

HUMAN RIGHTS REGULATORY REGIME IN INDIA: AFTER THREE DECADES

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Abstract

Human rights, as the name suggests, are inherent to all human beings and are available to all by virtue of being humans. These rights form the basis of life, liberty, equality, and dignity, which has been recognized by the international community. The international community has therefore tried to strengthen the idea of establishment of national human rights institutions in its member countries. The National Human Rights Commission (NHRC) of India, which was established after the realization of the importance of a national institution for the preservation and protection of human rights by the government of India, has been in service for around three decades now. It is popularly perceived that the maiden decade of NHRC was its golden decade since it very often made the headlines, owing to its operations across the country. However, it goes unnoticed that the commission has continued to be as effective as it was at the time of its establishment with an objective to mainstream human rights into the Indian legal system through systematic dissemination of information and wisdom vis-à-vis human rights through educational enterprise, training, and research across the country; timeous disposal of complaints; and increasing effective coordination with the state commissions and the international bodies working for the preservation of human rights. This research ergo discusses the role played by NHRC in encouraging and protecting human rights, and compares the operations of the commission in its first decade and the years that follow.

Keywords: Human Rights, National Human Rights Commission, India

Introduction

The international community started recognizing the importance of national human rights institutions as early as 1946 when a proposal for their establishment was first tabled in the United Nations forum, to act as ‘agents’ of international law in the national arena.¹ The object behind the establishment of these institutions was to introduce vectors to transmit the norms of human rights law recognized by the international community from the global to the domestic arena. It was believed that this transmission would be carried out by strengthening education

¹Report of the Commission on Human Rights, E/38/Rev.1 (1946), 5-6; E/HR/15 (1946), seventh meeting, 8 May 1946; Anna-Elina Pohjolainen, "The Evolution of National Human Rights Institutions: The Role of the United Nations" (Copenhagen: Danish Institute for Human Rights, 2006), p. 85.

and encouraging substantial protection of human rights in national legislation. Domestic institutions are also capable of monitoring compliance with the treaty obligations by the government.² Additionally, such institutions were to be accessible, independent, and custodians of wide-ranging powers, thus having the potential to ensure human rights protection at an increased level.³

In this regard, a UN-sponsored meeting was convened in 1991 to discuss the status of national institutions for human rights protection by representatives of such institutions, which resulted in the adoption of a set of principles, known as the Paris principles, on the status of such national institutions.⁴ Subsequently, the UN Commission on Human Rights in 1992⁵ and the UN General Assembly in 1993⁶ endorsed the Paris principles. These principles became the foundation for the establishment of national human rights institutions. In 1993, the Vienna Declaration was adopted at the Vienna World Conference on Human Rights which highlighted the significant role played by the national institutions in ensuring human rights protection, especially in disseminating relevant information, promoting education and training in human rights, offering advice to the competent authorities, and making efforts that sought to remedy human rights violation.⁷ In 1993 itself, as a response to the Paris principles, India came up with the Protection of Human Rights Act, which established the NHRC entrusting it with a wide range of powers and functions including intervention and inquiry into the matters pertaining to human rights, making recommendations for effective implementation of laws and treaty obligations, promoting education and research on human rights, etc.⁸

Age of Activism (1994-2003)

The National Human Rights Commission of India was established on 12th October 1993 under the Protection of Human Rights Act, 1993 (hereinafter referred to as 'act'). The act stipulates the functions and powers of the body under sections 12 and 13 respectively. Section 14 of the act further empowers the body to utilize the services of any officer or investigation agencies under the state or central government. In the exercise of the powers and functions provided in

²16, H.O. AGARWAL, *INTERNATIONAL LAW AND HUMAN RIGHTS* 954 (Central law Publications, 2009).

³ Catherine Shanahan Renshaw, *National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels*, *Global Governance*, 18 3 299-316 (2012).

⁴Ravinder, *Contribution of the National Human Rights Commission to Protect Human Rights in India*, 7 *INTERNATIONAL RESEARCH JOURNAL OF MANAGEMENT SOCIOLOGY AND HUMANITIES*(2016).

⁵ Commission on Human Rights Resolution 1992/54 of 3 March 1992.

⁶ General Assembly Resolution 48/134 of 20 December 1993.

