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The concept of democracy is based on several competing principles such as the Benthamite maxim of “greatest good for the greatest number” (Pratt 1955) and that of “majority rule and minority rights” (Dion 2011). The former principle argues that governments must make decisions which benefit the greatest number of people possible. The latter suggests that even governments elected by a popular majority are obliged to protect minority rights. These principles have the potential to come into conflict with each other and need to be balanced by elected governments charged with running democratic states. Therefore, the constitutions of many, if not most democratic nations, provide for the protection of minority rights even if a majority elects the government.^[1] Ideally, a government is obliged to balance between these principles. However in practice, especially when a majoritarian government is elected, it tends to pay lip service to safeguard the minority rights in favor of serving the interest of the majority. One way to gauge whether a government is implementing a constitutional mandate (in this case mandates related to minority rights in India) on the ground or is merely being strategically compliant is through evaluating the strength of governance and institutions related to that mandate.

This case study evaluates the National Minorities Commission of India (hereinafter referred to as NCM or as the Commission) - a constitutional body set up under the National Commission for Minorities Act, 1992 mandated to protect the rights of the religious minorities in India.^[2] The analysis indicates that successive governments in India have been merely strategically compliant to the cause of protection of minority rights while NCM as an institution suffers from several major structural inefficiencies and challenges. Three challenges, in particular, have been discussed: (1) Capacity related challenges; (2) Financial planning and expenditure related challenges; and (3) Legal and constitutional authority related challenges. The Commission is unable to effectively deliver on its mandate due to these challenges which result in inefficiencies.^[3] The analysis also suggests several ways in which the identified challenges can be addressed.

Historical Context

India attained independence from British colonial empire in 1947 after nearly two hundred years of subjugation. The freedom struggle and independence came at a huge cost. In the ensuing struggle against the British empire, religious lines divided the Indian population. A new nation, Pakistan, was carved out from the eastern and western parts of India. The

division of India left nearly fifteen million people displaced and more than a million dead during one of the bloodiest mass migrations in history.^[5] The genocide of partition that took place on religious lines left a deep-seated insecurity among the religious minorities in India. Even after the partition, there were more Muslims in India than in Pakistan. Nevertheless, as per the 1951 census, they constituted a minority of the Indian population (9.8 percent) alongside Christians (2.3 percent), Sikhs (1.89 percent), Buddhists (0.74 percent), and Jains (0.46 percent).^[6] As a result of the experiences of the partition of the nation and subsequent incidences of religion-based violence in the nation, the need for a dedicated commission emerged to safeguard the rights of the minorities laid down in the Constitution of India.^[6]

2. Background, Genesis, and Mandate of NCM

On January 12, 1978, the Ministry of Home Affairs established the National Minorities Commission of India in a resolution which specifically mentioned that:

“despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities ... in the Constitution...”.^[7]

In 1984, the Minorities Commission was detached from Ministry of Home Affairs and placed under the newly created Ministry of Welfare. Once the National Commission for Minorities Act was enacted in 1992, the Minorities Commission became a statutory body (i.e. recognized by the constitution) and was renamed as National Commission for Minorities.

Box 1: Mandate of NCM^[8]

As per Section 9(1) of the National Commission for Minorities Act, 1992, the Commission is required to perform the following functions:
(a) Evaluation of the progress of the development of minorities under the Union and States;
(b) Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
(c) Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;
(d) Looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;
(e) Getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal;
(f) Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
(g) Suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
(h) Making periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and
(i) Any other matter, which may be referred to it by the Central Government.

Since 1993 there have been six successive National Commission for Minorities in place with statutory status (the current being the seventh one, appointed in May 2017).

