

Role of NHRC in Protection of Human Rights: Critical Appraisal

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Abstract – The role of the NHRC in protecting the human rights of the victims is very proactive in spite of various challenges before the commission. This study highlights the problems and challenges of the commission to overcome the same. Human rights are the need of the hour.

Keywords: Human Rights, Constitution, Law, Society, Human Being and Education

INTRODUCTION

The United Nations organize the congress on the prevention of crime and the treatment of offenders in every five years since 1955. These crime congresses have taken the lead in formulating and implementing many of the United Nations declarations and the agreements that offer standards, norms and codes to guide the law makers, law enforcers and judiciaries throughout the globe. For instance, the seventh congress held in Milan (Italy) traced the spotlight on a number of trans-boundary crimes that fall into the space between the laws and internationally organized crimes in the form of terrorism and the illicit trade in national art treasures and the like.[1] The Milan plan of action recommended a variety of legal reforms and improvement in criminal justice system to close the entire loopholes existing in the system. Representatives from one hundred and twenty-nine participating member countries helped to prepare for the eighth congress in the course of five international and regional meetings. Draft recommendations and resolutions from these conferences were taken up by the committee on prevention and control. The twenty-seven members of standing body of experts, answering the economic and social council, examined and shaped the drafts for the submission to the congress.

The crime prevention and criminal justice branch of the Centre for social development and humanitarian affairs at the United Nation's office in Vienna acted as congress secretariat throughout the preparation period.[2] The social humanitarian and committee's two draft resolutions drew from the Secretary General's report on crime prevention and criminal justice[3], noted the danger of all forms of transactional criminality, thriving at unprecedented levels and in ways previously unheard of, stressed

the concern over severe resource constraints that threatened to jeopardize its success. These two resolutions, one on international co-operation in combating organized crime and the other a catch all that among other things, invited government to provide information on the progress made in implementing the Milan plan of action. The latter also requested the Secretary General to submit to the General Assembly his views and recommendations on implementing the conclusions of the congress. Meeting for its eleventh annual session, the committee on crime prevention and control which is charged with developing practical policies for crime prevention and criminal justice and monitoring with the implementation of the United Nations standard and norms, considered various measures, both national and international, to combat the sorts to trans boundary offenses addressed earlier. One of the resolutions it recommended, which calls for studies concerning the linkage of such crimes to corruption, for new legislation targeted at money laundering and organized fraud and for heightened co-operation among nations in combating organized crime. Later Economic and Social Council had urged the committee to give special attention to this issue, noting that organized crime has become increasingly transactional in character leading in particular to the spread of such negative phenomena as violence, terrorism, illegal trade in narcotic drugs and in general undermining the development process, impairing the standard of living of the people and threatening human rights and fundamental freedoms.[4]

The proposal of committee on crime prevention and control to combat international terrorism observes that existing international norms might not be sufficient to control all forms of terrorist violence and suggests attacking the problem on

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several new fronts, ranging from extradition to the creation of an international criminal court. The committee's draft model treaty against the illicit import and export of movable cultural property would require states to confiscate and return of such property taken without authorization and introduce measures to prevent the acquisition by museums and institutions of such property imposing sanction on those responsible. Other agenda items for the crime congress are the committee on crime prevention and proposed rules for the protection of juveniles deprived of their liberty, affirming that detention should be the punishment of last resort and for the minimum period necessary. A related draft offering guideline on the prevention of juvenile delinquency pays particular attention to children at social risk. The Committee on crime prevention and controls draft, United Nation standard minimum rules for non-custodial measure of imprisonment, calls for appropriate actions to rationalize criminal justice policies from the standpoint of human rights. A draft offering basic principles for use of force and firearms by law enforcement officials is yet another committee on crime prevention and control entry on the lengthy agenda of the crime congress. Beyond the considerable problem of finances, the congress faces a boycott by the USA, which, as expressed by the United States mission spokesman, considers it highly inappropriate to hold the meeting in a country that flouts international norms in the area of crime prevention and criminal justice.

VIOLATIONS OF HUMAN RIGHTS IN INDIA

Human rights and freedom are the part of the constitutional order in India and are enforced through independent judicial processes. In fact, the right to seek constitutional remedies against the violation of guaranteed rights is itself a fundamental right under the Indian constitution.[5] The higher judiciary in India, the Supreme Court and High Courts as the guardians of people's right, have been by and large doing a wonderful job in regulation of the arbitrary exercise of governmental power and in securing the rule of law in the governance of the country. None the less, one may argue from the contemporary experiences that a legal culture conducive to democracy, the human right and rule of law is yet to develop in some sections of the bureaucracy and in political leadership operating at different levels of the society. It is no consolation that things in many other countries are as bad or as worse than the condition of ours. Having a democratic government for more than six decades one would expect the socio-political system to be much more accommodative of plurality and dissent and much less primitive of religious intolerance, fundamentalist sentiments and violent social conflicts.