⁷Catherine, *supra* note 3

⁸Ravinder, *supra* note 4

the act, the commission since its establishment has ceaselessly made efforts to increase human rights literacy, made recommendations for effective implementation of international obligations, intervened in matters pertaining to human rights violation, made visits to prisons, correctional institutions, hospitals, and mental health institutions to ensure the protection of the right to life, including the right to liberty, health, and freedom from torture, made efforts to promote research, and the like, which can be deduced from a collective reading of annual reports published by the commission.⁹

The NHRC was established amidst considerable scepticism on the part of advocates of human rights as to the efficiency of the commission in better protection of human rights. Therefore, it began its operation with a knee-jerk effort to preserve human rights by focusing major lyon the dissemination of information, increasing accessibility of the commission, and the generation of awareness.¹⁰This effort includes setting up an Information and Public Relations division, and computerization of its work to introduce a user-friendly complaint monitoring system (COMMONS)¹¹, among others, which was further strengthened by subsequent efforts of the commission¹², seeking the cooperation of and association with NGOs for education, research, training and awareness pertaining to human rights¹³, encouraging human rights literacy by making academic curricula of institutions inclusive of human rights as a subject¹⁴, and by making constant efforts for constitution of a research division within the commission, which finally became operational during the year 1996-97.¹⁵

It is due to the efforts of the commission to disseminate information and increase human rights literacy that there was a systematic and significant upsurge of complaints registered with the commission as a result of increased awareness among people about their human rights and freshly pounded trust in the body. The complaint docket embracing a yearly record of the number of complaints addressed to the commission has been illustrated below.¹⁶

⁹Annual Reports, National Human Rights Commission, available at: <https://nhrc.nic.in/publications/annual-reports> (last visited Oct. 8, 2022)

¹⁰ Annual Report 1994-95, National Human Rights Commission, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201994-95.pdf> (last visited Sept. 25, 2022)

¹¹ *Id.* para 11.5-7

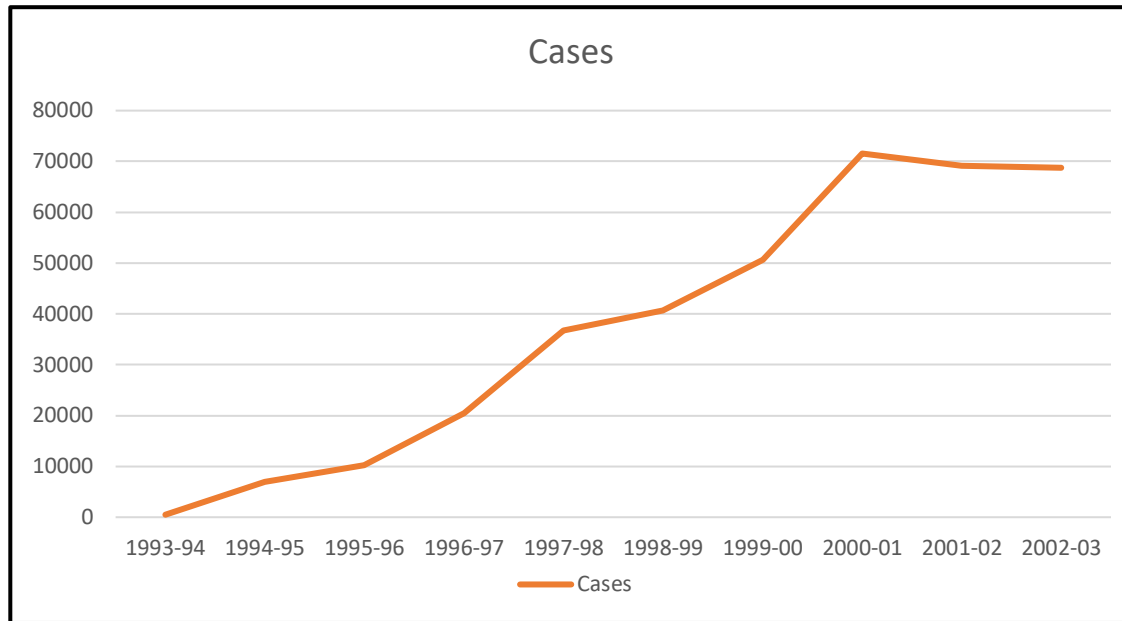
¹² Annual Report 1996-97, National Human Rights Commission, para 11.5, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201996-97.pdf> (last visited Sept. 25, 2022)

¹³ See *Supra* note 10, para 7.3; See Annual report 1995-97, National Human Rights Commission, para 7.4, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201995-96.pdf> (last visited Sept. 25, 2022)

