has been a Judge of the Supreme Court;  
(c) One Member who is or has been the Chief Justice of a High Court;  
(d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in matters relating to Human Rights;
2. The Chairperson of the National Commission for Minorities, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes and National Commission for Women are deemed Members of the Commission.
3. There is a Secretary General who is the Chief Executive Officer of the Commission and exercises such powers and discharges such functions, as

delegated to him by the Commission or Chairperson, as the case may be.

### 2.4 Divisions of NHRC

There are six divisions in the NHRC. These have been entrusted with specific tasks and they work in close consultation and coordination. The six divisions are:

- The Administrative Division
- The Law Division
- The Training Division
- The Policy, Research and Project Division
- The Investigation Division
- The Information and Public Relations Division

### 2.5 Functions of NHRC

The primary function of NHRC is to conduct inquiries into violations of human rights. NHRC conducts inquiries for the following categories of violations:

- Violation of right to life, liberty, equality and dignity
- Violation of international treaties to which India is a party.
- Abetment of violation of human rights by a public servant.
- Negligence of public servant in prevention of human rights violations.

### Functions of NHRC<sup>1</sup>

- Inquire into human rights violations on its own or on a petition by a victim or any person on his/ her behalf,-
- Intervene in any proceeding involving any allegation of violation of human rights pending before a court
- Visit jails, hospitals, juvenile homes, mental hospitals, etc. to study the living conditions of the inmates.
- Review the law and procedures for protection of human rights and make recommendations for their effective implementation
- Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- Undertake and promote research in the field of human rights;
- Spread human rights literacy;
- Encourage the efforts of non - Governmental organizations and institutions working in the field of human rights;

## 2.6 Important Cases decided by NHRC

The following are some of the important cases which have been taken up by the NHRC and created a positive jurisprudence to prevent violations of human rights. The trainees will appreciate and understand the role of NHRC in protection and promotion of human rights through these selected cases. For details of these cases, the trainees are requested to refer the NHRC website ([www.nhrc.nic.in](http://www.nhrc.nic.in)).

### CASE ONE - GUJARAT RIOTS

The National Human Rights Commission had taken suo-motu cognizance of media reports about the unearthing of a mass grave in Lunawada village of Panchmahal District of Gujarat. The Commission sought a report from the State Government and CBI in the matter.

Large Scale incidences of communal violence were reported in Gujarat during February-March 2002. About three thousand people belonging to minority Muslim community were killed and property was destroyed. The Gujarat state government and its police did not take appropriate measures to prevent violence and failed to provide safety, security and justice to the victims of Muslim minority community. What can be done in these type situations of massacre of people in collusion with the state? Does NHRC have the power to inquire suo-moto into this case of gross violation of human rights? Indeed, the NHRC initiated a suo-moto inquiry into these incidents and directed the state government to report the measures taken to restore peace in the state of Gujarat. The Commission also approached the Supreme Court of India on behalf of the victims of the Gujarat riots.

<sup>1</sup> Section 12 of the protection of Human Rights Act,1993.



### **CASE TWO - PUNJAB MASS CREMATIONS**

The National Human Rights Commission awarded compensation of Rs.1.75 lakh each to the next of kin of 1051 victims of the Punjab Mass Cremation Case. The Commission found that the bodies of these persons were cremated by the State authorities in violation of rules on cremation of unidentified bodies. The act amounted to violation of the dignity of the dead and hurt emotions and sentiments of their kin, who would have preferred to perform their last rites, the Commission held. The Punjab Government was directed to deposit Rs.18,39,25,000/- within three months for disbursement to the next of kin.

This case is a shocking incident of gross violation of human rights wherein a large number of human bodies was cremated by the Punjab police. This case was referred to NHRC by the Supreme Court. The Commission found the State of Punjab accountable and responsible for the infringement of the right to life of the deceased. Again on 8 March 2006, the Commission granted compensation in respect of 38 more persons.

### **CASE THREE - STARVATION DEATHS IN ORISSA**

The NHRC took cognizance of the reports of deaths of people due to starvation in Koraput, Bolangie and Kalahandi districts of Orissa. It sent a team to report about the existing conditions. It also appointed a special rapporteur to look after the relief and rehabilitation work. NHRC periodically reviews the measures taken by the state government to prevent starvation deaths.

### **CASE FOUR - ENCOUNTER DEATHS IN ANDHRA PRADESH**

The Andhra Pradesh Civil Liberties Committee (APCLC) complained to the NHRC about encounter deaths wherein the police were killing people on the suspicion of being members of the People's War Group. The police said that the deaths took place when armed militants resisted arrest, but the Andhra Pradesh Civil Liberties Committee insisted that there were extra-judicial killings amounting to unjustified and unprovoked murders. They gave the details of 285 such incidents. NHRC inquired into six cases involving the death of seven people and formulated guidelines in 1997 for the first time in India, detailing the procedure in respect of encounter deaths.