India is a vast country inhabited by more than 1.33 billion of population belonging to a complex mixture of religions, languages, castes, tribes and races.[6] For over five hundred years it has been under the

colonial rule, first under the Mughals and later under the British. On becoming a republic[7], India adopted a secular, democratic constitution under which the 17th general elections have so far been conducted and the political power changed hands peacefully to the elected representatives of the people. The country had federal polity and parliamentary system of government. Power is divided between the Union and State Governments with in the states local and State Governments. Women now have 14 percent of the elected positions reserved for them under the constitution.[8] Most of the important political and civil rights provided under the universal declaration are part of guaranteed freedoms under the constitution of India and they are enforceable against the highest organs of the state. Minorities enjoy special right under the constitution to continue their cultural integrity and independence. Many of the social and economic rights are part of Directive Principles of the state policies, an integral part of the Indian constitution declared fundamental to the governance of the country. Judicial review is part of the unalterable basic structure of the Indian constitution, thus making the court a most powerful instrument in ensuring legality in governance at every level. Thus, the legal architecture of India is perhaps one of the best models of the democratic governance in plural societies.

Human rights, being dynamic, inalienable and indivisible, are fundamental to the dignified existence of individuals. They are neither utopian, nor legal dicta to be of concern to jurists and academics. They have direct impact on the quality of life of the society. Human right ensures in society by having a stratified and productive people.

Social and economic rights take care of the weaker and less privileged sections of the society by providing them equality of opportunity in the matter of education, employment and mobility. Equality in enjoyment of public facilities and in access to public employment enables upward mobility of the downtrodden. Economic opportunities and equality enable the citizens to strive hard and become more productive, which in turn add to the overall prosperity of the citizens ensuring through of conscience and free profession, practice and propagation of religion. Right of minorities to establish and administer their own educational, institutional and other rights; help the religious minorities to live happily with the majority. Thus, human rights help in promoting communal amity. Economic equality establishes good relations in society. As basic grievances of religious minorities, economically backward and others have been taken care of by human rights, life is free of tension and dissonance. Since peace prevails, there is less scope for the state to interfere with the activities of the public, who in turn enjoy their basic freedoms. Thus, human rights enable peace and

harmony to prevail in the society. Despite these positive thinking and aspects, violations of human right occur in our society at an alarming rate.

The human right movement in India was spearheaded by the leftist orient institutions and intellectuals. Until recently left was not fashionable world in political circles. Consequently, the common man treated human activism as a political gimmick of the left and the movement did not get the public support it deserved; thus, a good cause was lost due to bad representation or advocacy. However, India has shown that developing country can have the greatest concern for the human rights of the people. The Supreme Court, the high courts, the National Human Rights Commission and the State Human Rights Commissions, Human Rights Courts and Human Rights cells are turning the rhetoric of human right into achievement reality.

The existing criminal justice apparatus, however, is not only inadequate and inefficient but it is also completely out of date. The fact is what violence is no longer merely an incident, but it has become a lifestyle. The family feuds and dissidence and even the caste wars are fought with violence in which unlicensed firearms and most sophisticated smuggled weapons are freely used with impunity and once the hall is set in motion is blazes more and more fire and violence. The present condition prevails despite having good percentage of people having elementary education. They never think about the conditions of our own surrounding society which is generally guided by the political party leaders, religious heads, a belief that law can be easily misused and used to take sides and it is not possible than the courts are there to sell justice to the highest bidders. Infect, old traditions of cordial relations lose their meaning and the informal system of social control breaks down, the law by itself becomes helpless and turns into agreement for the strong to achieve their selfish ends.

It appears that in recent years there has been an alarming increase in custodial crimes[9]. It is therefore, necessary, among other things to amend some of the laws relating to arrest and custody and to ensure that the laws are effectively implemented. Before dealing with the necessary amendments, however, it is desirable to emphasize that no progress in this branch of police work can be expected so long as the relations between the police and the people are as bad as they are today. There can be little doubt that the attitude of most of the police personnel towards the people, particularly towards those who are poor and deprived, is arrogant, haughty and highhanded. As a result, police hardly get any public co-operation in their work of investigation in to offences and virtually the only method left with them is to apprehend suspect persons and to interrogate them by using third degree methods. Any improvement in the situation can be brought about only if the higher police officers

and state government and union territories take the initiative to improve the attitude of the police towards the people. Positive attempts must be made so that the police earn the respect and confidence, and eventually the friendship of the people among whom the work.

TERRORISM AND INSURGENCY

Today, both the world at large and India in particular, face daunting challenges in the task of protecting human rights of the common people regardless of the country they belong to. No country in the world can be said to be free from the deadly scourge of terrorism. With the grim specters of terrorism continuing to target innocent and defenseless people, the task has never been more sensitive for the commission. The commission has always stood firm in its belief that the twin concepts of national security and individual dignity are mutually compatible and are not contradictory. A peaceful society rests on the pillars of justice and individual accountability. The concern for justice has been the paramount objective of the commission while dealing with the vexed issue of terrorism. The commission believes that the state has the unquestionable right, and indeed the duty, to combat and overcome terrorism. The commission is also acutely aware of the complexity of protecting human rights in the new international climate, which made it obligatory for states to take a number of specific measures, and to cooperate in the fight against terrorism. Several subsequent acts of terrorism, which have killed innocent people the world over, during the year the country has been a witness to wanton acts of violence. Some of them are briefly indicated below:

On 14 February 2019, a convoy of vehicles carrying security personnel on the Jammu Srinagar National Highway was attacked by a vehicle-borne suicide bomber at Lethpora in the Pulwama district, Jammu and Kashmir, India. The attack resulted in the deaths of 44 Central Reserve Police Force (CRPF)[10]

A cursory glance reveals that terror knows no religion, defies, all logic and is inimical to the whole humanity. Most of the victims in the above incidents were innocent civilians. The Commission forcefully and unequivocally condemns all such acts of mindless violence.