¹⁴ See *Supra* note 10, para 6.1; Annual report 1995-97, National Human Rights Commission, para 7.4, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201995-96.pdf> (last visited Sept. 25, 2022)

¹⁵ Annual Report 1996-97, National Human Rights Commission, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201996-97.pdf> (last visited Sept. 25, 2022)

¹⁶ Annual Report 2002-03, National Human Rights Commission, available at:



This suggests that while the commission encouraged aggrieved individuals to approach with their complaints, it also sought to establish an environment that fosters due respect for human rights. Looking at the rising cases, the commission constantly advocated for decentralization and the setting up of state commissions and human rights courts.¹⁷Sensitization was another and hitherto the most emphasized focus area of the commission. To achieve this, NHRC made efforts to build interaction with the media in order to have a wider coverage of its activities.¹⁸Acknowledging the significance of media association, it recognized in its annual report that media is an “*invaluable associate in its efforts to promote and protect human rights.*”¹⁹

Significant efforts were made by the commission to improve the police-community relationship by sensitizing the police force on human rights. To achieve this, the commission continually advocated for the constitution of human rights cells in state police headquarters, and district complaint authority, and for the adoption of other such measures to improve the ‘out-reach’ of police officers in order to gain the confidence of the public. The commission even provided elaborate guidelines on the functioning of human rights cells to the State governments.²⁰

<https://nhrc.nic.in/sites/default/files/AR02-03ENG.pdf> (last visited Sept. 27, 2022)

¹⁷See *Supra* note 10, para 10.1; Annual Report 1995-96, para 8.6, National Human Rights Commission, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201995-96.pdf> (last visited Sept. 26, 2022)

¹⁸ See *Supra* note 10, para 6.17

¹⁹See *Supra* note 18, para 6.25

²⁰Annual Report 2000-2001, National Human Rights Commission, available at:

However, the commission soon realized that the provisions of the act need to undergo significant amendments to create a firm impact and ensure better protection of human rights. In this regard, the commission recommended certain amendments to the act including the inclusion of the term ‘international covenant’ in the long title of the act, recognition of inquiry on the basis of a request made by the Supreme court, omission of the requirement of intimation to the state government prior to visiting any jail or other institution under the control of that state government, the inclusion of the power to obtain statements of witnesses or any other person along with summoning and examining them on oath, the inclusion of the power to transfer complaints to the state human rights commissions and entrusting the officers of the commission with investigative powers, among others.²¹

Major interventions that gathered media attention

1. In 1995, the commission filed a public interest litigation petition in the Hon’ble Supreme Court of India, drawing its *locus standi* from article 32 of the Indian constitution, for safeguarding the interests of the *Chakma* community, which was displaced from erstwhile East Pakistan, under article 21 which provides for the right to life and liberty. As a result of this intervention, the government of Arunachal Pradesh was directed to ensure the life and personal liberty of *Chakma* refugees residing in the area. This judgment even recognized the guarantee of rights mentioned under article 21 to foreigners as well.²²
2. Following a referral made by the Supreme Court to the NHRC of a case concerning the mass cremation of human bodies by Punjab police, the commission took cognizance of the same and arranged for the award of monetary compensation to the next of kin of each of the victims of the incident after holding the State accountable and responsible for the infringement of the right to life of the deceased.²³
3. NHRC took *suo moto* cognizance of deaths caused due to starvation in the Koraput, Bolangie, and Kalahandi districts of Orissa in 1996 following media reports covering the incidents and appointed a special rapporteur to look into the rehabilitation and grant of relief to the residents of the region. This gets reviewed by the commission periodically.²⁴

<https://nhrc.nic.in/sites/default/files/Annual%20Report%202000-2001.pdf> (last visited Oct. 8, 2022)

²¹Annexure, Annual Report 1999-2000, National Human Rights Commission, available at: <https://nhrc.nic.in/sites/default/files/Annual%20Report%201999-2000.pdf> (last visited Oct. 8, 2022)

²²National Human Rights Commission of India v. State of Arunachal Pradesh, AIR 1996 SC 1235

