

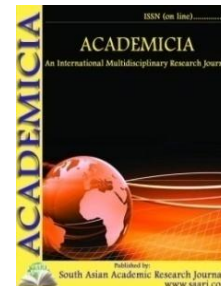


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NATIONAL HUMAN RIGHTS COMMISSION AND HUMAN RIGHTS IN INDIA

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ABSTRACT

The idea of Human Rights is as old as the state itself. Human Rights are, therefore those rights which belong to an individual as a consequence of being human. They cover legal rights and fundamental rights which are protected by different bodies like a pluralist and accountable parliament, an executive who is ultimately subject to the authority of elected representatives, and independent impartial judiciary. Besides, National Human Rights Commission has been perceived as an alternative mean to protect human rights. The Commission is vested with the wide-ranging powers relating to inquiries and investigations for the protection of an individual human rights. This work is an attempt to study the role of National Human Rights Commission in this perspective.

KEYWORDS: *Human Rights, Legal Rights, Fundamental Rights and etc.*

INTRODUCTION

The idea of Human Rights is as old as the state itself. Man as a member of human society has some rights in order to survive, as well as to make his or her life better human rights are concerned with the dignity of the individual and level of self esteem that secures identity and promotes human grace. They cover legal rights protected by laws of the state. They also cover fundamental rights incorporated into the basic law and there by given special treatment in respect of their amendment and Judicial enforcement.

There are different ways to protect human rights. A pluralist and accountable parliament, an executive who is ultimately subject to the authority of elected representatives, and independent impartial judiciary are necessary, but not sufficient institutional prerequisites.

Besides, basic institutions there may be other mechanisms whose establishment and strengthening may enhance the existing mechanisms. In this regard, National Human Rights Commission has been perceived as an alternative mean to protect human rights. This paper is a modest attempt to study the role of National Human Rights Commission in this perspective.

INDIAN NATIONAL HUMAN RIGHTS COMMISSIONS (INHRC)

The Government of India introduced the Human Rights Commissions Bill in the Lok Sabha on 14 May, 1993. The bill was referred by the Speaker to the standing committee of parliament on home affairs. In view of urgency of the matter, the protection of Human Rights ordinance, 1993 was promulgated by the president on 28 September, 1993. After incorporating certain amendments having regard to the discussion in the said standing committee and to replace the ordinance of 1993 the protection of Human Rights Bill was passed by both the houses of parliament and it came on the statute book as the Protection of Human Rights Act, 1993. The commission was initially constituted on 12 October, 1993 under the protection of human rights ordinance of 28 September, 1993.¹ The protection of Human Rights Act is a comprehensive piece of legislation, similar to ordinance passed earlier, and consists of forty three sections arranged under eight chapters.

OBJECTIVE

The main objectives of Act is to provide for the constitution of National and State Human Rights commissions and Human Rights Courts for better protection of human rights and matter connected therewith. Thus, it has a twin objectives to fulfill, namely, establishment of institutional structure, both at center and state levels and to create enforcement machinery in terms of human rights courts for protection of human rights.

HUMAN RIGHTS DEFINING

In terms of section 2 of the Act, "Human Right" means the right relating to the life, liberty, equality and dignity of the individual, guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India. "International Covenants" 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, 1966.²

WORKING OF NHRC

The Commission is vested with the wide-ranging powers relating to inquiries and investigations under the Act. While inquiring into complaints under the Act, the commission could exercise 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:

- (a) summoning and enforcing the attendance of witness and examining them on oath, (b) discovery and production of any document, (c) requisitioning evidence on affidavits, (d) requisitioning any public record or copy thereof from any court or office, (e) issuing commissions for the examination of witness or documents, and (f) any other matter which

may be prescribed.³

PROCEDURE AND REGULATIONS

In order to discharge the aforesaid functions of the commission, certain procedures and regulations are followed by it. The commission convenes its meeting at the discretion of the Chairman and also regulates its own procedures.