The government of India recognizes six religious communities — Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis), and, Jains - as minority communities. Together they constitute 20.22 percent of India’s population.¹⁹ The Commission requires representation

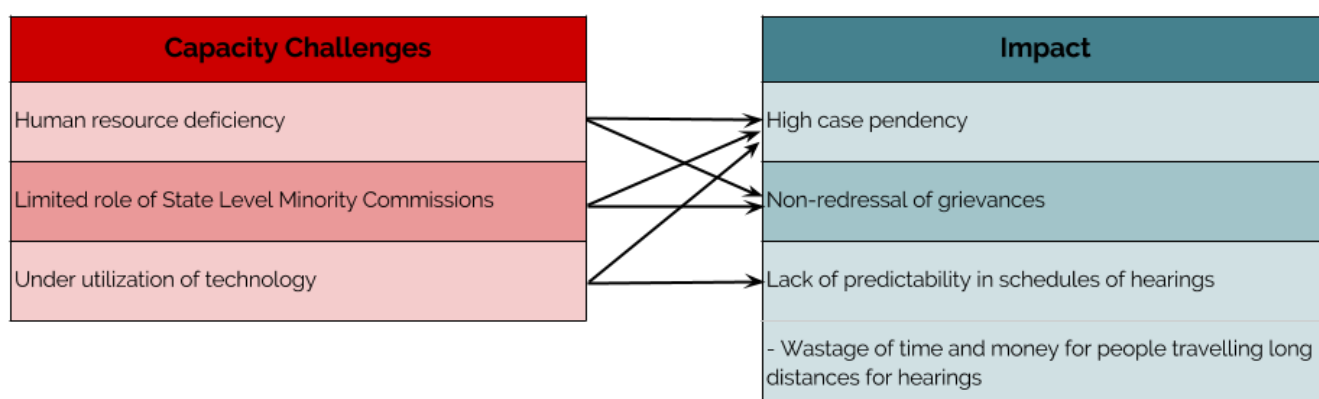
from a member of each of these communities in addition to a Chairperson and a Vice-Chairperson. Together these eight officials (six representatives from each of the six minority communities and a Chairperson along with a Vice-Chairperson who belong to either of the six minority communities) constitute the Commission.

3. Institutional Challenges

The NCM currently faces three types of institutional challenges which have been classified as: (1) Capacity related challenges; (2) Financial planning and expenditure related challenges; and (3) Legal and constitutional authority related challenges.

3.1 Capacity Related Challenges

Figure 1: Capacity Related Challenges and their Impact



The first set of institutional challenges for NCM are related to its capacity to perform its functions. There are three major sets of capacity related challenges for NCM: (1) Human resource deficiency, (2) limited role of state level minority commissions and, (3) under utilization of technology.

The [composition of NCM over the years](#) shows inconsistencies in the staffing and appointments of key officials in the Commission.^[10] As per [guidelines](#), the Commission is ideally supposed to “consist of a Chairperson, a Vice Chairperson and five (now six) Members to be nominated by the Central Government.”^[11] [Note: from January 2014 onward the Jain community has been recognized as minority under Section 2 (c) of the National Commission for Minorities Act, 1992.^[12] Therefore, from 2014 onward the central government is required to nominate six instead of five Members to the NCM.]^[13] Nonetheless, the problem

of vacant positions has persisted over time across successive commissions. The Vice Chairman’s position in NCM remained vacant from December 2012 to April 2017 (fifth and sixth Commissions). There have been instances when, for months, the commission has been [headless i.e., without a Chairperson and with “just one out of the eight stipulated members”^{\[14\]}](#).

