

National Human Rights Commission: Problems and Prospects

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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. Although the contemporary scenario is the time of human rights and constitutional rights.

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

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As we know the National Human Rights Commission was setup in the year 1993, under the provisions of the Protection of Human Rights Act, 1993, with a mandate to protect and promote human rights and relentlessly endeavored to fulfill the aspirations of the citizens of the country in leading a life of dignity and self-respect. Human Rights as defined under Section 2(d) of the Act, mean rights relating to life, liberty, equality and dignity of the individual. The creation of NHRC has brought about a qualitative change in the observance of human rights in India.[1] These rights are basic conditions for a dignified life of an individual and are so inalienable. The Commission has been receiving more or less one lakh complaints per annum alleging human right violations, having complaints alleging death in fake encounters, custodial deaths and custodial torture and other police atrocities, child labour, bonded labourers, rape and abduction, trafficking of women, electrocution deaths due to the negligence of authorities, environmental and pollution hazards, inadequate health services, malfunctioning and malpractices in hospitals, etc. These complaints are received from all over the country including far flung areas of the countryside. The complainants, including human rights defenders, have faith in the Commission and pinning hopes that Commission would render justice to them. The Commission is also organizing its camp sittings and open hearings in different parts of the country, with an endeavor to render justice at the door steps of the victims. As a result, though there is greater awareness to follow human rights principles among the police, army and security forces.

CHALLENGES COME IN THE WAY OF IMPLEMENTING HUMAN RIGHTS

Despite that there are number of constraints and constitutional limitations that have made the NHRC like a toothless body. For instance, the role of NHRC

in probing in June 2016, the NHRC and former chief justice of India, H.L. Dattu, described this institution over which he presided as “a toothless tiger.” In 2017, the Supreme Court of India seemed to support Justice Dattu’s remarks while dealing with the alleged extra-judicial killings of 1,528 persons in Manipur by police and armed forces. “Considering that such a high-powered body has brought out its difficulties through affidavits and written submissions filed in this Court, we have no doubt that it has been most unfortunately reduced to a toothless tiger. We are of the clear opinion that any request made by the NHRC in this regard must be expeditiously and favorably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country,” the Bench, comprising Justice M.B. Lokur and Justice UU Lalit, had observed.[2]

In addition, NHRC has no financial independence of its own. It is dependent on central government grants. The grants are so limited that they often restrict the commission's activities. Moreover, commission cannot interfere in service matters. Consequently, several human rights violation cases remain unheard. Some statutory bodies allied with the commission, like National minorities commission, National commission for women and National commission for schedule cast, schedule tribe. The commission is also unable to take prompt action due to lack of adequate number of staff especially in the field of investigation. Now the commission has a sanctioned strength of 343 officers and staff for more than 133crore people but the rate of violation of human Rights cases are increasing day by day. Last but not the least, the commission has no power to entertain the complaints about events that have occurred over

one year prior to the date of the filing the complaint. But this limitation has been overlooked in mass cremation of more than 2000 bodies of persons killed by the Punjab police during 1991-93 in fake encounters. When the matter was under investigation by the NHRC, the union government in fact questioned its jurisdiction in view of one-year time limit set by the protection of Human Rights Act. When the commission rejected the objection, the government had got the inquiry stayed to enable it to appeal to the Supreme Court. The apex court subsequently gave a ruling that, "Any compensation award by the commission shall be binding and payable". A major worry and challenge at the term of century of those who are concerned with human rights is the threat to human rights from terrorism without going into the debate about causes for the rise of terrorism, one thing can be said clearly is that human rights and terrorism are in compatible. 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 several specific measures, and to co-operate, in the right against terrorism.

The problems of human administration of jails, despite the concerns frequently expressed by the judiciary and NHRC continue to remain largely unattended. Many jails all over country are overcrowded. It is estimated that about 60 percent of jail population comprise under trial prisoners.[3] Numerous reasons have been cited for such a large number of under trial languishing in jail for several years-undue delays in investigation, shortage of police escorts, ropes and handcuffs, slow rate of disposal of cases, failure of a prisoner to furnish sureties or surety amount of bail, arrest of persons charge with petty offences etc.