²³Ravinder, *supra* note 4

²⁴*Id.*

4. In 2002, the commission took *suo moto* cognizance of Gujarat communal riots based on media reports and initiated an inquiry into the incidents. The commission directed the state government to submit a report stating all the measures taken by the government to restore peace in the state. NHRC also approached the Supreme Court of India on behalf of the victims of the Gujarat riots.²⁵
5. In 2003, the commission took *suo moto* cognizance of a case concerning terrorist attacks in Jammu & Kashmir that resulted in the deaths of ‘Vaishno Devi’ pilgrims following media reports. The commission reviewed relief and assistance provided to the Kashmiri Pandits in the migrant camps.²⁶

Age of Pragmatism (2004 Onwards)

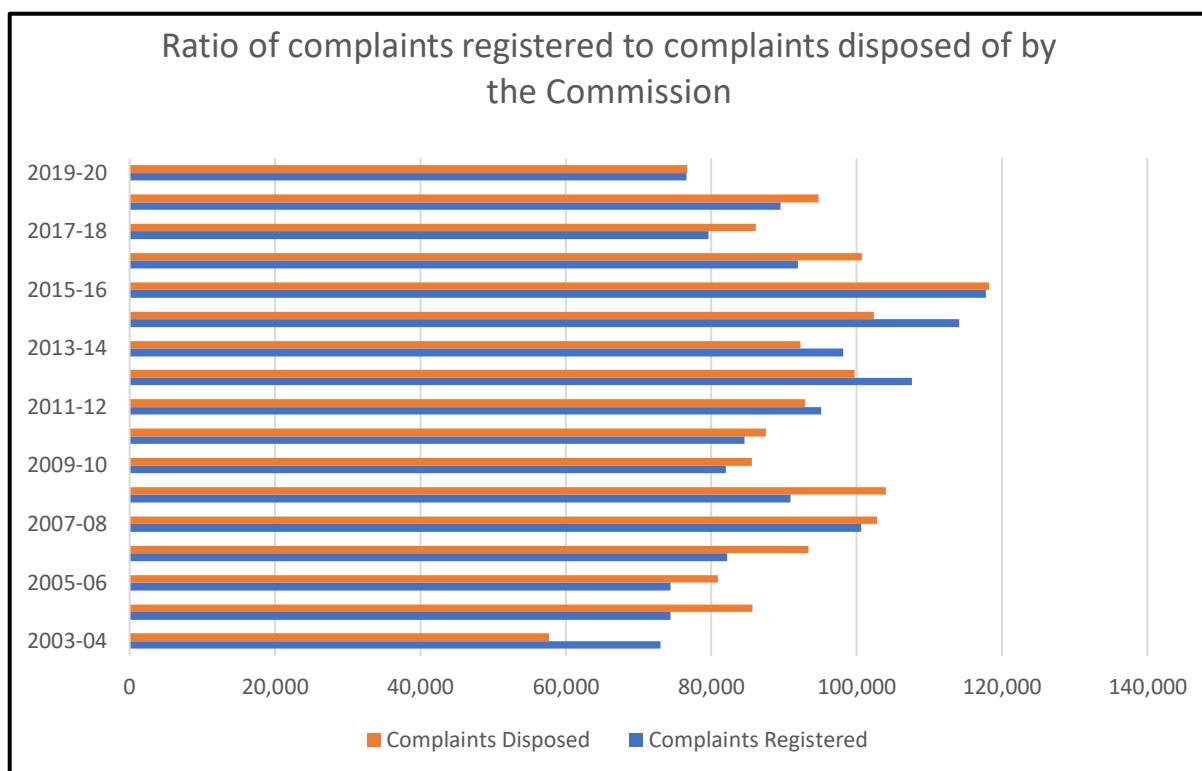
One of the major setbacks faced by the commission during its first decade was the increasing number of pending cases over the years which became the driver for effective measures taken by the commission to dispose of the backlog of cases. The focus of the commission has continued to be on the expeditious disposal of complaints addressed to it since 2003 along with the disposal of pending cases.²⁷ A graph illustrating the ratio of cases disposed of and cases registered with the commission since 2003 is provided below.²⁸

²⁵*Id.*

²⁶ Press release, ‘Year-end review 2003 NHRC’, available at: <https://nhrc.nic.in/press-release/year-end-review-2003-nhrc> (last visited Oct. 8, 2022)

²⁷Annual Reports, 2002-03 onwards, National Human Rights Commissions

²⁸Complaint Dockets, Annual reports 2003-04 to 2019-20, National Human Rights Commission



As of 2020, the statistics suggested that leaving the disposal of cases from 2011-2014, the number of cases that have been disposed of by the commission since 2003 has always outnumbered the fresh complaints registered with it. Further, the data also shows that up until 2016, there has been a gradual increment in the number of cases that were addressed to the commission, suggestive of the fact that the body continued with its efforts to increase awareness and human rights literacy.

