

A. Name and date of creation : National Human Rights Commission of India was established on 12 October 1993 by an Act of Parliament. Its statute is contained in the Protection of Human Rights Act, 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006 (PHRA).

B. Status of the institution (to tick)

- Separate or autonomous institution, established by law, with reference to the Convention on the rights of the child
- Institution integrated in a general human rights institution (Human Rights Commission) with specific legislation.
- Institution integrated in a general human rights institution (Human Rights Commission/Mediator/General Ombudsperson) without specific legislation
- Conformity with the Paris Principles and General Comment no. 2 of the Committee on the Rights of the Child

C. Mandate and Competences

➤ Which general principles are contained in the mandate of the institution?

- Which laws? Which treaties?

As per Section 2(1)(d) of the PHRA “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The “International Covenants”, as per Section 2 (1) (f) means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify.

- Affirmation of the principle of independence?

It takes independent stand and provides its own views on different human rights issues. It has powers of civil court in making inquiries.

- Best interests of the child?

As per Section 2 (1) (f) of PHRA, the best interests of the child in the country is taken into consideration by NHRC India as the Government of India ratified the Convention on the Rights of the Child in December 1992.

- What is its overall mission?

NHRC India is an embodiment of India's concern for the promotion and protection of human rights.

- Which powers has it been attributed?

- Jurisdiction: **public sector**/private sector?

It has all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, like summoning of witnesses and examining them on oath; discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing of commissions for the examination of witnesses or documents.

It has the power to recommend to the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim(s) or the members of their family as it may deem fit.

It has evolved unique transparent procedures and mechanisms over the years for discharge of its functions and monitoring the implementation of its various recommendations.

- Powers of investigation:
 - Referral powers different than those for adults? Can it take up cases as of right?
Yes.
 - Visit places for children without need for prior authorization (detention centres, schools, hospitals, workplaces, children's centres, etc.)

As per Section 12 (c) of PHRA; visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for

the study of the living conditions of the inmates thereof and make recommendations thereon to the Government.

- **Obligation for other actors to provide documentation and/or testimony upon request?**

Yes.

The Commission is vested with wide-ranging powers relating to inquiries and investigation under Section 13 of the PHRA. While inquiring into complaints under the PHRA, the Commission has all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters:

- **Summoning and enforcing the attendance of witnesses and examining them on oath.**
- **Discovery and production of any document.**
- **Receiving evidence on affidavits.**
- **Requisitioning any public record or copy from any court or office.**
- **Issuing commissions for the examination of witnesses or documents.**
- **Any other matter that may be prescribed.**

Other than this, it also has the power to call for any person to furnish information on points or matters which in the opinion of the Commission may be useful or relevant to the subject matter of inquiry and the concerned person shall be legally bound to furnish the required information within the meaning of Section 176 & Section 177 of the Indian Penal Code.

The Commission or any other officer, not below the rank of a Gazetted Officer, authorized by the Commission may enter any building or place where it has reason to believe that any document relating to the subject matter of the inquiry may be found and seized.

- Possibility for the institution to refer a case to the courts?

Yes.

- Advice and recommendations on laws and policies:
 - Possibility for the institution to make recommendations regarding the adoption of or amendments to laws, in particular with respect to the right to effective protection from violence and sexual exploitation?

Yes. The Commission in pursuance of its statutory responsibilities approved the guidelines for the speedy disposal of child rape cases in the year 2007. The task of evolving guidelines was taken by the Commission when it was apprised about three incidents of sexual assault and rape of minor girls in Kerala by an NGO. The Commission was facilitated in the task of preparing these guidelines by Home Secretaries and Directors General of Police of all the States/Union Territories. Later these guidelines were forwarded to the Home Secretaries and Directors General of Police of all the States/Union Territories for information and compliance.