Cases of fake encounters, indiscriminate fire whether in dereliction of duty or in excessive use of force, and illegal detention by the police continue to deprive citizens of their right to life or personal liberty. This is also a big challenge for the commission.

Autonomy involves the capacity to take independent decision uninfluenced by any vested interests including the state. Autonomy is ensured by the manner of appointment to the National Commission, the stature, status and position of its members, security of their tenure and unconditional financial grants to carry out its activities. All these matters have been adverted to in the Act. In the process of selection of the members of the commission Chairman is not consulted. This ignorance may lead to the appointment of under qualified or undeserving person. This is also a big challenge for the commission.

Because of certain weakness in the Act at times the commission feels the need for the amendments. But the commission has constrained in doing so. Any ignorance or delay in making amendments may

cause ineffectiveness of NHRC that becomes a challenge for the commission. Another major challenge of the commission is that it does not have powers to investigate armed forces, BSF or any other paramilitary forces. Followings are some basic problems and challenges before the NHRC:

Legal Constraints

Each financially year the Commission is making recommendations in about 450-500 cases for payment of monetary relief to the victims or to the next-of-kin of the deceased victims. In the current year also, the Commission recommended monetary relief of ` 11,24,87,500/- in 531 cases. However it is a fact, that despite the best efforts by the Commission, to redress the human rights violations, to create awareness of the human rights, and to sensitize the authorities on the human rights issues and to imbibe the respect for human rights in the people, particularly, the authorities with whom the responsibilities of the protection of human rights rests, there have been many incidents of grave human rights violations. While dealing with these issues of human rights violations, the Commission has felt the various constraints. The Commission believes that it would have performed much better, if these constraints had not been there. The Commission, therefore, urges that necessary remedial measures be taken to remove these constraints stated below, to enable the Commission to protect and promote human rights in better ways.

As on 31.03.2017, the Commission has 32,085 cases pending disposal, out of which 2,537 cases were recently registered pending for preliminary orders by the Commission. But despite best of its efforts, many cases have been pending for quite considerable time. These cases are pending for want of requisite reports from the authorities concerned and in several cases the Commission was constrained to invoke its powers u/s 13 of the PHR Act, issuing summons and bail-able warrants. The shortage of manpower with the Commission is also one of the reasons for the pendency. The Commission comprises of a Chairperson and 4 Members, who are assisted with 443 approved manpower. The Commission observes that it can reduce the pendency of complaints in a better way if the manpower available with the Commission is augmented to the reasonable justifiable level, particularly; the strength of the Law Division and the Investigation Wing of the Commission is required to be enhanced considerably. The Hon'ble Supreme Court vide its order dated 14.07.2017, in the Writ Petition[4] in the case of Extra Judl. Exec. Victim Families assn, & Anr.Vs. Union of India upheld the need for enhancement of man power of the Commission with the following observations:

"It is quite clear from a reading of above provision[5] that the Central Government is under

an obligation ('shall make available') to provide adequate officers and staff so that the NHRC can perform its functions efficiently. The difficulties faced by the NHRC due to inadequate officers and staff and something to worry about from a human right perspective."

Other constraint is that the recommendations made by the Commission are not binding upon the authorities, as a result the Commission is nicknamed as 'toothless tiger'. At the one hand the Section 2(d) of the Protection of Human Rights Act, 1993, defined these rights as enforceable by the court of Law, and the Section 13(5) provides that every proceeding before the Commission shall be deemed to be a judicial proceeding, and the Commission has also been equipped with the powers of a Civil Court while enquiring a complaint, as per Section 13(1), but when it is concluded that human rights are violated, and there should be remedial measures to protect the human rights and grant of compensations to the victims, the powers of the Commission as per Section 18(c) of the Protection of Human Rights Act, 1993 are confined to make recommendations to the government. Sometimes it is felt that the recommendations are left to the sweet will of the government, and they are a liberty to ignore the Commission's recommendations. It is a fact that the recommendations are not simple opinions and advices, or consultancy, but these are orders in proceedings where the Commission after giving all possible opportunities to the State authorities has taken view to recommend monetary compensation to the victims or the family members of the deceased victims, as the case may be, or to initiate prosecution of the violator of human rights of the victim. The aforesaid provisions of the Act indicate that the compliance of the recommendations made the Commission, under the Act, cannot be left to the discretion of the government, but the government is under obligation to pay regard to the recommendations. Though the High Court of Judicature at Allahabad in the Case of State of U.P. and 2 Others Vs. NHRC and 3 Others[6] while upholding the view that due regard should be paid by the State Governments to the recommendations made by the Commission, has observed as follows: -