### **CASE FIVE - DEATHS DUE TO SILICOSIS**

The National Human Rights Commission expressed deep concern at the deaths of tribals from Alirajpur tehsil of Jhabua District of Madhya Pradesh, who worked as labourers in the quartz crushing factories of Godhra in Gujarat due to silicosis/silicotuberculosis. The Commission learnt about this tragedy when it went through a news report captioned "Death Stalks Godhra again, in the form of silicon dust" in the *Indian Express* on 19 September, 2007. As per the report, these tribals were exposed to silica dust and no protection was given to them at their work place. The report also said that about 200 tribals had died in the last four years. The report added that those labourers who returned to their villages in Jhabua and died of silicotuberculosis in their villages were not getting any compensation or retribution as they didn't have documentary proof to process compensation claims.

After going through the report, the Commission directed that the same may be forwarded to the Chief Secretaries of Gujarat and Madhya Pradesh and also to the District Collectors of Panchmahal and Jhabua for a factual report within four weeks. The Commission also dispatched a team from the Investigation Division for a spot enquiry.

### Activity 1

1. Find out the end results of the above mentioned important cases.

## 2.7 Procedure for Dealing with Complaints

One of the basic functions of NHRC is to deal with complaints. Any person or group of persons or any organization can submit a complaint about human rights violations to NHRC. The complaints received by the Commission are registered and given a specific number. These complaints are placed before the Members. The Commission may ask for any further information and affidavits in support of the allegations in the complaints. If the Commission does not find any substance in the complaint, then the complaint can be dismissed.

Once a complaint is admitted, the Commission directs further inquiry or investigation. The Commission also calls for reports or comments from the respective state governments. Subsequently, a detailed note on the merits of the case is prepared and placed before the Commission. The complaint can be closed in case no further inquiry is required or the concerned government has taken the required action.

When the Commission decides to take up a case, then it can conduct investigation by its members or by the investigation division. After the inquiry if it is found that there was a

violation of human rights or negligence by a public servant, then the Commission may recommend to initiate proceedings for prosecution against the guilty persons. The Commission can also recommend the concerned government for grant for immediate relief to the victim or the members of the family. The Commission may also approach the Supreme Court or the concerned High Court for the implementation of its orders and directions.

In case the complaints are related to armed forces, the Commission calls for a report from the central government. If the Commission is satisfied with the report of the government, it will not proceed further with the complaint. If the Commission is not satisfied, then it makes its recommendations to the government. The central government is required to inform the Commission about the action taken on the recommendation within a period of three months.

The Commission has its own investigation staff, headed by a Director General of Police, for investigation into complaints of human rights violations. The Commission can also utilize the services of any officer or investigation agency of the Central Government or any State Government in conducting an investigation. In some cases, the Commission has also associated non - Governmental organizations during enquiries.

## 2.8 Filing of Complaints

Before the establishment of NHRC, it was difficult to file a complaint against police abuse, unless the victim had a strong backup support and was courageous enough to face all the consequences from the police. There are very few cases of complaints filed against police in local criminal courts as 'private complaints'. With the establishment of NHRC, a new avenue

was provided to the victims of police abuse for filing complaints.

- Complaints may be filed in Hindi, English or in any language included in the Eighth Schedule of the Constitution.
- No fee is charged for filing complaints.
- The Commission may ask for further information and affidavits to be filed in support of allegations whenever considered necessary.
- The Commission may in its discretion, accept telegraphic complaints and complaints conveyed through FAX or email [(covdnhrc@hub.nic.in (General)/jrlaw@hub.nic.in
- Complaints can also be made on the mobile telephone number, 9810298900 of the Commission.

## Activities 2

1. *What is the composition of NHRC and its various divisions?*
2. *Briefly describe the procedure adopted by NHRC in entertaining complaints?*

## 2.9 Complaints admitted by NHRC

The following are some of the different types of complaints received by NHRC

- Deaths in police and judicial custody
- Fake encounters by police, army or paramilitary forces
- Illegal detention, extortion and intimidation by police
- Non-registration of cases

- Failure of police to protect the life and property of citizens
- Failure in conducting effective investigations
- Beating, torture or rape in police custody or in judicial custody
- Denial of basic facilities of legal aid, decent food, hygiene in police stations and prisons
- Denial of clean drinking water
- Atrocities against Dalits and denial of access to village tanks, wells and water sources
- Forced or bonded labour
- Environmental pollution.

## 2.10 Types of Recommendations made by the Commission to Government

The NHRC issues the following kinds of directions based on the complaints taken up. Sometimes NHRC can issue directions on its own based on the seriousness of the complaint. The Commission can also approach a court and register a criminal case against the guilty persons.