The NHRC India constituted a Committee on 12 February 2007 to examine the issue of missing children in the wake of young children being killed/found missing from one of the neighbouring villages of the National Capital Territory of Delhi, namely, Nithari in NOIDA. The Committee was requested to give its recommendations/suggestions so as to facilitate tracing and restoring of missing children back to their families or to agencies/support system where there could be taken care of and protected. The recommendations/suggestions put forth in the report by the Committee were subsequently endorsed by the Commission and forwarded to the Chief Secretaries and Directors General of Police of all the States/Union Territories, as well as to the National Commission for Women, National Commission for Protection of Child Rights and the Ministry of Women & Child Development, Government of India for their compliance.

Prior to this, pained with the plight of child victims, especially the manner in which their cases were being reported by the media, the Commission in 1998, launched a two-month campaign in New Delhi in collaboration with

the then Department of Women and Child Development, UNICEF and few non-governmental organizations. Subsequently, the NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers across the country. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Based on the deliberations of these workshops, the Commission and the Prasar Bharati, with support from UNICEF, jointly prepared a Guidebook for the Media on Sexual Violence Against Children so as to encourage media professional to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interest of children.

The Commission has played a decisive role in recommending the prohibition of employment of children below the age of 14 years by government officials/personnel. This view of the Commission effected necessary amendments to Conduct Rules of the Central and State Government officials/personnel. By virtue of these amendments, employment of children below 14 years by the government officials/personnel as domestic help now attracts disciplinary action.

It continues to play a prominent role in eliminating the problem of child labour, especially those employed in hazardous industries. It also ensured that the directions given in the landmark judgement delivered by the Supreme Court on 10 December 1996, in writ petition (civil) no. 465/1986 *M.C. Mehta vs. State of Tamil Nadu and others* are implemented.

In 2002, it undertook an Action Research on Trafficking on Women and Children in India which was completed in the year 2004. Its recommendations were forwarded to all the major stakeholders across the country. While conducting the Action Research, two Nodal Officers on Trafficking (one from the Police Department and the other from the Department of Social Welfare/Child Development) were identified to focus on protection, prevention and rehabilitation of children and women who were victims of trafficking. An Action Plan to prevent trafficking was also prepared and disseminated across the country.

- Possibility for the institution to provide advice on draft laws in order to ensure conformity with the Convention on the Rights of the Child, in particular with respect to the right to effective protection from violence and sexual exploitation?

Yes. NHRC India was instrumental in recasting of the Child Marriage Restraint Act 1929 along with the Ministry of Women & Child Development, the Nodal Ministry dealing with children in the Government of India. The recast Act is known as “The Prohibition of Child Marriage Act 2006”.

The Commission also played a major role with regard to the amendment of the Juvenile Justice (Care and Protection of Children) Act 2000. The amended Act is known as “Juvenile Justice (Care and Protection of Children) Amendment Act 2006”.

- Responsibility to promote child participation and taking children’s views into account in all matters affecting them?

Yes.

- Responsibility to promote human rights/child rights education?

It is one of the major functions of the Commission to promote human rights education including child right education.

The Commission ever since it was constituted has been spreading human rights literacy among various sections of society including children. It has brought out various publications. Some of the important publications are “Human Rights Education for Beginners”, “Module on Human Rights Education for Teaching Professionals Imparting Education in Primary, Secondary, Higher Secondary Levels”, “Children in India and their Rights”, “Child Labour (under the Know the Rights Series)”. In March 2009, it organized a National Conference on Human Rights Education at School Level. The main objective of the Conference were to – incorporate human rights education (HRE) in the existing school education system; discuss the challenges relating to human rights education in respect of curriculum and introduction of human rights education at different levels in the school system; policies and perspectives for spread of human rights education at primary, secondary and senior secondary levels; implementation and monitoring of HRE components at different levels in the school system; and deciding a future plan of action.

Due to Commission’s persistent follow-up, the 86th Constitution Amendment Act of 2002 has made right to education a Fundamental Right by inserting Article 21 A, 51 A(k) and amending Article 45. The inserted Article 21-A proclaims that “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine.” Article 51A (k) states that it shall be the duty of every citizen of India “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”. Correspondingly, the amended Article 45 provides for “early childhood care and education for all children until they complete the age of six years”. In order to facilitate the implementation of the 86th Constitution Amendment Act, NHRC India organized a two-day National Seminar on Right to Education in New Delhi on 11/12 September 2008. The recommendations of this seminar were forwarded to all the major stakeholders. The resultant effect of this is that a law has been enacted in the country - the “Right of Children to Free and Compulsory Education Act 2009”.