The Commission is unable to effectively fulfill its mandate when the key positions of Commission Members remain unstaffed.^[15] For example, the Commission mandated to conduct hearings - “looking into specific complaints regarding deprivation of rights and safeguards of minorities ...”^[16] - is unable to process the numerous cases it receives. When the top positions at the Commission are vacant, there remains no person authorized to conduct hearings of cases of transgression of minority rights. This leaves numerous pending cases at the end of every year,^[17] as shown in Table 1:

Table 1: Status of Complaints as on March 28, 2016^[18]

Year	Number of New Complaints Received	Number of Disposed Complaints	Number of Pending Complaints (Under Process/Report Called)	Rate of pending complaints
2011-12	2439	2324	115	4.72%
2012-13	2127	1974	153	7.19%
2013-14	2639	2485	153	5.80%
2014-15	1995	1944	51	2.56%
2015-16 (till March 2016)	1995	1791	164	8.22%

When there is political pressure to show progress in the Commission’s work, they may merely close pending cases. This may be done without much consideration of whether the actual grievances of the victims/appellants have been resolved or not. An evidence of such a practice is the record of the list of hearings conducted by the Commission in the year 2011.^[19] As per this list the Commission conducted only 24 hearings,^[20] while it disposed of 2324 complaints in the same year.^[21] One wonders as to how the Commission managed to dispose of more than two thousand complaints without giving them a chance of a hearing. The

Constitution of India provides the “Right to Constitutional Remedy”^[22] as a fundamental right and Article 14 of the Constitution of India extends the right to fair hearing to every Indian citizen.^[23] Therefore, NCM is constitutionally obliged to uphold these rights and give each appellant a fair hearing. While it is true that some of the cases that reach these Commissions may be unsubstantiated claims, the Commission cannot justifiably decide if a claim is unsubstantiated or not without offering an opportunity for the aggrieved party to voice their complaints. In fact, the lack of case handling capacity stems from the Commission’s lack of human resource capacity to process such large number of complaints.

This lack of case processing capacity is further aggravated by the lack of integration of Minority Commissions in the states with the National Minorities Commission, which operates from the capital (New Delhi). While there is a chain of hierarchy in judicial courts - from the courts at the district level, the high courts at the state level and the Supreme Court of India acting as the apex court at the capital - there is no such hierarchy between the NCM and the minority commissions set up by the state governments.

A major recommendation of the [Annual Conference of State Minorities Commissions \(2008\)](#) was “that the State Governments should also set up State Minorities Commissions on similar lines (as that of the NCM).”^[24] Only 16 states have set up minorities commissions, however, and those too remain understaffed and largely dysfunctional in the absence of a regular monitoring mechanism of the State Commissions’ workings.^[25] Since there is hardly any defined hierarchy or chain of filtration of cases from the state commissions to NCM, the latter is overburdened with cases that could have been resolved at the state level.

Moreover, as one third of Indian States lack a minority commission, it creates a pressure on the NCM office at the capital. This results in ad hoc methods of closing files without adequate hearings.

Another barrier is the underutilization of the technological capacity. While the Commission does utilize a complaint monitoring system,^[26] it is still a rather basic software which does not by itself facilitate an end-to-end complaint handling mechanism. Besides this, there is no real-time communication of schedules and appointments for hearings with the complainants who sometimes travel thousands of kilometers to the capital (New Delhi), only to know that their scheduled hearing appointment has been cancelled or rescheduled. This results in wastage of time and money, which in turn amounts to suffering at the individual level and national waste of resources at the macro level.

3.2 Financial Planning & Expenditure Related Challenges

Financial allocation and expenditure planning remains a key challenge for NCM. While conducting “studies, research and analysis on the issues relating to socio-economic and educational development of minorities” is one of the primary mandates of NCM (as it is expected to submit recommendations to the President of India and the Parliament), only a small proportion of the allocated budget of the Commission is spent in research activities. The actual expenditure that NCM incurred in the year 2015-16 was INR 65,600,000 (approximately 1 million US dollars) the majority of which was spent on salaries and none on Research Studies and Publication (see Table 2).¹²⁷ Whether due to financial constraints or political will, the non-allocation of funds for research on minority related issues obstructs the achievement of the mandate of the Commission. Further, in the absence of any research activities, data points from previous annual reports of the Commission keep repeating in the subsequent ones and often the analysis is limited.