".....the Commission is not merely a body which is to render opinions which will have no sanctity or efficacy in enforcement, cannot be accepted. This is evident from the provisions of clause (b) of Section 18 under which the Commission is entitled to approach the Supreme Court or the High Court for such directions, orders or writs as the Court may deem fit and necessary. Governed as we are by the rule of law and by the fundamental norms of the protection of life and liberty and human dignity under a constitutional order, it will not be open to the State Government to disregard the view of the Commission. The Commission has directed the State Government to report compliance. The State Government is at liberty to challenge the order of the Commission on merits since no appeals provided by

the Act. But it cannot in the absence of the order being set aside, modified or reviewed disregard the order at its own discretion. While a challenge to the order of the Commission is available in exercise of the power of judicial review, the State Government subject to this right is duty bound to comply with the order. Otherwise the purpose of enacting the legislation would be defeated. The provisions of the Act which have been made to enforce the constitutional protection of life and liberty by enabling the Commission to grant compensation for violations of human rights would be rendered nugatory. A construction which will produce that result cannot be adopted and must be rejected."

But there have been some contrary decisions of High Courts to the effect that acceptance of recommendations of the Commission may be left to the discretion of the concerned government. It is therefore felt the position in the matter be clarified by a suitable amendment in the Act.

In addition to the above-mentioned constraints, the constraint reported in the Annual Report of the Commission for the year 2015-2016, are yet to be addressed. In brief, these are as follows. The Commission be conferred with penal powers, or the powers to make contempt proceedings to enable it to deal with the public servants who do not submit the enquiry reports pursuant to the Commission's directions, consequently the matters have been languishing for years together.

The Commission's powers in respect of the human right violations by the armed forces be reviewed and improved. The Commission's powers in respect of Jammu & Kashmir region be also reviewed and improved. The provisions of the section 36(2) of the PHR Act 1993, barring the Commission to take cognizance of an incident of human right violation beyond one year since the date of incident, be also reviewed and improved.

Administrative Constraints

The NHRC is Paris Principles compliant which states "the National Human Rights Institutions shall have an infrastructure which is suited for the smooth conduct of its activities, in particular adequate funding and staff. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence from the perspective of human rights".

The role of the Commission is expanding day by day and currently it is handling more than one lakh complaints a year reflecting the growing trust reposed by the citizens of India. This necessitates devolution of powers to the Chairperson, NHRC in Administrative as well as financial matters.

The vacant post of Member[7] is to be filled up by the Government. It has remained vacant for considerable time adversely affecting the functioning of the Commission. The post of Director General (Investigation) remained vacant from 01.11.2014 to 01.02.2017. The Government has posted Shri P.V.K. Reddy, IPS (TR:82) w.e.f. 02.02.2017, however he will be demitting the office on attaining the age of superannuation on 30.04.2017. Though the Commission is effectively advocating and conducting various programmes viz., seminars, conferences, workshops etc. on 'Right to Health', 'Rights of the Elderly', the officers and staff of the Commission who are directly appointed are not getting medical benefits after their retirement. They deserved to be treated at par with Central Government Servants and extended the medical facilities after their retirement. Matter was taken up with Ministry of Health & Family Welfare but has not yielded any fruitful result. Space crunch is also a constraint being faced by the Commission, for which correspondence is still under process. Similarly, despite repeated correspondence with the 'Delhi Jal Board', issue of supply of Jal Board Water has not been resolved till date. As a result, Commission is facing acute water shortage particularly during peak summer season. Further, with the shifting of many offices in GPO Complex, traffic congestion issue is needed to be taken up with the concerned traffic authorities as the vehicles are being parked in the GPO Complex in a very disorganized manner which always results in jam on the congested road whole the day.

