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3rd Year, LL.B.**FUNCTIONING OF THE HUMAN RIGHTS COMMISSION-THEORY
AND PRACTICE**

De Jure Nexus

Abstract

The National Human Rights Commission (NHRC) is a statutory body established under The Protection of Human Rights Act, 1993. The Act also provides for formation of State Human Rights Commission (SHRC) to enquire into violation of Human rights in subjects under the state list and concurrent list covered under Schedule VII of the Constitution of India (Together they will be referred as Human Rights Commission-HRC). The aim of NHRC is protection and promotion of Human Rights. The Act provides for various powers and function for the NHRC. In spite of such provisions the National Human Rights Commission has been infamously termed as 'toothless tiger'. According to Justice Dattu, there is a provision in the Act, which only permits to make recommendations. The Commission makes recommendations to the government but in case the recommendations are not followed up there is no further course of action. If government attempts to give appropriate powers to NHRC through amendments in the Act, NHRC will certainly become a 'Toothful Tiger'¹. This paper aims to study theory of Human Rights Commission, the aim and

¹<https://indianexpress.com/article/india/need-more-power-to-become-a-toothful-tiger-nhrc-chief-hl-dattu-6267161/>

objective of the Commission, its powers and functions and the extent of success it has been able to achieve in upholding human rights.

Keyword: Human Rights Commission, toothless tiger, recommendations, protection

Introduction

The Human Rights Commission has been formed on the Paris Principle. These principles are minimum standards for effective and credible National Human Rights Institutions (NHRIs) The following are the criteria laid down by the Paris Principles- Mandate and competence, Autonomy from Government, Independence guaranteed by a Statute or Constitution, Pluralism, Adequate resources; and adequate powers of investigation².

The Protection of Human Rights Act, 1993 states the functions of the Commission under Section 12. It has the power to enquiry into complaints of violation of human rights or negligence in the prevention of such violation by a public servant, the Commission studies treaties and international instruments on human rights and make recommendations for their effective implementation to the Government.

One of the key functions of the Commission is to spread awareness of human rights amongst its citizens and encourage the efforts of all stake holders in the field of human rights literacy at both national and international level. NHRC can be said to be one of its kind institutions across the world because it is one of the few National Human Rights Institutes (NHRIs) in the world whose Chairperson is mandated to be former Chief Justice or the retired judge of the Hon'ble Supreme Court. The NHRC of India has been able to set benchmark as a role model in promoting and monitoring effective implementation of promotion and protection of human rights.

Section 2(1) (d) of the PHR Act defines Human Rights as the essence to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants. The NHRC plays an active role in coordinating with other NHRIs of the world to enhance awareness from the perspective of human rights. It has hosted delegations from UN

² <https://nhrc.nic.in/about-us/sca-accreditation>

Bodies and other National Human Rights Institutions and members of civil society, lawyers and political and social activists from many countries.³

Overview of composition, function and powers of NHRC

1. Composition - The Commission consists of a Chairperson and full-time Members appointed by a select Committee. It also constitutes ex officio members who are chairman of the following commission- National Commission for Minorities National Commission for SCs, National Commission for STs, national Commission for the Backward Classes, National Commission for Women, Chief Commissioner for Persons with Disability. The statute⁴ has given the required qualifications for the appointment of the Chairperson and Members of the Commission.⁵
2. Functions and Powers-
 - NHRC has the power to investigate grievances regarding the violation of human rights either suo moto or after receiving a petition.
 - It has the power to interfere in judicial proceedings that involve any allegation of violation of human rights.
 - It can visit any jail or any other institution under the control of the State Government and check the living conditions of the inmates. It can make investigations and provide recommendations based on the condition of inmates.
 - The NHRC has been provided power to review for the safeguards provided under the constitution or any law for the protection of the human rights and can recommend appropriate remedial measures.
 - It also undertakes research in the field of human rights.
 - NHRC works to spread literacy and promotes awareness of the safeguards available for the protection of these rights through various channels such as publications, media, seminars and other means.

³ <https://nhrc.nic.in/about-us/vision-and-mission>

⁴ The Protection of Human Rights (Amendment) Act, 2019

⁵ <https://nhrc.nic.in/about-us/organization-structures/constitution-of-nhrc#:~:text=The%20Commission%20consists%20of%20a,and%20Members%20of%20the%20Commission.>

- The Commission is expected to make an independent investigation while providing opinions for the protection of human rights within the parlance of the Constitution or in law for the time being enforced.
- It has the powers of a civil court i.e. it can issue summons and can grant interim relief.
- It has the authority to make recommendation for payment of compensation or damages.
- NHRC has been applauded for the sheer number of complaints it receives which reflects the credibility of the institution and the trust reposed in it by the citizens.
- It can make recommendations to both the central and state governments and enable them to take suitable steps to prevent the violation of Human Rights. The annual report is submitted to the President of India and the causes it to be laid before each House of Parliament.⁶

In spite of these it has been highlighted that the Human Rights Commission has failed in its mandate of promoting and protection of Human Rights. The reasons stated are as follows:

1. Failure to undertake suo motto cognizance in cases involving ruling government:

NHRC has the power to take suo motto cognizance in cases involving violation of human rights. It has taken suo motto cognizance in many landmark cases such as:

- a. Mass Cremation Case in Punjab
- b. Encounter death in Andhra Pradesh
- c. Death due to Silicos
- d. Migrant crises during the pandemic
- e. Post poll violence in West Bengal

However, it has distant itself from cases that involve locking horns with the Ruling Government. There have been incidents in the recent past that required involvement of NHRC but it has either kept itself aloof or shown lapses in investigation. This cases include

- a. Extra judicial killing in Manipur- The bench of Justice M. Lokur criticized NHRC for being a 'toothless tiger' for its failure to act reasonably in the case