Table 2: Budgetary Allocation and Expenditure for NCM for the Financial Year 2015-16¹²⁸

Sub-heading	Allocated Budgetary Expenditure for 2015-16 Indian Rupees in Thousands (INR)	Allocated Revised Expenditure for 2015-16 Indian Rupees in Thousands (INR)	Actual Expenditure for 2016-16 Indian Rupees in Thousands (INR)
<i>Salary</i>	47,000	43,450	43,428
<i>Wages</i>	100	20	10
<i>OTA (*no full form provided)</i>	150	100	96
<i>TE (D) (*no full form provided)</i>	4,500	1,950	1,850
<i>TE (F) (*no full form provided)</i>	500	200	85
<i>O.E. (*no full form provided)</i>	20,000	19,700	19,700
<i>Medical Treatment</i>	900	700	431
<i>Research Studies & Publications</i>	2,500	1,000	0
<i>Total</i>	75,650	67,120	65,600

3.3 Legal and Constitutional Authority Related Challenges

The institutional reform for minorities has historically been weak as the Commissions,

including the NCM, haven't been provided with any "teeth" in terms of their legal capacity to carry out their Constitutional mandate. The decision of the Commissions including NCM, the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes, can be overturned by the district and high courts. When the commission has decided the case in favor or against a certain party and the court overturns such a decision, it leads to the depletion of trust in the Commission's decision-making authority in the eyes of the public.

Further, in the case of NCM, the absence of any constitutional power to conduct independent enquiries in cases of transgression of minorities' rights, and especially in cases of communal violence, render the Commission legally incapacitated to fulfill its duty. This limitation has also been mentioned in a recommendation in the Commission's 2007-08,^[29] 2008-09,^[30] and 2010-11^[31] annual reports of the Commission.

In addition, the State Minority Commissions are not seamlessly linked with the State Governments' decision-making process and are not generally consulted with, while formulating plans or proposals for minorities in the states. Likewise, State Minority Commissions are not given adequate powers to implement, monitor, and review developmental programs and welfare schemes under the [Prime Minister's 15 Point Program for Minorities](#). These issues have been voiced in the 2007-08 recommendations of the Commission's Annual report,^[32] but hardly any progress has taken place on this front by the Central Government.

4. Recommendations

Considering the complexity of the problems faced by the National Minorities Commission, discussed in the section above, a system thinking approach may be suitable to find some solutions.^[33]

4.1. Results Based Management (RBM)^[34]

The United Nations Development Group's [handbook](#) on Results Based Management (RBM) defines it as:

"a strategy by which all actors, contributing directly or indirectly to achieving a set of results, ensure that their processes, products and services contribute to the achievement of desired results (outputs, outcomes and higher-level goals or impact). The actors in turn use information and evidence on actual results to inform decision making on the design, resourcing and delivery of programs and activities as well as for accountability and

reporting.”^[35]

In simple terms, RBM argues for setting objective parameters of performance that are specific, measurable, achievable, realistic, and time bound (SMART).^[36] Even though the various Commissions’ work to hold other institutions accountable, there are negligible methods in place to ensure accountability and transparency in the operations of these Commissions. The NCM requires objective parameters to gauge the extent to which it is fulfilling its various mandates as per the Section 9(1) of the National Commission for Minorities Act, 1992.

As a first step towards RBM, it may be beneficial for the Commission to condense these mandates into the following four manageable priorities that impact the systems and processes of the Commission or System Level Priorities (SLPs):^[37]

- System Level Priority 1 (SLP1): Monitoring and Evaluation (of policies and programs)
- System Level Priority 2 (SLP2): Complaint Handling
- System Level Priority 3 (SLP3): Research, Analysis and Publication
- System Level Priority 4 (SLP4): Recommendations to Central and State Governments

Based on these SLPs, various outputs, outcomes, performance indicators, and data sources for recording data on performance indicators have been identified in the Logical Framework (see Appendix 1). Essentially, this is an exercise aimed at providing the Commission with a tool to measure its impact in a clear manner. This would also bring transparency and structure in its operations and will help the various institutions such as the President of India, the Parliament, and the public at large to evaluate the performance of the Commission.