INQUIRY INTO COMPLAINTS

The commission while inquiring into complaints of violations of human rights, may call for information or report from the central government or any state government or any other authority or organisation subordinate there to, within such time as may be specified by it. If the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaints on its own, on the other hand if, on receipt of information or report, the commission is satisfied that no further inquiry is required or that the required action has been initiated or taken by the concerned government or authority, it may not proceed with the complaint and inform the complainant accordingly.

STEPS AFTER INQUIRY

The commission may take any of the following steps upon the completion of an inquiry:

(1) Where the inquiry discloses to the commission act of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceeding for prosecution or such other action as the commission may deem fit against the concerned person or persons, (2) approach the Supreme Court or the High Court concerned for such directions, orders, or writs as that court may deem necessary, (3) recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary, (4) subject to the provisions of clause (5), of section (18) provide a copy of the inquiry report to the petitioner or his representative, (5) send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned government or authority shall, within a period of one month, or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the commission, (6) make public its inquiry report together with the comments of the concerned government or authority, if any and the action taken or proposed to be taken by the concerned government or authority or its recommendations.⁴

PROCEDURE WITH RESPECT TO ARMED FORCES

The term 'armed forces' for purpose of the Act means naval, military and air forces and includes any other armed forces of the union. The Act envisages the procedure set out for complaints of violations of human rights by any other public servant.

The commission shall not with standing other procedures of the Act, adopt the following procedure while dealing with complaints of violation of human rights by members of the armed forces:

(a) It may, either on its own motion or on receipt of a petition, seek a report from the central Government,

1. After the receipt of the report, it may either not proceed with the complaints or, as the case may be make its recommendations to the Government.
2. The central Government shall inform the commission of the action taken on the recommendations with in three months or such further time as the commission may allow.
3. The commission shall public its report together with its recommendations made to the central Government and the action taken by that Government on such recommendations.
4. The commission shall provide a copy of the report published under sub-section (3) of the section 19 to the petitioner or his representative.

NUMBER AND NATURE OF COMPLAINTS

As in the previous year, the Commission received number of complaints relating to human rights violations from different parts of the country. The complaints included cases alleging custodial deaths, torture, police high-handedness, violations committed by security forces, prison conditions, atrocities on women and children and etc. The Commission also took suo motu cognizance of many incidents of violation of human rights based on reports in newspapers, television and visits undertaken by its Chairperson, Members, Special Rapporteurs and senior officers. The following paras summarize the number and nature of the complaints and also observations made by the Commission in some important cases.

During the year under review, the NHRC had a total of 1,00,167 cases for examination. From these NHRC disposed off 85,587 cases and 5,929 cases were transferred by the NHRC to the State Human Rights Commissions (SHRCs). At the end of the reporting period, that is on 31 March 2010, the total number of cases pending with the Commission was 14,580, which included 2,809 cases were awaiting preliminary consideration and 11,771 cases were either awaited for the reports had been received from the concerned authorities or were pending further consideration off the Commission. In the beginning of the year, that is on 1 April 2009 a total number of 18,146 cases were pending before the Commission and 82,021 cases were registered in the Commission during 2009-2010, while the corresponding figure for the year 2008-2009 was 90,946. During the year under review the 80,260 cases of alleged human rights violations were registered. As per the guidelines issued by the Commission, every death in police and judicial custody is to be reported to the NHRC for its scrutiny irrespective of such death being natural or otherwise. The custodial deaths that were reported in the course of the year 2009-2010, 2 deaths allegedly occurred in the custody of defence / para-military forces, 124 deaths occurred in police custody, 1,473 deaths in judicial custody. Most of the deaths in judicial custody were due to prolonged illness, old age and other incapacitating factors. In comparison to the large number of complains being registered in the Commission upto 2007-2008, the number of

