

Foundation Course

Semester 3

REDRESSAL MECHANISMS

REDRESSAL MECHANISMS AT THE NATIONAL AND STATE LEVELS

Understanding the rights of people in a democracy is not enough. There is also a need to understand the implementation of these rights. Legal provisions merely do not provide the atmosphere and the eligible conditions to enjoy citizenship in a democracy. There have been several philosophies that stated the need for a sovereign to ensure good governance. Man by nature, is selfish and it is rare that he would sacrifice his goals of achieving the maximum from a free society. Hence the need to protect the vulnerable becomes an utmost necessity in the present modern world.

Our Constitution by article 32 and Article 226 has recognized every individual's rights to seek redressal from the court if his/her rights are violated. These are termed as the Right to Constitutional Remedies. The judiciary, especially the Supreme Court has been empowered to accept/entertain writ petition from person or persons whose rights are violated.

These constitution makes provisions for such institutions with the details of their establishment, tenure, appointment and powers clearly specified to avoid disputes.

The appointment of such redressal mechanisms are done at all federal levels to ensure smooth and democratic functioning. There are state and National level Commissions developed in this regard. A few important redressal tools in the form of Commissions are discussed in the unit.

THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by The Protection of Human Rights Act, 1993 (TPHRA). The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

The Commission undoubtedly has some achievements to its credit. It has succeeded in persuading the Central Government to sign the United Nations Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment. It has brought into sharp focus the problem of custodial deaths and taken steps to see that these are not suppressed by the state agencies and that the guilty persons are made to account for their sins of commission and omission. It has also helped in designing specialised training modules on human rights for introduction in the educational and training institutions.

The Commission has a wide mandate including civil and political rights, economic, social and cultural rights, and group rights. Section 12 lays down that the Commission shall perform all or any of the following functions, namely: Inquiring, suo motu, or on petitions, presented to it by victims, or any persons on their behalf, or on a direction or order of any court, into complaints of violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant. Intervening in any proceeding involving any allegation of violation of human rights pending before a Court, with the approval of such Courts. Visiting, 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 making recommendations. Reviewing the safeguards provided by, or under, the Constitution, or any law for the time being in force, for the protection of human rights, and recommending measures for their effective implementation. Reviewing the factors, including acts of terrorism, that inhibits the enjoyment of human rights, and recommending appropriate remedial measures. Studying treaties and other international instruments on human rights, and making recommendations for their effective implementation. Undertaking and promoting research in the field of human rights.

Spreading human rights literacy amongst various sections of society, and promoting awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means. Encouraging the efforts of non-governmental organisations, and institutions working in the field of human rights. Undertaking such other functions as may be considered necessary for the promotion of human rights.

THE NATIONAL COMMISSION FOR SCHEDULED CASTES (NCSC) AND THE NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST)

The first Commission for the SCs and the STs was set up in August 1978. It was set up as a National level Advisory Body to advise the government on board policy issues and levels of development of Scheduled Castes and Scheduled Tribes. It was in 1990 that the body was proclaimed Statutory.

It was later that the National Commission for Scheduled Caste and Scheduled Tribes was bifurcated by the Constitution (Eighty-Ninth Amendment) Act, 2003 to establish separate Commissions for SCs and STs. The NCST was established in February 2004.

The Functions of both the Commissions can be envisaged as follows:

To investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes/Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes/Scheduled Tribes;

To participate and advise on the planning process of socio- economic development of the Scheduled Castes/Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

To make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and to introduce other measures for the protection, welfare and socio-economic development of the Scheduled Castes/Scheduled Tribes; and

To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes /Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

THE NATIONAL COMMISSION FOR WOMEN (NCW)

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India) to: review the Constitutional and Legal safeguards for women ; recommend remedial legislative measures ; facilitate redressal of grievances and advise the Government on all policy matters affecting women.

In its advisory role, the Commission is to participate and advise on the planning process of socioeconomic development of women. The commission is empowered to undertake research and special studies or investigations into specific problems or situations arising out of discrimination and atrocities on women and recommend measures to deal with these. Through its annual and other reports it can make recommendations for the effective implementation of safeguards provided to women in the Constitution. It has a specific task of recommending amendments to meet any lacunae, inadequacies or shortcoming in the existing legislations. The Commission has so far reviewed about 23 laws and made more than 700 recommendations to the government. The Commission has also brought out many special studies.

THE NATIONAL MINORITIES COMMISSION (NCM)

The Recognition and protection of minority rights under a legal framework has two fold objectives –firstly to prevent state from being oppressive against the minorities as in a democratic setup government is run by majority, secondly to provide the minority a protective zone whereby they can preserve their separate identity while contributing in national development and progress. The Constitution of India neither defines the term minority nor

provides details relating to the geographical and numerical specification of this concept though it talks about the rights of —minorities|| under Article 29 and 30.

In order to preserve the country's secular traditions, to promote national integration and to remove any feeling of inequality and discrimination amongst minorities, the Government of India constituted a Minorities' Commission in 1978 through administrative order which was later on regularized by _The National Commission for Minorities Act, 1992.' The Commission discharges the following' functions under Section 9 of the Act : evaluate the progress of the development of minorities; monitor the working of the safeguards provided in the Constitution and other enactments; make recommendations to appropriate government for the effective protection of the interests of minorities; look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities; studies into problems arising out of any discrimination against minorities and recommend measures for their removal; conduct studies and researched analysis on the issues relating to socio-economic and educational development of minorities; suggest appropriate measures in respect of any minority to be undertaken by the appropriate government; make periodical or special reports to the Central Government on any matter relating to minorities and in particular difficulties faced by them; and any other matter which may be referred to it by the Central Government.