Manpower Constraints

Presently, the Commission has sanctioned strength of 331 officers and staff, out of which 294 is the present strength. Despite several attempts by publishing various posts in leading English Newspaper, Employment News, in the Website of NHRC and wide circulation of the posts to various Ministries, the Commission could not get suitable officers for many posts. Since its inception, the Commission has never had the full sanctioned strength as compared to the available strength. As a result, due to voluminous complaints, it is compelled to engage retired Government officers as Consultants on contract basis. It is pertinent to mention that the amendment/revision in the Recruitment Rules was sent to the Ministry of Home Affairs in 2012, however, due to various reasons the same could not be notified and again the Commission initiated amendment of RRs.

The Commission struggles to cope up with the expectations of the Human Rights affected victims throughout the country and unable to fulfill its mandate in protecting and promoting human rights. The Commission requires creation of various posts for effectively and efficiently discharging its mandate. Shortage of experienced investigating officers who are required to be provided by the Government as per Section 11(b) of the Protection of Human Rights

Act, 1993 affected to some extent for conduct of spot enquiries on custodial deaths, torture, illegal detention etc. for which sufficient number of experienced staff are required. The Law Division which is the backbone of the Commission also faces lot of problems in performing its pivotal role in handling/disposing the large number of complaints due to shortage of manpower.

Financial Constraints

The Commission receives grants-in-aid every year from the Government of India, Ministry of Home Affairs. In terms of Chapter VII Section 32 (2) of the Protection of Human Rights Act, 1993, "the Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to sub-section (1)". With this financial independence, the Commission functions efficiently to fulfill its mandate. On financial autonomy accounts virtually, no predicament was faced by the Commission during the period. However, the Commission wishes to have financial autonomy to purchase vehicles as the same has not been delegated.

Prospects of NHRC

The existing status of human rights in India matches the international level and there is needed to more focus the same. Although most of the international, national conventions, policies, act, declarations and treaties regarding human rights are implemented but it must be very effective through a strong legislation.

NHRC is only an investigative and recommendatory body. It does not have power of prosecution. From the ongoing discussion it is crystal clear that NHRC has achieved a lot within the short span of its existence despite its constraints. The structure and style of functioning and its point of view is such that everyone agrees that it is the most effective statutory body in comparison to other commission. Within the last 25 years it has proved its excellence by protecting humans' rights and human rights education. From the point of view of common man so far it has done a creditable job not only promoting and protecting human rights in the country but also raising the image of the country in the global scenario. The initial suspicion that sooner or later the National Human Rights Commission will end up another government type organization with its usual quota of lethargy, and indifference has withered away as the NHRC successfully maintained its image of objectivity, impartiality and integrity and assumed the role of a model institution working as a catalyst in keeping the executive and legislative wings of the government stacked to its tasks. Indeed, the 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 each threat of perception the integrity and security of the state.

It is functioning proper role as per philosophy of human rights, but it must be included Civil society representation through prominent independent scholars, lawyers and researchers is critical for giving it greater depth and strength. This would give it both teeth and possibly restore its roar.[8] But there are certain drawbacks in the Human Rights Act, 1993 which needs to be re-examined for better role of NHRC in achieving its basic prospects and 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 is 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 must 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 enough 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 help speedy disposal of the cases.
6. There should be focus on prevention strategies on economic empowerment, education, advocacy, and awareness rising. It should also constitute a specialized nodal agency as anti-trafficking structure. A national bureau for prevention of trafficking in human beings and the appointment of two nodal officers, are also necessary (one from

the police and other from the social welfare/child welfare department), as per the direction of the NHRC. Special courts to deal with cases of trafficking in a speedy manner and provide safeguard for witness protection in crimes of trafficking should also be set up.

7. 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.
8. The efficacy of commissions will be greatly enhanced if their decisions are made enforceable by the government it plays a meaningful role in society; they must include civil society human rights activists as members.
9. Misuse of laws by the law enforcing agencies is often the root cause of human right violations. So, the weakness of laws should be removed, and those laws should be amended or repealed, if they run contrary to human rights.
10. The Information and Public Relation Division of the commission should become more and more active as per the need of the hour. Their work should not be confined to the publication of annual report and monthly newsletter. Time has come to popularize the human rights education through electronics and print media. The achievement of the commission should appear in the headlines of the newspapers and television news in all vernacular languages so that the commission's work will be popular, and people can retain their confidence in the functioning of the commission. Apart from this, efforts should be made by both public and private parties to produce films and serial highlighting the performance of the commission to make common people vigilant.