4.2 Outcome based Performance Measurement

As an extension of RBM, NCM should evaluate the performance of its members based on specific performance criterion to ensure accountability. As noted earlier, some of the capacity related challenges in NCM include disparities in the number of cases heard, number of decisions taken and number of cases disposed by the commission. Therefore, the performance of the constitutional position holders in the Commission such as the Chairperson, Vice-Chairperson, and other representative members should be evaluated on parameters such as:

- the number of decisions taken by them
- disposal rate of cases in the stipulated time

- pendency of the cases assigned to them

This data should be recorded and made public to facilitate transparency and accountability.

4.3 Setting Baseline Targets to keep Pendency in Check

To reduce pendency of cases at the organizational level, the Commission should set certain baseline targets related to the pendency rates. For example, the Civil Service Commission of Massachusetts, ^[38] in their 2015 strategic plan proposed the following principle: the number of open appeals pending before the Commission should not exceed the equivalent of 6 months inventory at any point during the year; and that 25 percent of new appeals should be disposed of within 4 months, 50 percent within 6 months, 75 percent within 9 months, and 95 percent within 12 months. NCM could adopt similar standards for complaint handling and keeping pendency rates in check.

4.4 Staffing Needs Assessment

At regular intervals, conducting a staffing needs assessment may be a useful solution to address the problem of vacant positions at the leadership level. In itself, the staffing needs assessment may not be of value since vacant positions may be a consequence of lack of political will. Nonetheless, the reporting of the same in the media and in the annual reports may serve as leverage to generate political pressure to keep these positions actively occupied.

Also, considering the volume of cases that NCM receives each year, a staffing needs assessment exercise may provide useful data to determine whether the Commission requires funds for additional support staff for its efficient functioning.

4.5 Feedback Mechanisms

As per the theory of New Public Management (Osborne 1993) for any institution to deliver effective public service, it is imperative for it to receive feedback from its so called 'customers'. Therefore, NCM should develop a Stakeholder Satisfaction Survey for parties to anonymously provide feedback regarding how their appeal was processed, irrespective of the decision made (See Appendix 2 for indicative survey).

4.6 Technological Upgrades for Efficiency

Technological upgrades including investment in more sophisticated information management systems could help reduce the pendency rates of cases in the Commission. The

Commission may invest in a “e-hearing” mechanism which connects appellants from their home districts to the Commission through audiovisual conferencing for appearing in hearings. This could prove especially useful as it could obviate the need for people to travel far distances for attending hearings at NCM in Delhi. Nevertheless, considerations of costs and access to internet and telecommunication services needs to be assessed before implementing such a plan. The Commission could consider utilizing funds from the government’s “[Digital India](#)” program to acquire funds for the same.^[39]

4.7 Predictability Through Defining a Process Flow in Case Handling

Further, a process flow of hearings could be shared with the appellants and other stakeholders (see Appendix 3) to add to the element of predictability of the hearing process. Posting real-time schedules of hearings made available in advance on the NCM website as well as mobile enabled reminders and notifications to the various stakeholders in the hearings could reduce the element of unpredictability and save time and money of those who end up waiting in long queues for hours for the Commission hearings.

Additionally, the number of NCM decisions appealed in the courts, and the percentage of decisions overturned by the courts should to be measured on a regular basis to imbibe a sense of trust and predictability in the decision-making process of the Commission.

4.8 Expanding the Role of State Minorities Commissions

The strengthening of the State Commissions and setting up new state level commissions, where these do not yet exist, can help in reducing the pendency rates and increasing hearings’ effectiveness of the Commission. This issue has also been discussed in the various annual reports of NCM (2007-08,^[40] 2008-09,^[41] 2010-11^[42]) but hardly any action has been taken on this by the central and state governments.