### Recommendations by NHRC

- Pay compensation to the victim or to the victim's family
- Take disciplinary action against the guilty persons
- Initiate proceedings for prosecution against the concerned person.
- Take preventive measures so as to stop further Human Rights violation



## 2.11 Important Guidelines issued by the National Human Rights Commission

One of the primary mandates of NHRC is to inquire into deaths in police custody and deaths in prison. The first important instruction issued by NHRC in its first year to all the state governments is on mandatory reporting of custodial deaths and rape. NHRC directed on 14 December 1993 to the district magistrate and superintendent of police to report to the Commission incidences of custodial deaths and rape within 24 hours and stated that failure to send a report within the stipulated time would be presumed as suppression of the incidents. The mandatory reporting was extended to deaths in prison in 1994.

Later, NHRC also issued directions on encounter deaths. NHRC also issued comprehensive guidelines on pre-arrest, arrest and post-arrest after the D K Basu Case. These guidelines will be discussed in detail in Unit 4 on custodial justice.

### Activities 3

*In order to make this a more participatory learning, the learners are requested to visit the website of*

NHRC ([nhrc.nic.in](http://nhrc.nic.in)), wherein at the left hand side, a link is provided to the 'instructions'.

After going through the guidelines issued by NHRC's, briefly explain the guidelines on:

- Custodial deaths/rape
- Encounter deaths
- Guidelines on arrest

## 2.12 Other Human Rights Institutions in India

The Government of India has constituted several commissions, to safeguard and protect the rights of specific groups. They are the SC/ST Commission, National Commission for Minorities, National Commission for Women, National Commission for Protection of Child Rights and the Disability Commissioner. Moreover, some of the States have also set up their respective State Human Rights Commissions.

The table below introduces to the trainees the other human rights institutions in India. This will provide the trainees a glimpse of the scope, aims and thematic focus of these Institutions.

Sl.No.	Name of the body/ institution	Scope	Aims	Themes
1.	State Human Rights Commission	State	Protection of human rights, prevention of human rights violations, awareness generation on human rights	Human Rights covering custodial deaths, police excesses, fake encounters, women and children's rights, Dalit's rights, minority communities, disability, bonded labour, armed forces, para military forces etc. in the state

*cont....*



Sl.No.	Name of the body/ institution	Scope	Aims	Themes
2.	National Commission for Women (Chairman as ex-officio member of NHRC)	National	Addressing the issues of women rights violation and advising the government on policy matters related to women	Women's rights
3.	National Commission for Minorities (Chairman as ex-officio member of NHRC)	National	Protection of minorities rights	Minorities rights
4.	National Commission for SC/ST (Chairman as ex-officio member of NHRC). These are two separate commissions: one for SC and another for ST.	National	Protection of SC/ST rights	SC/ST rights
5.	National Commission for Protection of Child Rights	National	Protection of child rights and best interest of Children	Child rights
6.	Disability Commissioner	National	Protecting the rights of Disabled persons	Looks into complaints with respect to disabled persons

#### Activity 4

1. Visit your respective State Human Rights Commission or the National Human Rights Commission (or website thereof) and identify a case of custodial death/torture, reported at NHRC/SHRC and follow up the entire case. Identify the procedure that has been followed and submit a report based on your understanding of Human Rights violations followed in that particular case.
2. Visit your district police headquarters and identify the cases against police reported from NHRC. Write a brief summary of five cases of Human Rights violations that you have identified and see whether the procedure followed by police was in accordance with the procedure as laid down in law and/or the guidelines of NHRC .
3. Visit your local police station and identify cases of Human Rights violation against vulnerable sections and present a critical report on how the local police station has dealt with these cases.
4. Visit the website of NHRC and note down the ways in which NHRC is protecting and promoting Human Rights in India.
5. Go through the latest Annual Report of NHRC and identify the cases selected by NHRC and give your comments in detail on any two cases of custodial death.



### Check your progress

1. How does the NHRC protect and promote Human Rights?
2. How would you file a complaint at a National/State Human Rights Commission?
3. What are the powers vested with NHRC related to inquiries?
4. How is the Commission different from a court?

### Let us Sum up

This unit helps the learner to go through the mechanisms for implementation of Human Rights. It also helps the learner to understand the functions of NHRC, the kinds of cases of Human Rights violations that the NHRC takes up, filing of complaints at NHRC and also some of the recommendations made by NHRC. In short, after going through this unit, the learners would be able to understand the functioning and contribution of NHRC in the protection and promotion of Human Rights. Again in this unit, only when the learner does the activities and questions, after reading this complete unit, will s/he be able to understand and internalize the content of this unit in a better way.