In the last two decades, the commission has endeavoured to strengthen the research division by establishing core groups on relevant subjects including a core group on women, children, trafficking of women and children, health and mental health, persons with disability, elderly persons, bonded labour, right to food, lawyers, NGOs, environment, business and the like.²⁹ Besides core groups, the research division of the commission also works on subjects such as the rights of seafarers, SCs/STs, minorities, internally displaced persons, education, under-trial prisoners, manual scavengers, LGBTQI, local self-government, etc. The core groups and other groups of subjects conduct open house discussions and meetings with relevant stakeholders to release recommendations or advisories on any issue that falls within the brackets of the abovementioned subjects. Further, the commission also takes up research projects and assigns

²⁹Core Groups, National Human Rights Commission, available at: <https://nhrc.nic.in/about-us/core-groups/archive> (last visited Oct. 9, 2022)

them to various academicians and researchers of relevant fields in order to further strengthen the protection of human rights by identifying ambiguities or loopholes in the present protection system and offering suggestions to cure the same.

However, despite strengthening the administrative framework of the body, limited powers of the commission as provided in the act often created hindrances to human rights protection. It is due to the relentless efforts of the commission that the act underwent amendments in 2006 and 2019 that sought to expand the powers of the commission for an effective discharge of its functions. These amendments include the omission of the precondition to intimate the state governments before making visits to prisons, correctional institutions, and the like, subject to any law in force; insertion of a provision for transfer of complaints to state human rights commission; the inclusion of power to recommend authorities to make any payment of compensation, interim relief, or damages to the complainants; the introduction of a provision empowering the commission to make regulations to carry out the provisions of the act; inclusion of provisions for state human rights commissions and human rights courts; the inclusion of a provision to increase the representation of women in the commission; among others.³⁰

In the last two decades, the commission has constantly attempted to make legislation and policies of the government human rights sensitive. These efforts include recommendations to include rehabilitation and resettlement in the Land Acquisition Act of 1894³¹ to make such provisions justiciable that served as a contributing factor when the provisions were finally incorporated in the revised act of 2013³²; recommendations to convert *Vishakha* guidelines of the Supreme court³³ for the protection of women from sexual harassment at workplaces to national legislation³⁴ that led to the enactment of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*; recommendations to ratify the UN convention against torture³⁵ that persuaded the government to propose the *Prevention of*

³⁰ The Protection of Human Rights (Amendment) Act, 2006; The Protection of Human Rights (Amendment) Act, 2019

³¹ Annual Report 2004-05, National Human Rights Commission, available at: <https://nhrc.nic.in/sites/default/files/AR04-05ENG.pdf> (last visited Oct. 9, 2022)

³² Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

³³ *Vishakha and others v. State of Rajasthan*, AIR 1997 SC 3011.

³⁴ See *Supra* note 16

³⁵ Press release, 'Government urged to ratify UN Convention against Torture', available at: <https://nhrc.nic.in/press-release/government-urged-ratify-un-convention-against-torture> (last visited Oct. 9, 2022)

Torture bill in 2010 however, there isn't any development in this regard since 2010; among many others.

In 2018, a bench comprising of Justice Dr. D. Y. Chandrachud and Yashwant Varma interpreted the meaning of 'recommend' under section 18 of the act and opined that the "commission is not merely a body to render opinions without enforcement as that would defeat the statutory object underlying the constitution of such a body".³⁶ Nevertheless, due to the lack of binding nature of the recommendations of commissions as provided under the act, the authorities continuously and very conveniently ignore the recommendations made by the body despite perpetual insistence by the body which is why a few years back, the former Chairperson of the commission, Justice H.L. Dattu, referred to the body as a 'toothless tiger'.³⁷

Major interventions that gathered media attention

1. In 2007, the commission took *suo moto* cognizance of the case concerning the deaths of the factory workers, who were members of a tribal community from Alirajpur, Madhya Pradesh, due to Silicosis in Gujarat following media reports. The reports claimed that these tribal labourers were exposed to silica dust without any protection while working in the factories.³⁸
2. In 2008, the commission took cognizance of various cases of internal displacements due to infrastructural projects and made recommendations for rehabilitation and resettlement. Later provisions in this regard were incorporated in the Land Acquisition Act itself.³⁹
3. Apart from these, the commission has continuously intervened in issues pertaining to communal violence in Jammu and Kashmir⁴⁰, recommended making counterterrorism

