



National Human Rights Commission: How much a Solution?

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KEYWORDS :

The concept of Human Rights gained formal international recognition with the incorporation of human rights in the United Nations Charter in 1945. With that, human rights became a matter of international concern. India after gaining independence incorporated 'rights' in its Constitution in the form of Fundamental rights and Directive Principles of State Policy. So, even though the term Human Rights is not mentioned in the Constitution, the Constitution has integrated human rights in big way in the form of Fundamental Rights (part III) and Directive Principles of State Policy (part IV). While the former integrates civil and political rights, the latter incorporates economic, social and cultural rights.

In order to give further impetus to the promotion and protection of human rights, the need was felt for the establishment of an institution which could check the violation of human rights. In the early 1990s, the circumstances became more fruitful when India positively responded to the criticism of foreign governments in the context of disturbances and violence in North East, Punjab, and Jammu and Kashmir. There was also criticism from the international groups. Apart from the international pressures, there were also pressures from the domestic front for the creation of such an institution. All this led the government to establish National Human Rights Commission (NHRC).

The national institution of this kind is one of the most effective means for checking the violation of human rights. Not only does it investigate the violation of the cases related to human rights, it also recommends the governmental authorities as to what should be done as a corrective measure. Such an institution not only raises awareness through sensitization but also spreads human rights education. They also influence the legislation to preserve human rights and also monitors government compliance.

National Human Rights Commission (NHRC) was constituted in October 1993. It was given a statutory basis by the Protection of Human Rights Act 1993. (Protection of Human Rights Act : 1993).NHRC is a statutory body and not a constitutional body. This act was also amended in 2006.

The Act defines human rights as "rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The above definition limits the scope in the functioning of the NHRC. India ratified the two covenants – International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights – but these Covenants are not directly enforceable as law before the Indian courts. The references to these covenants in the Act are purely cosmetic. The decisive words are: 'and enforceable by courts in India.' These words limit human rights strictly to the fundamental rights embodied in part III of the Constitution which are enforceable by the courts in India. The fact is that they are more limited than human rights in the covenants." (Agarwal: 2014: 320) Now the question was why the Commission was established, when fundamental rights were already there in the Constitution and they being constitutional rights, are enforceable before the courts. Commission's main purpose was to provide better protection of human rights. It acts as a regulator of human rights violation. Its Objectives are to address the human rights issues, to look into the violations independently of the government, stress government's commitment and strengthen the efforts that have already been made in this direction.

Composition

The Commission is a multi-member body consisting of a Chairman

and four members. The Chairman should be retired Chief Justice of India, one member who is or has been a judge of the Supreme Court of India, one member who is or has been the Chief Justice of a High Court, two persons having knowledge or practical experience with respect to human rights. In addition, the chairpersons of four National Commissions (Schedule Caste, Schedule Tribes, Minorities and Women) are the ex officio members of the NHRC.

Functions of the Commission

As mentioned in the Protection of Human Rights Acts, (TPHRA) 1993, the functions of the NHRC include, conducting enquiries into the violations of human rights, conducting enquiries into the prevention of such violation, visiting any jail or other institution, in order to assess the conditions of the inmates living there and suggests recommendations. It also reviews the protection provided under the constitution and legislation for the protection of human rights. Besides this, it also encourages research in areas related to human rights.

Powers of the Commission

According to the Act, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure of 1908. It shall have the power to require any person to furnish information on matters which may be useful or relevant. It may enter any building where it believes that any document may be found. It is empowered to exercise the powers of a civil court only during the course of inquiry. After recording the facts, it forwards the case to a Magistrate to conduct the trial. After that the Commission may make recommendations. It can also approach the Supreme Court to pass directions. (Protection of Human Rights Act, 1993) It can also publish its inquiry report.

If one analyses the powers of the Commission, it can be appreciated that the Commission has the resources to bring facts to the public and even publish it. It has its own importance and can bring pressure upon the government to act. However, it cannot be denied that it, on its own cannot punish the offenders and can only give recommendation.