complaints registered during 2009-2010 was distinctly less. However, as in the past, the largest number of complaints registered was from the State of Uttar Pradesh. Out of the total number of complaints registered by the Commission, Uttar Pradesh accounted for 51,270 (62 per cent) complaints, followed by Delhi with 5,228 (6 per cent) complaints and Haryana coming third with 2,921 (3.5 per cent) complaints. It once again goes on to show that the establishment of SHRCs has so far not brought out any significant reduction in the number of complaints being received by the NHRC as more than 85 per cent of the complaints received were from the States having their own Human Rights Commissions. However the total number of 85,587 cases disposed off in 2009-2010 from these 60,041 were dismissed 'in limini', while 10,936 were disposed off with directions to the appropriate authorities for remedial measures. 1,984 intimations relating to custodial deaths and 3 intimations relating to custodial rapes; 73 cases of encounter deaths; and 6,621 other cases were also disposed off. From these other cases 25 cases pertained to alleged disappearances; 1,335 cases related to illegal detention/illegal arrest; 109 cases were of alleged false implication; 10 cases were of custodial violence; 47 cases of alleged 'fake encounters'; 1,012 instances related to failure to take appropriate action; and 1,374 complaints related to other alleged police excesses. Out of these, 40 cases pertained to allegations of violating the dignity of women; 37 cases alleging sexual harassment of women; 201 cases were of alleged abduction, rape and murder; 240 cases related to dowry deaths; 59 cases were of dowry demand; 32 cases alleging exploitation of women; and 82 cases were those alleging rape of women were all disposed off. In addition, the Commission disposed off 27 cases of child labour; 10 cases relating to child marriages; and 344 cases of bonded labour. The Commission dealt with complaints relating to conditions in prisons as well. Their details are 92 cases were of alleged harassment of prisoners; 32 cases pertained to alleged lack of medical facilities in jails; and 122 cases related to other aspects of conditions in jails. All these cases were disposed off by the Commission with appropriate recommendations. Other than these, 130 cases alleging atrocities against members of the Scheduled Castes/Scheduled Tribes were disposed off by the Commission, as also 5 cases of communal violence and 1,256 cases relating to 'other' incidents. Besides, in certain cases, either in response to the notice issued to the state authorities or notice issued to them under section 18 (3) of the protection of human right act, 1993 to show cause as to why interim relief should not be recommended in favour of the victim, the concerned authorities of their own, informed the commission about their decision to pay compensation of relief.⁵

SLECTIVE CASES

Summaries of some such cases have been included in the list of selective cases given here after:

- a) NHRC takes Suo-motu cognizance of media reports on boy getting HIV infected blood at a Delhi Hospital. The Commission took suo-motu cognizance of distressing media reports on 9-01-09 alleging that HIV infected blood was transfused to a 13 years old boy Raju S/o Kumar Tilakram at Guru Bahadur (GTB) Hospital, Delhi where he was being treated for lung cancer. He had received the treatment at that hospital for eight months and he has been found HIV positive and Hepatitis B positive. The Commission considers it as serious issue of violation of human rights of the victim Raju. The commission has issued notice to secretary, Health Government of NCT of Delhi on 12-01-09 for sending a factual report in the matter to the commission with in two weeks from the date of the receipt.⁶