³⁶State of Uttar Pradesh v. National Human Rights Commission, Writ - C No. - 15570 of 2016

³⁷Gargi Verma, *Need more power to become a 'toothful' tiger: NHRC chief HL Dattu*, available at: <https://indianexpress.com/article/india/need-more-power-to-become-a-toothful-tiger-nhrc-chief-hl-dattu-6267161/> (last visited Oct. 9, 2022)

³⁸Ravinder, *supra* note 4

³⁹Press release, 'Some important interventions of NHRC', 2008, available at: <https://nhrc.nic.in/press-release/some-important-interventions-nhrc#:~:text=There%20are%20a%20number%20of,mega%20projects%2C%20disasters%20and%20conflicts> (last visited Oct. 9, 2022)

⁴⁰Press release, 'NHRC takes suo-motu cognizance of terrorist killings of Kashmiri Pandits - Government of India and J&K Government asked to report', available at: <https://nhrc.nic.in/press-release/nhrc-takes-suo-motu-cognizance-terrorist-killings-kashmiri-pandits-government-india-0> (last visited Oct. 9, 2022)

laws human rights sensitive⁴¹, periodically released recommendations for the protection of manual scavengers, etc.

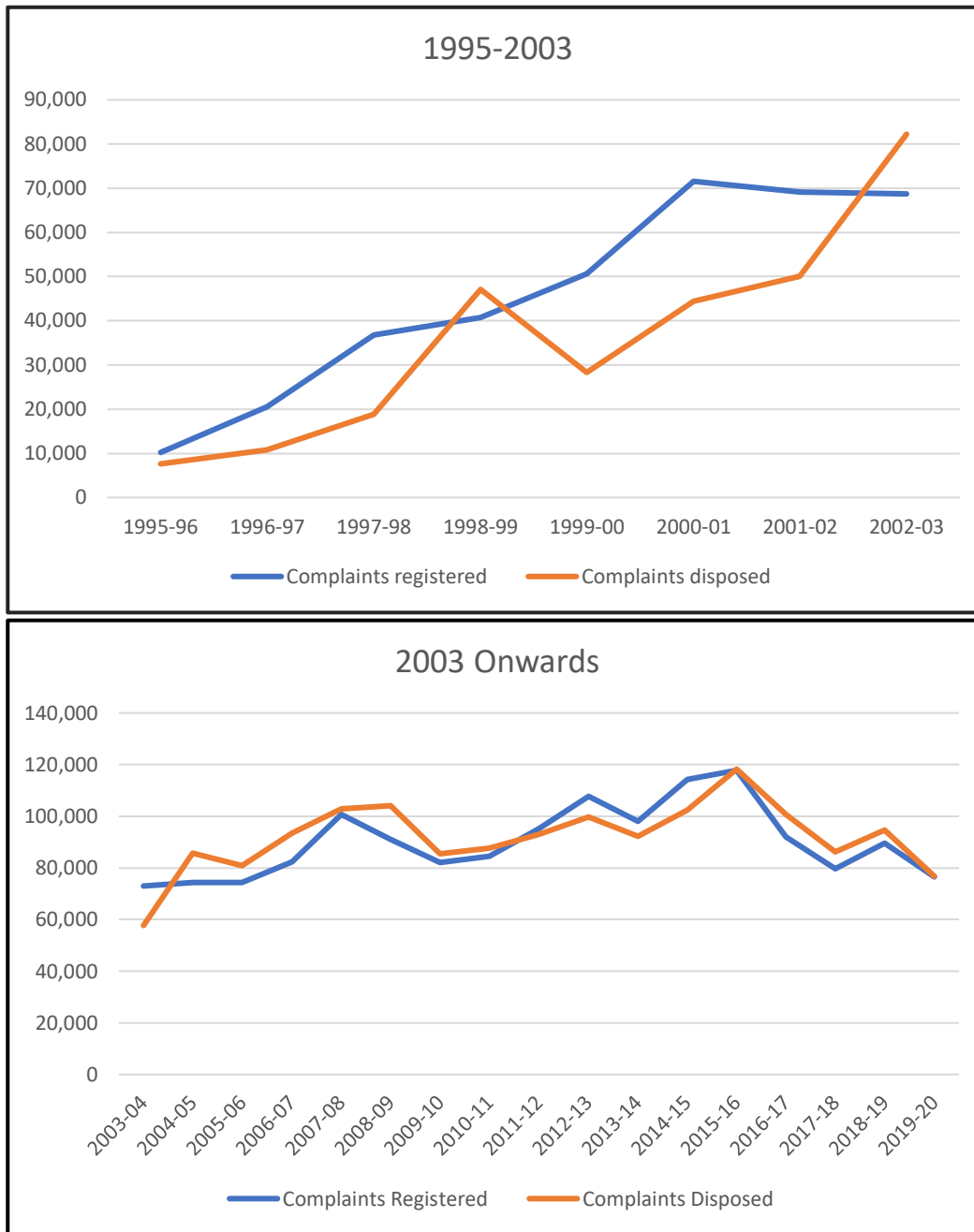
Comparative Study

The first decade, which is very often referred to as the ‘golden decade’ of NHRC, began with efforts to increase awareness and human rights literacy in the country which was lacking when the commission was established. The body majorly focused on sensitization and drawing media attention by taking up issues that made headlines since there existed public scepticism as to the capability of the institution in ensuring human rights protection. However, in the years following the first decade, the body restricted itself more to education, research, and ensuring compliance. The research division was strengthened, recommendations and advisories were released by the commission more regularly, and the powers of the commission were expanded owing to the concerted efforts of the body and the government which resulted in recommendations for payment of compensation to the aggrieved persons and more policies directed at achieving social welfare during this period.

Since the focus of the body was predominantly on sensitization in the first decade, there existed a backlog of cases that increased over the years during the period. This became a reason for concern and a shift in focus of the body from sensitization to compliance. The graphs provided below depict the ratio of complaints addressed to the commission and the number of cases disposed of, including the backlog cases, during the two periods in question.⁴²

⁴¹ Recommendations, Negative effects of Terrorism on the enjoyment of Human Rights, National Human Rights Commission, India

⁴² Annual Reports, NHRC, *supra* note 9



The graph for the first decade depicts a disparity in the ratio of complaints registered to that of complaints disposed of throughout the period, which the commission overcame twice i.e., during the year 1998-99 and during 2002-03 as opposed to the graph for the second period in question i.e., 2003 onwards, which suggests that the focus of the commission throughout the period has been timeous disposal of complaints and disposal of pending complaints addressed to it.

