

Organization, Functions and Powers of National Human Rights Commission (NHRC): An Overview

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Abstract

The National Human Rights Commission of India is a strong resolve to protect and check the violations of human rights on part of the Indian state. The Protection of Human Rights Act, 1993 Act came into force with retrospective effect from 28th September 1993. TPHRA 1993 provided for establishing a NHRC by Union Government which would function according to this Act. Hence, NHRC was constituted on 12th October, 1993 in compliance with the Paris principles of 1991. Through this paper the researcher will highlight the inception of NHRC in India and its organisation, functions, powers and role.

Keywords: Rights, NHRC, violation, functions, inquiry, commission

I. Introduction

The National Human Rights Commission portrays independent India's preference for the protection and promotion of human rights. It was created under "The Protection of Human Rights Act, 1993 (TPHRA), for examination and investigation of the complaints relating to violation of human rights as well as negligence on the part of any public servant in preventing such violation."ⁱ Such an organization does not only safeguard and foster human rights but also give a fantastic platform to construct public opinion which in turn influences policy making and its regulation by the government. Apart from this it helps in projecting human rights as the national agenda by developing liaison with NGOs and human rights campaigners. It does not only lead to resolution of disputes but also conducts various studies, projects and researches on human rights which have a high reliability.

"The UN 'Principles Relating to the Status of National Institutions' called 'Paris Principles' laid down the guiding principles for establishing and maintaining independent and effective National Human Rights Institutions (NHRIs). Drafted at an international NHRIs workshop in Paris in 1991, they were adopted by the United Nations General Assembly in 1993."ⁱⁱ

"The Protection of Human Rights Act, 1993" was endorsed in the forty-fourth year of our Republic. The Act came into force with retrospective effect from 28th September 1993.

Objectives

To study the provision of NHRC under TPHRA 1993.

To analyse the composition, functions, powers and role of NHRC in India as well as the procedure of inquiry followed by it.

To understand the establishment of SHRCs in India.

TPHRA, 1993 provided for establishing a NHRC by Union Government which would function according to this Act. Hence, NHRC was constituted on 12th October, 1993 in compliance with the Paris principles of 1991. While performing its functions of conducting inquiries suo moto or on a petition filed on behalf or by the victim regarding violation of human rights, reviewing constitutional safeguards, factors affecting the enjoyment of rights and recommending damages to be paid to the victim, initiation of proceedings for prosecution etc, it also publishes its annual reports. The annual reports of the commission put a light on number of cases of violation of human rights which were registered, disposed and pending.

TPHRA is in conformity with the Paris principles with respect to the structure of the commission, procedure of the installation of the Chairman and members as well as the stipulated period of time during which they will hold their office and perform their functions. TPHRA tries to ensure comprehensive independence of the Commission both in workings and monetary affairs. TPHRA, 1993 provided for constitution of a Commission to protect rights at the national level by the Union Government which would work in consonance with the act. Hence NHRC was constituted on 12th October, 1993 "under Section 3 of the 1993 Act for better protection of human rights."

The main objective of TPHRA, 1993 is the not only the creation of "National Human Rights Commission" but also the "State Human Rights Commissions" and "Human Rights Courts" which would

guarantee the safeguarding the rights of man in an enhanced manner. The NHRC has fixed its structural and functional framework in accordance with the act in order to fulfill its aims to the optimum level.

“The term ‘human rights’ is defined in ‘Section 2(d)’ of the 1993 Act, which reads as follows: Human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”ⁱⁱⁱ

“Eleven amendments, six substitutions and one new insertion have been made in the original Act vide the Protection of Human Rights (Amendment) Act, 2006. For example, Under the original act the Commission had the power to recommend immediate interim relief to the complainant once the inquiry is completed. The 2006 amendment has increased the Commission’s powers since now it can recommend immediate interim relief at any stage of inquiry as well as compensation or damages after its conclusion.”^{iv}

‘National Human Rights Commission’ (NHRC): Statutory, Non-Constitutional and Quasi-Judicial Body

The “National Human Rights Commission” (NHRC) and “State Human Rights Commission” (SHRCs) are legislative, non-constitutional organizations. NHRC is not a constitutional body since it is not established in accordance with the constitution of India. Rather it being established under a parliamentary legislation namely TPHRA, 1993 makes it a statutory body. National Human Rights Commission is a quasi-judicial body. “Quasi-judicial bodies are organizations or bodies which have powers similar to that of the law imposing bodies but they are not courts. They mainly govern the administrative areas. The court (judiciary) has the power to preside over all kinds of disputes but the quasi-judicial bodies are the ones with the powers of imposing laws on administrative agencies. These bodies definitely reduce the workload of the courts.”^v

Composition of NHRC

“The Commission consists of a retired Chief Justice of the Supreme Court as its Chairperson, one Member who was or currently a Judge of the Supreme Court, one Member who is or has been the Chief Justice of a High Court. In addition, it also has two Members who are appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. The commission also has deemed members who are the Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women. They are deemed to be members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.”^{vi}

The head office of the Commission is situated in Delhi but it can also setup its work places in different parts of India after getting the consent of the Union government.