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.

Justice V.S. Malimath on the "Role of Human Rights Commission" had stated[9]:-

"National Human Rights Commission of India is one of the most effective Rights Commissions in the world which has established its credentials as a statutory independent body within a short span of

one year. There was a growing awareness in the society about the human rights and the people want to seek redressal of various kinds of abuses including child abuse and custodial deaths. The Commission till date has received more than 5000 complaints which have been attended properly. The daily average of complaints received by the Commission varied from 50 to 60. The complaints poured in from all parts of the country—from individuals and organizations. The Government cannot wash away the recommendations made by the Commission. The Commission's role might be recommendatory, advisory, yet the Government considers the cases forwarded by it."

Justice Ranganath Misra had observed:[10]

"Violence is spreading faster than culture of discipline and this tendency needed to be checked and non-violence encouraged and promoted in our society as was done by Mahatma Gandhi more than 50 years ago. Violence is a killer of human rights. The National Human Rights Commission is making use of all the channels including education to spread a message of human rights in the society and bring about attitudinal change for respect of these rights. Cumulative efforts must be made to reduce violence through spread of discipline, better culture, better education and introducing in our society better conduct for human rights which is in consonance with the requirement of these rights. The development of a culture of human rights is the goal of the National Human Rights Commission. The preamble of Universal Declaration of Human Rights and other treaties speak about a family of human beings free from quarrels and disputes. This is possible only when we develop a culture of human rights. The conduct of man is not regulated by law. I contest the view that human conduct is regulated by law. This is not demonstrated either by practitioners of law or the society where law is very much in spread. This is because these principles and conduct must be disciplined and regulated if it is practised with human beings. Conduct of discipline cannot be done by law, Parliament, or the courts etc. This could only be made effective by compulsion of a situation."

As already stated supra, the concept of human rights became a concern of universal importance. Ours is a multi-linguistic, multi-religious complex society. We have several problems of our own including the problems of women, children and minorities peculiar to our Indian society. We have been always speaking about legislations in theory and legislations in practice. As far as certain social problems are concerned, mere legislations cannot bring the change though they may operate as a threat and there must be change in the society itself, a social reformation as I can put it. Untouchability and dowry prohibition can be cited as examples. *Confrontation between communal or religious fanaticism v. secularism* in this country is yet another problem which ultimately may have serious impact

on basic human rights. Terrorism is yet another serious problem posing a threat to invasion of human rights. The examples referred to supra are only illustrative and not exhaustive. The statutory provisions as such cannot be said to be insufficient, but however, several of the legislations are not legislations in practice and the failure to implement them is on account of major sections of the society's disinterestedness in having them implemented in strict letter and spirit. Let us hope that the Indian society will well receive such changes and will give a nod of approval, which we call as "social approval" in the larger interest of the Indian society and the nation as well.

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.

1. Das, H. B.: Education for all – insignia of human rights. (Human Rights YearBook, 2008, op 210) (NHRC)
2. <https://www.humanrightsinitiative.org/blog/nhrc-a-toothless-tiger>
3. <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%202018-11-2016.pdf>
4. Case No. 445 of 2012
5. The recommendations made by the Commission for payment of monetary relief to the next-ofkin of the deceased victim (Sl. No.5) challenged by the Ministry of Railways in the High Court of Delhi, vide Writ Petition (Civil) No.1194/2017.
6. Writ – Case No.- 15570 of 2016
7. (Shri Satyabrata Pal, Member demitted office on 1.3.2014)

8. <https://www.humanrightsinitiative.org/blog/nhrc-a-toothless-tiger>
9. <http://www.legalserviceindia.com/lawforum/index.php/topic,2260.msg2576.html?PHPSESSID=3hvmr0l8vkjreclmidhgk7i1vu2#msg2576>
10. http://nhrc.nic.in/sites/default/files/nhrc_journal_2013.pdf

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