Various human rights issues were taken up by the Commission. For example, issues related to women, children, Dalits, bonded labour, rights of disabled persons, functioning of the mental hospitals, right to food, monitoring relief measures, functioning of the Government Protective Home for Women in Agra, abolition of manual scavenging, harassment of women passengers in trains, check custodial deaths, rape and torture among many others.

As reported by Damini Nath (2016) in the newspaper 'The Hindu', cases reported and registered by the NHRC have increased over the past three years but the number of cases in which monetary relief was provided have gone down.

Year	Cases Reported	Cases where monetary relief was recommended
2013-14	98136	443
2014-15	1.14 lakhs	378
2015-16	1.17 lakhs	326

Source: Damini Nath, "NHRC Registering more Cases", 26 August, 2016, in, www.thehindu.com/news/national/NHRC-registering-more-cases-says-there-is-more-awareness/article14591227.ece.

So, it is very clear that the number of cases that were reported increased by 20 per cent and the cases where relief was recommended decreased by 26 per cent. Although the record of monetary relief is not very encouraging, it however indicates that there is now more awareness

towards seeking justice through NHRC and people seem to have more faith in this institution.

Although the contributions of the NHRC in dealing with the complaints cannot be refuted, lots of structural and practical limitations have been identified which inhibit the functioning of the institution. (Mandeep Tiwana (2004); See also, Insights into Editorial (2016).

- The first and the foremost relates to its recommendations. The recommendations of the NHRC generally refer to payment of compensation to the victims or disciplinary proceedings among others. Many times, the government rejects the recommendations, or there is partial compliance of the recommendations.
- Human rights commission cannot investigate a complaint, if it is made more than one year after the incident. With the result, a large number of complaints go unaddressed.
- Another drawback is related to its composition. Out of five members, three are from judiciary and must be former judges. The other two members must have knowledge and experience of human rights which can be a very basic knowledge.
- In case of violations of human rights by armed forces, the NHRC can only seek a report from the government.
- Also, it cannot punish the authorities who do not comply with its orders.
- Some other practical difficulties related to the Human Rights Commission are, there are too many complaints to be handled.
- Lastly, the Act does not extend to Jammu and Kashmir.

A very disappointing development that took place and shook the credibility of the NHRC, was a report (by Global Alliance for National Human Rights Institutions (GA-NHRI) to the United Nations High Commissioner for Human Rights (OHCHR), which recommended that the accreditation to the NHRC be deferred till November 2017. This would mean that, the NHRC would not be able to represent India in the UN's Human Rights Council as well as the UN General Assembly till accreditation is renewed. The NHRC was highly criticized for its selection process. It was criticized for not advertising the vacancies for top posts and also poor representation of women. (Saurav Datta: 2017).

The requirement of choosing members of the senior judiciary severely restricts the other deserving candidates who can be appointed, including women and other members of the civil society. The questioned was also raised that why police personnel, should be made a part of the investigating wing of the Commission, because NHRC also investigates human rights violations by government and police.

Some suggestions were made by NHRC which are almost universally accepted by the supporters of human rights protection. Their decisions must be enforced immediately if they are to be effective. Commission must be allowed to investigate complaints against the military and security forces. They also must include civil society human rights activists as non-judicial members.

NHRC Chairman Justice H. L. Dattu recently said that the NHRC "needed some teeth to enforce its orders on remedial measures in cases relating to violations." It was further pointed out that the reason for this is that, the NHRC investigates the cases of violation and once the evidence is collected and findings are arrived at, it can only suggest remedial measures or direct the authorities concerned to pay compensation. It is argued that the government must consider the recommendations made by the NHRC because they are made by the eminent jurists. (Dhanajay Mahapatra: 2016).

Conclusions

How human rights protection can be made effective is only through law and order. People violate human rights despite knowing that they are violating. Just as corruption refuses to recede, violation of human rights too does not show any signs of receding. The accreditation too indicates that NHRC needs to be revamped. Giving more powers to the NHRC will make it more effective and lessen the burden of

government. NHRC need not be a parallel government but it requires the cooperation of the government to succeed. It has been emphasized again and again that human rights education should be promoted. For this the laws related to the protection of human rights, their implementation as well as mechanism of human rights has to be strengthened.

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