Thus, the commission has been careful in keeping a balance between the need for safeguarding the paramount objective of national security as well as the sacred obligation of individual dignity and freedom. It is an unenviable task, but a necessary one to be performed in the democratic framework of our country.

PRISON POPULATION

The Commission continued to compile and analyze prison statistics on biannual basis during the period under report; the prison statistics as of December 31, 2016 were analyzed. The salient points of the analysis are given in the succeeding paragraphs: -

There were 433,003 prisoners in jails across India as on 31 December 2016. Males at 414,505 make up 95.73% of prisoners while females at 18,498 represent 4.27%. Most prisoners are between 30-50 years old (44.0%), followed by age group of 18-30 years (43.1%), and above 50 years (13.0%). Forty-one inmates were between the ages of 16 and 18 years as on 31 December 2016. There were 1,649 female prisoners with 1,942 children as on the same date.[11] The education/literacy profile of prisoners as on 31 December 2016 was below Class X (42%), illiterate (28.4%), above Class X but below graduation (21%), graduated secondary school (5.9%), post graduates (1.8%), and technical diploma/degree holders (1%). Most prisoners are housed in a jail from their home state. Around 91.1% of prisoners belonged to the state in which the prison is located, while 7.5% hailed from other states, and 1.5% were foreign citizens. The number of foreign prisoners in India was 6,370 as on 31 December 2016, a decrease of 5.4% from the previous year. Among convicted foreign prisoners, the highest number are from Bangladesh (75.7%, 1,792 convicts) followed by Nepal (8.9%, 211 convicts) and Myanmar (4.3%, 101 convicts)[12]

The following table gives the population and occupancy rate of prisons in India annually:[13]

Years	Number of inmates			Occupancy Rate[14]
	Male	Female	Total	
2011	356,902	16,024	372,926	112.1%
2012	368,184	16,951	385,135	112.2%
2013[15]	393,804	18,188	411,992	118.4%
2014[16]	400,855	17,681	418,536	117.4%
2015[17]	401,789	17,834	419,623	114.4%
2016	414,505	18,498	433,003	113.7%

Thus, for improving jail conditions the custodial justice cell of the commission is working under the guidelines of the commission which fulfill its obligation under section 12 (c) of the protection of Human Right act.

Number and Nature of Complaints

The human rights literacy has been continuously increasing in the country. The spectrum of the human rights has also significantly widened through legislation as well as judicial pronouncements, bringing new concepts of human rights and more rights in the ambit of human rights. There is wider discussion and debate about the fourth-generation

human rights. People are coming forward voluntarily for the cause of protection of human rights, and the number of volunteers and NGOs working for safeguard of human rights is increasing manifold. As a result, the number of complaints of alleged human rights violation was bound to increase. The State Human Rights Commissions are also redressing a big chunk of such complaints now, and the sensitivity and the respect for human rights amongst civil authorities is increasing day by day.

Due to these factors, the number of complaints of alleged human rights violations, received in the Commission, has slightly come down from 1,17,808 cases registered by the Commission in the year 2015-2016, to 91,887 cases in the year 2016-2017. The complaints, received in the Commission, cover a wide range of issues such as alleged human rights violation due to negligence by a public servant in the prevention of such violation, alleged custodial deaths, torture, fake encounters, police high-handedness, violations committed by security forces, conditions relating to prisons, atrocities committed on women and children and other vulnerable sections, communal violence, bonded and child labour, non-payment of retiral benefits, negligence by public authorities and atrocities on SC/ST, etc. The Commission also took cognizance of the intimation received regarding deaths in police encounters and police custody, judicial custody and in the custody of defence/para military forces. *Suo motu* cognizance of many incidents based on reports in print and electronic media was taken, including those cases which came to the notice of Chairperson, Members, Special Rapporteurs and Senior Officers of the Commission during their visits to different parts of the country.

During the year under review, the commission had a total number of 1, 32784 cases to consider, which included cases brought forward from previous year as well as fresh institution during the current year[18] (91887). During the period from April 1, 2016 to March 31, 2017 the commission disposed of 100699 cases. At the end of the reporting period, i.e. as on March 31, 2017, the total number of cases pending with the commission was 32085, which included 2537 Cases Awaiting Preliminary Consideration and 29548 Pendency of Cases where Reports have either been Received or Awaited from the Authorities

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 rights act, 1993 to show cause as to why interim relief should not be recommended in favor of the victim, the concerned authorities of their own, informed the commission about their decision to pay compensation of relief.

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