In this regard, NCM could solicit help from the NITI Ayog (the Government of India’s policy think-tank and central policy planning agency). NITI Ayog with its promise of bolstering center-state relations in the spirit of “cooperative federalism” could help in the setting up and empowerment of the State Minorities Commissions.^[43]

4.9 Filtration Process and Linkages for Cases Between State Level Minorities Commissions and NCM

In addition to setting up more state minorities commissions, there is a need for a process of filtration of cases from the state level Commissions to the NCM at the capital (New Delhi)

with a view of reducing the excessive number of pending and unheard cases each year. The Commission could, in consultation with a legal officer, define parameters to segregate cases into High, Medium, and Low priority. The parameters for this classification could be:

- Financial loss
- Extent of hurt
- Discretionary parameters such as degree and extent of social injustice committed etc.
- Level of arbitration difficulty at the state Commission in dealing with a case

This approach may have its own challenges as the quantification of the loss of dignity in cases of discrimination against minorities is difficult. Nevertheless, the guiding rule of thumb could be that only the following classifications of cases may be forwarded from the state level commissions to the National Commission:

- (a) cases related to Central Government, or those concerning Central Universities;
- (b) long standing contentious cases; and
- (c) cases of grievous discrimination.

4.10 Expanding NCM's Legal and Constitutional Authority

NCM could fulfill its duties assigned in its mandate if greater legal and constitutional authority is extended to the Commission. The Commission could be more effective if it has greater authority to conduct independent enquiries in cases of transgression of rights of the minorities, and especially in cases of communal violence. This aspect has also been highlighted in detail in the 2007-08,^[44] 2008-09^[45] and 2010-11^[46] annual reports of the Commission.

5. Conclusion

In this era of populist majoritarian movements that render minority rights ignored, subdued, and suppressed, the National Minorities Commission has the potential to rise as an institution that can serve as the beacon of minority rights in India. India being the largest democracy in the world, with a fifth of its population comprised of minority groups, is faced with the trial of proving its resilience and commitment to the idea of "unity in diversity" to the world. The National Minority Commission stands at the helm of this challenge, to prove its mettle as an institution that can safeguard the ethos upon which this nation was built.

