

Origin and Working of National Human Rights Commission of India

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Abstract – The National Human Rights Commission of India (NHRC) was established by an Act of the Union Parliament in 1993 called the Protection of Human Rights Act. The NHRC, like other National Institutions, is simply a recommendatory/ consultative body with no mechanism for enforcing its decisions. The Commission, on the other hand, has "utilised" its composition, independence, and openness to achieve some of its goals for "greater protection" of human rights. The NHRC is an independent, autonomous statutory body that is neither directed or controlled by any authority.

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The NHRC was established for "better protection of human rights and matters associated with or incidental thereto,"[1] according to the Statement of Objects and Reasons of the "Protection of Human Rights Act, 1993. The news of the Commission's formation was met with varied reactions at first. While many people were sceptical about how the Commission would fare, others believed that the Statute was fatally defective. According to the latter side, the Commission would be a "toothless tiger" and merely a "post office," issuing a certificate of "good behaviour" to the government for its "wrongdoings" rather than ensuring "improved" human rights protection. As a result, the Commission faced a lot of "friendly fire" from the start, as well as a lot to prove to detractors and doubters alike. It had to work hard to prove itself to itself and to the Indian people, many of whom decided to put their faith in it, with the number of complaints to the Commission growing dramatically with each passing year.

The NHRC's independence. The NHRC's biggest strength is that the Act grants the Commission the independence, functional autonomy, and wide mandate that are required for a National Institution to function properly. The provisions of the Statute pertaining to the Commission's composition, the process of nomination of the Chairperson and Members, and their removal have all done a good job of ensuring its independence. The power of selecting the Chairperson/Members vests with a Committee which consists of:

- (a) The Prime Minister;
- (b) Speaker of the House of the People;

- (c) Minister in-charge of the Ministry of Home Affairs in the Government of India;
- (d) Leader of the Opposition in the House of the People;
- (e) Leader of the Opposition in the Council of States;
- (f) Deputy Chairman of the Council of States.

This ensures that the appointees enjoy not only the confidence of the party in power but also of the Leaders of the Opposition and the Legislature. The Commission consists of

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one Member who is, or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The presence of a former Chief Justice of India as its Chairperson, as well as his appointment by the Leaders of the Opposition rather than the Government of the day, has added legitimacy to the NHRC. In carrying out their duties, the Chairperson and Members are not subservient to

anybody. They are guaranteed a job for the foreseeable future. The Chairperson/Member can be removed from his office by order of the President on the grounds of proven misbehaviour or incapacity after the Supreme Court, on reference from the President, has reported that the Chairperson/Member ought to be removed on any such ground after an inquiry held in accordance with the procedure prescribed by the Supreme Court.[2]

There are two more issues to consider in this regard. After leaving office, the Chairperson/Member is ineligible for further employment with the Government of India or any State Government.[3] The rules governing the Chairperson's and the four Members' terms of service provide that they would be paid the same emoluments as the Chief Justice of India and Supreme Court Judges, respectively. The Chairperson/pay Member's and allowances, as well as other terms and conditions of employment, cannot be changed to his disadvantage after his appointment.[4]

There is one obvious flaw in the way of procedure for appointing Commission members. The Chairperson is not needed to be consulted under the legislation, therefore the collegium can compel either a "unwanted" or "undeserving" member of the Commission. Because the Chairperson is responsible for the smooth operation of the Commission, including the creation of a roster of cases, he must be contacted before a person is nominated to the Commission, and his opinions must be given sufficient weightage.

The high objective set for the Commission in the Statements of Objects and Reasons in the Act was determined to be impossible to achieve due to significant flaws in different parts of the Act. As a result, the Commission was compelled to submit suggestions to change the Act so that its provisions would aid rather than hinder the Commission's appropriate execution of its responsibilities as envisioned in the Statement of Objects and Reasons. In its sixth year of operation, the NHRC asked the former Chief Justice of India (Justice Mr. A.M. Ahmadi) to chair a High Level Advisory Committee to examine the need for changes to the Act. In March 2000, the NHRC presented its own suggestions to the Central Government for modifying key parts of the Act after carefully considering the opinion of the Advisory Committee. These suggestions were fully incorporated into the Commission's Annual Report for 1999-20004.

Human rights breaches in India are caused by both the misuse of power by public officials and the failure to perform their public obligations. Section 12(a) of the Act empowers the Commission to examine complaints claiming violations of human rights, either on its own or on the basis of a petition brought to it by a victim or any person acting on his behalf. There is no defined form or court cost for filing a complaint

with the NHRC. The complaint is allowed to express himself in whichever language he choose. If the Members are unfamiliar with the language of the complaint, it is translated at the Commission's expense.

Normally, the Commission records its findings in English. There is no specific prohibition on the NHRC hearing complaints before all other available remedies have been exhausted, except those of which cognizance has already been taken by a State Commission or any other Commission duly constituted by the Government — of the State or the Union[5] or has been brought to its attention more than one year after the commission of such violation.[6] Thus, access to the Commission has been made open, simple, and inexpensive. Citizens have come to believe that they may seek remedy through the NHRC rather than the judiciary, where the procedure is costly and time-consuming. The volume of complaints sent to the Commission throughout the years is a strong indicator of the faith reposed in the Commission by the people of the country, as well as their longing for an accessible mechanism to resolve their human rights issues. This figure has risen at an alarming rate.

The Commission starts procedures based on reports in print and electronic media about violations of human rights by individuals or organisations.[7] Since the Commission has its own investigative section, which is led by an official with the rank of Director General of Police, the Commission submits problems to it for investigation and, in certain cases, on-the-spot investigation.

The Commission, on the other hand, lacks jurisdiction to investigate claims of human rights violations by Armed Forces, which include "the Naval, Military, and Air Force, as well as any other armed forces of the Union." [8]

There is no way to challenge the NHRC's recommendation. Of course, the High Court and Supreme Court have the constitutional jurisdiction to issue writs/orders/directions against the State or any authority, including the Commission.

There is no other national institution in India with the breadth or scale of activities as the NHRC. Section 12 of the Act lists the Commission's responsibilities. The functions include:

- intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- visit, under intimation to the State Government, any jail or any other institution under the control of the State

Government, where persons are detained or lodged for purposes of treatment,

- reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- undertake and promote research in the field of human rights;
- spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- such other functions as it may consider necessary for the promotion of human rights.

As a result, India's human rights commission requires a makeover. The commissions' effectiveness and authority will be considerably increased if their conclusions are made enforceable by the government as well. Misuse of legislation by law enforcement authorities is frequently cited as the primary cause of human rights breaches. As a result, in order to make the commission's activities more effective, legal flaws should be addressed, and laws that violate human rights should be modified or repealed. As Chairman Justice K G Balakrishnan correctly pointed out, in order to enhance and develop India's human rights situation, human rights defenders, state and non-state actors must collaborate.

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