- Advice provided to children directly?

The Commission has provided advice to children when interacting with them in schools, juvenile homes, children’s homes, etc.

D. Level of intervention (to tick)

- | | | |
|------------------------------|---|----------------------|
| ○ Regional | } | |
| ○ National | } | |
| ○ Local | } | At all levels |
| ○ Between local and national | } | |

E. Functioning of the institution

- How is the head of the agency appointed?
 - Which authorities are involved in the process? What is the role of civil society in such a process? Child participation?

The Chairperson and the Members of the Commission are appointed by the President of India, on the recommendations of a high-level Committee comprising the Prime Minister (as Chairperson), the Speaker of the Lok Sabha (House of the People), the Minister in-charge of the Ministry of Home Affairs in the Government of India, the Leaders of the Opposition in

So far as requisitioning the services of lawyers is concerned, few reputed lawyers have been empanelled by the Commission. Besides, there is a Core Group on Legal Issues which consists of reputed and renowned lawyers to advise the Commission in legal matters.

The Commission has a Law Division which deals with cases of human rights violations. For this purpose, it recruits only those officials who have a formal degree in Law.

- Full time or part time staff?

The NHRC India has a total sanctioned strength of 343 full time staff consisting of various ranks. The Commission has taken recourse to a variety of methods for building and developing a cadre of its own. These include direct recruitment, re-employment, deputation and contractual employment.

- If there is a complaints mechanism within the institution, how is its budget allocated?

- Portion of the overall budget of the institution?

Rs. 205 Millions

- Budget for the hotline?
- Allocated by the Executive? By Parliament?

Rs. 180 Millions (Non-Plan Budget) allocated by the Ministry of Home Affairs, Government of India. Rs.25 Million (Plan Budget) allocated by the Parliament.

- Possibility to raise funds from other sources? (eg. Private sector, international organizations, NGOs, etc)

None. However, at times programmes like training and research are organized in collaboration with international organizations like UNFPA, UNICEF, UNIFEM and British Council and credible NGOs/institutions within the country.

F. Participation of civil society and of children in the functioning of the complaints mechanism

- Specific system for child participation? Representation of children within the institution? If so, of what nature? Representation of girls or of children in difficult circumstances?

- Mechanism of coordination/advice involving civil society?

The Commission has constituted a Core Group of NGOs. The Commission interacts with the Members of the Core Group on important issues including those related to children from time to time.

- What is the nature of cooperation between the institution and civil society organizations? Possibility of signing agreements?

The Commission has constituted several core and expert groups whose members represent civil society organizations. Other than this, it interacts with the civil society organizations through research, training, seminars, workshops and conferences.

Insofar as an individual complaints mechanism is in place:

G. Accessibility

- To all children, without discrimination? Means by which children can access the mechanism and that are known to them (address, hotline, sms)

A complaint to the NHRC may be made in Hindi, English or any other language recognised by the Constitution of India, either by the victim or any other person on behalf of the victim or on a direction or order of any court, and may be submitted in person or sent through post, telegram, fax or e-mail. On-line registration of complaints is also available to the complainants. Urgent complaints can also be lodged, beyond the working hours of the Commission, through mobile number 98-102-98900. No fee is charged on complaints. Any complainant can approach the Facilitation Centre for obtaining information about their complaint. The complainant can also ascertain the status of their complaint through the NHRC's website - www.nhrc.nic.in . The NHRC also takes *suo motu* cognizance of serious matters on the basis of newspaper and media reports.

All complaints in NHRC are processed by the Law Division. On receipt of a complaint, a case number and a file number is assigned to it.

Thereafter details of the complaint are entered into the computer, and an acknowledgement is mailed to the complainant. The Complaint Management and Information System (CMIS) software has been especially devised for this purpose. The complaints are later placed before a Single-Member Bench, or before the Full Commission, as the case may be, for directions. If any complaint requires an investigation, it is carried out by the Investigation Division of NHRC.