Appendix

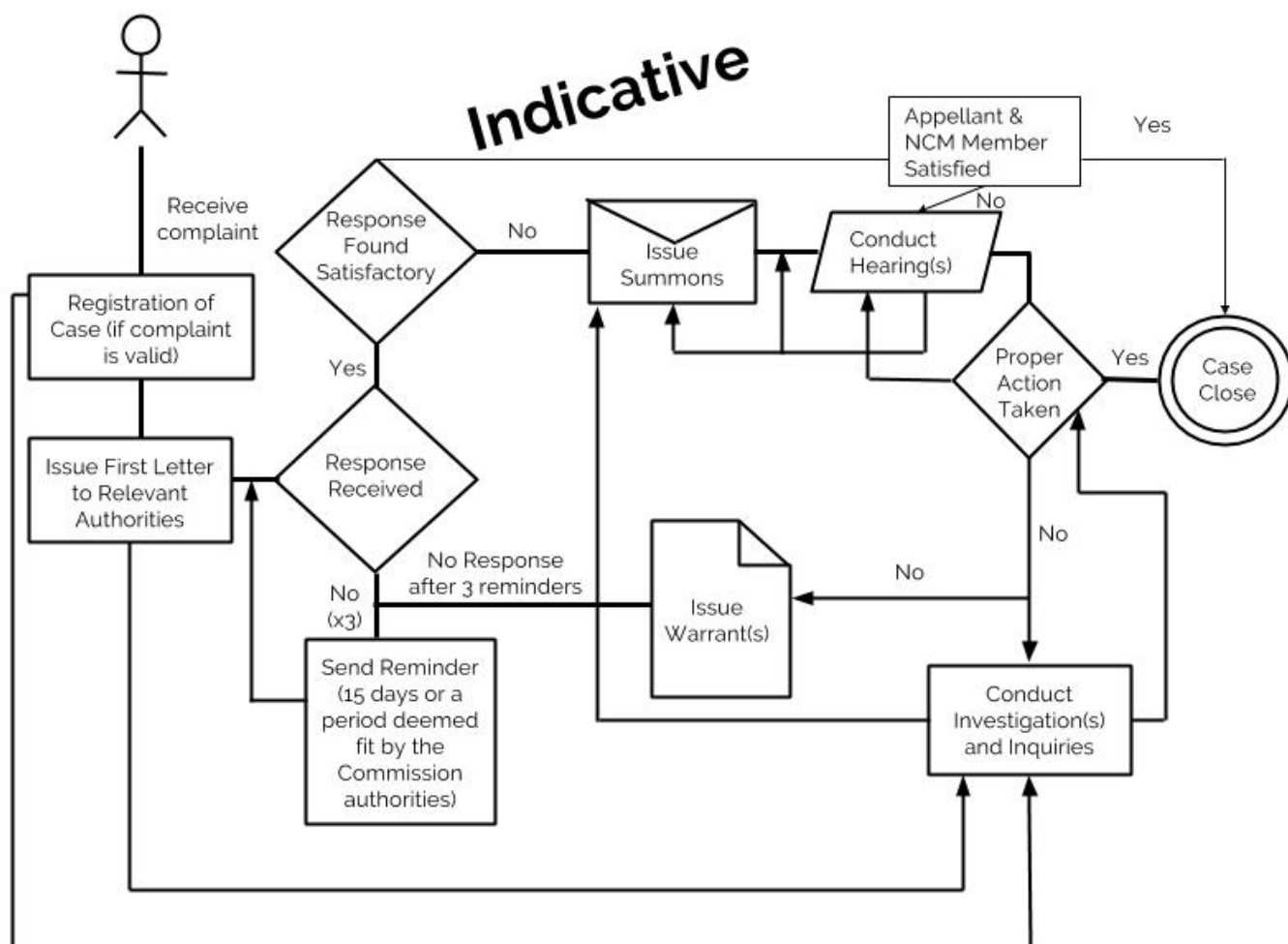
1. Proposed System Level Logical Framework for National Minorities Commission¹⁴²¹

[Proposed System Level Logical Framework for NMC](#)

2. Indicative Stakeholder Satisfaction Survey for Hearings at NCM¹⁴²¹

Was your complaint registered in a timely manner by NCM?	Do you think that the Commission officials were sensitive towards your problems?	Do you think NCM was prompt in acting upon your grievances?	Do you think you were given ample time to voice your grievances during the hearing?	Were you notified of the hearing date & venue well in time?
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No	<input type="checkbox"/> No
<u>Any Further Comments:</u>	Indicative			
				DD/MM/YY

3. Indicative Process Flow of Hearings¹⁴²¹



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33. Systems Thinking refers to the study of making distinctions, identifying relations, and taking perspectives to analyze systems (Cabrera and Cabrera, 2008). [↑](#)
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37. SLP1 deals with the mandates of “Evaluation of the progress of the development of minorities under the Union and States” and “Monitoring of the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures”; SLP 2 deals with the mandate of “looking into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities.” SLP 3 deals with the NCM mandates of “Getting studies to be undertaken into the problems arising out of any discrimination against minorities and recommending measures for their removal” and “Conducting studies, research and analysis on the issues relating to socio-economic and educational development of minorities”; and SLP 4 deals with the NCM mandates of “suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments”, “Making periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them”, and “Making recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments”. [↑](#)
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47. Created by the author [↑](#)
48. Created by the author [↑](#)
49. Created by the author [↑](#)



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