During the first decade, NHRC sought to increase awareness, human rights literacy, and accessibility of people to the commission and took up issues that gathered limelight along with

making persistent efforts to dispose of complaints, strengthen its research division, and persuade the government to make amendments in the act for enlargement of powers of the commission. However, the focus of the body was more on the former than on the latter, which has been vice versa for the next two decades in question. Owing to this, the first decade has been referred to as the ‘age of activism’ while the next two decades, wherein the commission disposed of complaints addressed to it timeously, overcame the backlog of complaints effectively, underwent structural changes in its research division, became the reason for right-sensitive enactments and policies, and became successful in convincing the government to make amendments in the act, have been referred to as the ‘age of pragmatism’. The shift from the former to the latter was a gradual process and the periodization is taken on a tentative count, with no watertight compartmentalization to this end.

Conclusion

The ‘age of activism’ of the commission contributed to the dissemination of information, human rights literacy, and awareness despite the obstacles caused by the crippling poverty and literacy rate of India, and gaining people’s trust in preserving and protecting their human rights, especially of the vulnerable strata of society by making a strong presence in the media. On the contrary, the ‘age of pragmatism’ contributed to an increase in research, an increase in the number of open house discussions, meetings, and visits leading to the frequent release of recommendations and advisories to make policies human rights sensitive. Both activism and pragmatism are a matter of policy of the commission and have contributed to betterment in human rights protection.

In order to make an impact through the discharge of its functions, the commission not just needed to make its presence felt but also gain the trust of the community. This could have only been achieved through activism, media sensitization, dissemination of information, and awareness programs. Hence, the policies of the commission initially circled activism as required by the circumstances. Once the commission became successful in establishing its mark and in gaining community support, it restricted its operations to achieve effective compliance with its functions pertaining to expeditious disposal of fresh and pending complaints, offering continuous recommendations and advisories to relevant authorities, maintaining a sturdy focus on research and education, etc. Thus, the policies after the first decade have continued to be aimed at achieving compliance or pragmatism which has become indispensable given the prevailing state of affairs.