⁶ <https://www.drishtias.com/important-institutions/drishti-specials-important-institutions-national-institutions/national-human-rights-commission-nhrc>

- b. CAA- NRC- The protest over Citizenship Amendment Bill led to protest in Assam killing five people. The NHRC failed to take suo motto cognizance of offence in this case. Instead the Member of Parliament from Kaliabar Assam had to write to the Chairman to send a report on the matter.⁷
2. Lapses in investigation- The NHRC can reject an application for investigating a case under Regulation 9(xi) of NHRC Regulation if any matter is sub judice. However, recently, NHRC rejected an application of a Gujarat based human rights lawyer who was charged with forgery and produces before the magistrate 68 hours after arrest. It can be concluded that the understanding of the matter being prejudice is fraud as Section 2(i) of the Criminal Procedure Code states that a “judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath”. This definition remains unchanged from the previous version of the code. This definition contains “inquiry” and “trial” under its ambit and not investigation. Therefore, the stage of investigation cannot be equated to a judicial proceeding⁸. A similar view was held by the Delhi High Court in the matter RPS Panwar v Union of India.⁹
 3. Unreasonably closing of cases- In the case of extra judicial killing of Manipur youth the Hon’ble Supreme court has criticized NHRC. One of the ground has been closing of cases without application of mind and because of the conclusion arrived by Magisterial Inquiry Report which is merely administrative in nature¹⁰.
 4. Recommendatory in nature – The NHRC reports on the violence of human rights even prescribing the necessary punishment. However, the report of NHRC id merely recommendatory in nature. It cannot inflict mandatory actions on any authorities while dealing with such crimes.
 5. Non independence from the government – The chairman of NHRC consist of retired CJI or judge of the Supreme Court. The President appoints the chairman on the recommendation of six membered committee consisting of – Prime Minister, Home Minister, Speaker of Lok Sabha, Deputy Chairman of Rajya Sabha, Leader of Opposition

⁷ <https://www.thehindu.com/news/national/other-states/mp-asks-nhrc-to-give-update-on-5-anti-caa-protest-deaths/article32571555.ece>

⁸ <https://indianexpress.com/article/opinion/web-edits/nhrc-errors-of-omission-7281986/>

⁹ 2017 SCC OnLine Del 10030

¹⁰ (2016) 14 SCC 578 (2)

of Lok Sabha, and Leader of opposition of Rajya Sabha. The composition of selection committee makes the appointment favorable towards the ruling party. It thus questions the credibility of the commission to act independently and in the best interest of human rights. The NHRC accreditation was deferred by Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institution (GANHRI) in 2017 raising concerns over its independence from the ruling government¹¹

6. Controversial appointment – The appointment for various post in NHRC has been controversial and opposed by the opposition. The appointment of Justice Arun Mishra has raised eyebrows for he had acquitted Justice Gogoi of harassment charges who is now the Member of Parliament for the ruling party. This has largely questioned the independence and authority of the Commission.
7. Lack of human resource-. NHRC has been criticized for vague selection process. It has been observed that the vacancies are not well publicized by Commission. As a result appointment have attracted controversies. There have been delays in appointment of members of the Commission. It has also been criticized for being understaff leading to delay in investigation of cases.

Achievement

Despite a long list of failures and much needed reforms for the NHRC, it does have some feather in its cap. NHRC has been successful in handling cases of violence on inmates, police brutalities and extra judicial killing, atrocities against the SCs and STs. The Protection of Human Rights Act (Amendment) provides for appointment of former judge from the previous requirement of retired CJI. It also makes it mandatory for appointment of one women member to the Commission.

Reforms that needs to be undertaken :

1. Constitutional Body – Nepal has declared NHRC to be a constitutional body¹². In India the NHRC is a statutory body under the protection of Human Rights Act, 1993. A constitutional Body has many advantages. It is not subject to frequent amendments as per the wishes of the ruling party. This is due to stricter procedures in place for constitutional

¹¹ <https://thewire.in/rights/for-an-already-ailing-nhrc-justice-mishras-appointment-spells-further-doom>

¹² <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36171>

amendment. The chairman of constitutional bodies enjoy independence as they cannot be removed by the President only on the aid and advice of the Council of Ministers. It requires fulfilment of many conditions. The members of the commission also enjoy considerable security of tenure. This ensures they take decisions with independence and in the greater interest of the society.

2. Giving more teeth to the Tiger-¹³ The question was raised before the Madras High Court whether the recommendations provided by the State Human Rights Commission is only recommendatory in nature. The judgment however has come as a harbinger of hope for human rights in the country which makes such recommendations mandatory on the State Government. However, the court makes distinction between Sec 18 and Sec 12 of the Act¹⁴. It states that recommendations under Sec 18 is adjudicatory order which is immediately enforceable. However, Sec 12 deals with advisory nature of the Commission.¹⁵

Conclusion

The Human Rights Commission has been formed for the larger interest of the society. Their primary aim is to be the watch dog for violation of Human Rights. Therefore, empowering them for carrying out their functions in an independent manner is important. The Human Rights Commissions have been merited for acting promptly in cases of police brutalities, violence on SCs and STs, custodial deaths, etc. However, its investigation of cases on certain cases going against the government interest has been questioned. NHRC has been in news for its appointments and has been criticized for its slack of independence from the government. It is time that we give more tooth to the tiger so that it can act swiftly in the best interest of citizens.

¹³ <https://www.theleaflet.in/madras-high-court-judgment-is-a-harbinger-of-hope-for-human-rights/>

¹⁴ The Protection of Human Rights Act, 1993

¹⁵ Abdul Sathar v. State, WP No. 41791 of 2006, dated 5-2-2021