- b) NHRC takes suo-motu cognizance of teacher blinding a girl in Chhattisgarh. The commission took suo-motu cognizance of a media report published on 09-01-09 alleging a teacher stabbed a pin in the right eye of one Shweta, a class II student of Saraswati Mandir in Korba, Raipur, Chattisgarh. The student was severely beaten up by her teacher Parasram Bhaina as she could not properly answer a question. In a fit of fury the teacher snatched a pin from Shweta and stabbed her right eye with it. She was immediately taken into state capital. But according to the team of the eye specialists, the injury was too deep to regain eyesight. The commission considered it a serious issue of violation of human right of the victim Shweta. The commission has issued notice to secretary, Department of Primary Education, Government of Chhattisgarh, Raipur for sending a factual report in the matter to the commission with in two weeks from the date of its receipt.⁷
- c) Kashmir DGP summoned by NHRC: The NHRC has summoned Jammu and Kashmir DGP to appear before it in person in April in connection with the sensational porn-video case of former Miss Jammu Anara Gupta. The commission had taken cognizance of DGP Kuldeep Khoda's failure to reply to its earlier notices on a petition filed by Ms. Gupta wherein she alleged that the officer had setup a probe team in the case in 2004 in which the police has already submitted a report to the court. The NHRC in September 2008 had sought reply from the DGP that "under what circumstances "the special investigation team has been constituted in the case as the report in the case had already been submitted to the court. Also Khoda was asked to clarify as to whether a final report or a charge sheet had been filed in the case which was registered by Anara Gupta in 2005 against the police. As he failed to respond to the NHRC directions, the commission in its order issued late 2006 has asked him to make the requisite clarification on April 1, 2009 in person.⁸
- d) NHRC issues notices to Govt. of NCT and MCD on the issue of collapse of a building in East Delhi. The NHRC has taken suo motu cognizance of media reports on the collapse of a building at Lalita park, Laxmi Nagar in East Delhi on the 15 November, 2010 that claimed more than 67 lives. The commission observed on the 19 November that the contents of the press report if true raise a serious issue of violation of human rights of the people who died in the incident. The commission has issued a notice to the chief secretary Govt. of NCT of Delhi and the commissioner municipal corporation of Delhi calling upon them to submit a report in the matter within four weeks.⁹
- e) NHRC takes suo Motu cognizance of media reports on striping of a woman at a police post. Issues notice to the Delhi police commissioner. The NHRC has taken suo Motu cognizance of media reports alleging that a woman was forcibly striped at a Delhi police post, and asked by the cops to make physical relation with her 12 year old son if she could not do so with him. The report were carried on the 9 June, 2010. The Incident was reported to have happened on the 21 May, 2010 in Rajouri Garden police post in west Delhi. Considering the contents of media reports as distressing, the commission observed on the 14 June, 2010 that if these are true then it is a serious issue of violation of human rights of victims, and issued notices to Delhi police commissioner calling for a report within four weeks from the date of receipt.¹⁰

WEEKNESSES OF NHRC AND THE POSSIBLE STEPS TO STRENGTHEN THE NHRC

National Human Rights Commission has become the central focal point for enforcement of the new generation of human rights while protecting the basic social order in a given threat of perception the integrity and security of the state. But there are certain drawbacks in the Human Rights Act, 1993 which needs to be re examine for better role of NHRC in achieving its basic objectives such as :-

1. The dominant role of the government in the investigation of actions by armed forces constitutes a major hurdle in National Human Rights Commission pursuing the matter directly and independently.
2. With the complaints of violations of human rights before the National Human Rights Commission on the rise it is imperative that the commission's investigative machinery need to be strengthened. Similarly, the research staff also be inducted to undertake and promote research in the field of human rights.
3. Regional offices of the National Human Rights Commission to act as eyes and ears of the commission at zonal levels has to be established throughout the country to facilitate immediate action and direct supervision.
4. Moreover the provisions of the Protection of Human Rights Act, 1993, fixes one-year period as the duration for limitation with a series of socio, economic and cultural factors impeding immediate filing of the cases, It is more-realistic to provide sufficient leeway for the Commission to entertain cases where there has been reasonable and no purposeful delay in making the complaint.
5. There is a strong need to bifurcate police personal into two separate wings. One relating to investigation and other for law and order duties. Accordingly, the personnel should be trained to specialize in investigation procedure. This will definitely help speedy disposal of the cases.
6. The Commission is vested with the power of civil court and its decisions are confined to recommendations. It does not have the teeth to prevent the violators from escaping easily. Hence the Commission should be provided with some power of punishment to create a phobia among the violators.

Above all, in order to protect and promote human rights, efforts should be made to impart human rights education at all levels, starting from the schools to the university level and in all branches of study so that a culture can be created which will be the panacea to prevent human rights violation.

To conclude it may be in the fitness of things to state that in spite of the structural and procedural imperfections, initial dynamism and zeal that has been displayed by the national commission is certainly the progressive step in the rights directions. More importantly, the national commission coupled with the more responsible attitude of the press in

giving wide coverage of human rights enforcement aspects have undoubtedly given a fillip to the hopes of teeming masses as to the feasibility of having their grievances redress at and appropriate judicious forum. But if the legitimate expectations of the masses are to be fulfilled and if the creditable performance of the National Human Rights Commission is to become permanent features of the institution and not merely remains a performance motivated by the first flush of the enthusiasm, then it is for the government of India to make the suitable amendment and structured alteration as mentioned above.

END NOTES

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