- Physical accessibility: child-friendly reception (trained staff and child-friendly space)?

Yes. There is a ramp at the entrance of the Commission to facilitate entry of specially challenged children.

- Geographic accessibility (local branches? In areas frequented by children?) Does the mechanism depend on existing structures (NGOs, schools)?

Geographic accessibility is maintained with help of Special Rapporteurs and State Human Rights Commission. The Special Rapporteurs are very senior officers who, prior to their retirement, have served as Secretaries to the Government of India or Directors General of Police or have done exemplary service in a human rights related field. They are either assigned specific subjects to deal with, such as Bonded Labour, Child Labour, Custodial Justice, Disability, etc., or a zone comprising a group of States to look into human rights concerns and violations.

- Effectiveness? Relationship between the national and local levels?

Extremely effective. The credit for this goes to the Chairperson, Members, Special Rapporteurs and senior officers of the Commission.

- Practical/material accessibility (Languages; access by children with disabilities)

Yes.

- Activities in place to provide information and advice to children, in a child-sensitive manner, particularly to child victims of sexual violence or exploitation?

As mentioned above, guidelines have been developed by the Commission for speedy disposal of child rape cases. It also encompasses few guidelines for the trial courts.

- Dissemination of information on the role and existence of the complaints mechanisms to potential users?

Yes.

H. Protection

- Description of allegations received and processed regarding violence against children, particularly cases of sexual violence and exploitation (numbers, nature, form)

The Commission from its inception till date has registered altogether 5,246 cases of children. Their break-up is as follows: alleged death in homes (9); child labour (678); child marriage (408); prostitution of children (56); custodial deaths in juvenile homes (18); death in homes (1,167); deaths in judicial custody (103); death in police custody (4); disappearance/missing (632); exploitation of children (572); trafficked children (107); sexual harassment (223); complaints of miscellaneous nature (1,269). Cases of children which are not covered under the aforementioned 12 heads are dealt under the category of miscellaneous nature.

- Proactive in visiting structures and private spaces? (number, reports, results obtained)

As mentioned above, a Committee was constituted by the Commission to look into the issue of missing children.

Similarly, visits are made by the Chairperson, Members, Special Rapporteurs and senior officials of the Commission from the time to time across the country for examining the situation of child and bonded labour and their rehabilitation.

- Contribution to child protection policies (legislative reform, child protection strategies)?

The Commission has been instrumental in persevering with the Government of India to ratify the two Optional Protocols to the Convention on the Rights of the Child.

It has enabled the Government in recasting of the “Prohibition of Child Marriage Act 2006”.

It has contributed immensely in drafting the National Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women.

I. Confidentiality and protection of the child's right to privacy

- How does your institution ensure the protection of the confidentiality of the child?

While dealing with different cases relating to violation of children's rights, the principle of confidentiality is maintained through out.

- What are the procedures for archiving documents?

The Commission has evolved an effective Complaint Management and Information System (CMIS) software for archiving documents.

- What kind of relationships does your institution establish with parents/tutors of children?

Effective and cordial.

- Are there any mechanisms of coordination with NGOs, associations or institutions for children? With other human rights mechanisms?

Already mentioned above.

J. Follow-up / Evaluation

- Follow-up of judicial procedures?

Yes.

- Follow-up of child victims, particularly child victims of sexual violence and exploitation?

Yes.

- Obligation of annual reporting? If so, to which authorities?

Yes, the Annual and Special Reports of the Commission are submitted to the Central and the State Governments. The Central Government and the State Governments, as the case may be, shall place the same before each House of Parliament or the State Legislature 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.

K. Challenges, Good practices and Recommendations

Ever since the Commission was constituted, it has faced many challenges and in the process evolved good practices with regard of prevention of trafficking in children, prevention and prohibition of child and bonded labour. It has also made important recommendations with regard to combating trafficking in children, reporting of custodial deaths/rapes in juvenile/children's homes. Issue of missing children, prohibiting employment of children below the age of 14 years as domestic help by government officials/personnel and child labour in slaughter houses.