There is no legal obligation to ensure plurality in the composition of members of NHRIs^{vii} many lack representations from women and vulnerable groups.

Appointment of Chairperson and other Members

“The Chairperson and the Members are appointed by the President by warrant under his hand and seal subject to the condition that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee which consists of the Prime Minister as the Chairperson and five members namely speaker of the House of the People, minister in-charge of the Ministry of Home affairs in the Government of India, leader of the opposition in the House of the People, leader of the opposition in the Council of States and deputy chairman of the Council of States In accordance with Section 4 of the Act, the Chairperson and Members of the Commission were appointed by the President on the basis of the recommendations of a Committee comprising the Prime Minister, as the Chairperson, and the Speaker of the Lok Sabha, the Home Minister, the Leaders of the Opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha as Members. In accordance with Section 8 of the Act, the Central Government has notified the salaries and allowances payable to the Chairperson and Members of the Commission as also the terms and conditions of their service.”^{viii}

Resignation and removal of Chairperson and Members

The chairperson or any member has the freedom to resign after making the president aware of the same. There are certain issues which can act as a ground for their resignation. For example, bad behavior, insufficiency after the Supreme Court’s orders indicating the same and asking for their removal. They can also be removed in case of being an insolvent or unable to continue in office due to physical or mental ailment causing disposition. It is also possible that the chairperson has to go on leave due to which he cannot work in office. Now any member whom the President deems fit can be picked up by him to work on his behalf till time the Chairperson does not come back. In case the post of the Chairperson is lying vacant, the President can empower any member to work in the officiating capacity.

Various Terms and conditions of service of Chairperson and Members

“The salaries and allowances and other terms and conditions of service of the Chairperson and Members are as prescribed subject to the condition that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member can be altered to his disadvantage after his appointment. Any act or proceedings of the Commission cannot be questioned or invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.”^{ix}

Process followed by the Commission

- 1) The Chairperson fixes the time, occasion and venue for the meeting of the commission.
- 2) The Commission is autonomous enough to fix its own process of working provided that it is in consonance with the Act.
- 3) The power to authenticate the orders of the commission is given by the chairperson to any officer whom he considers fit.

Officers and Staff of the Commission

“An officer of the rank of the Secretary to the Government of India is made available by the central government to the commission as its Secretary-General. Besides this the government can also provide such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The Commission can also appoint such other administrative, technical and scientific staff as per its requirements.”

Functions of the NHRC

The Commission performs the following functions:

“It can inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court of law, into complaint of violation or abetment of human rights or negligence on part of a public servant in the prevention of such violation. It intervenes in any proceeding which involves any allegation of violation of human rights lying pending before a court but only with the approval of such court. In order to study the living conditions of the inmates and make recommendations to the Government on the same, it can visit any jail or other institution under the control of the State Government where persons are detained or lodged for purposes of either treatment or reformation or protection. The commission reviews the safeguards provided either by the Constitution or any law in force at that time with an aim of protection of human rights. This may be followed by several measures recommended for their effective implementation. It also reviews the factors, including acts of terrorism that inhibit the enjoyment of human rights followed by recommendation for appropriate remedial measures. The commission also studies treaties and other international instruments on human rights and make recommendations for their successful implementation. It also has to undertake and promote research in the field of human rights. Besides the above-mentioned functions, the commission also has to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights. This is done by it via publications, media, seminars etc. The commission also encourages the efforts of non-governmental organizations and institutions working in the field of human rights.”^x

Powers Relating to Inquiries

- 1) The Commission adopts equivalency of a “civil court” while making an enquiry into complaints of violations of rights of man. This also includes the interrogation of a witness as well as furnishing of a relevant paper.
- 2) Any person can be directed by the Commission to provide useful piece of information on any issue which according to the commission can be of some use for the inquiry included the interpretation of “section 176 and section 177 of the Indian Penal Code.”
- 3) Any officer delegated by the Commission can enter a place in case the Commission believes or is hopeful of finding any document relevant to inquiry. Furthermore, it can confiscate that document or take its copies in consonance with “section 100 of the Code of Criminal Procedure, 1973.”
- 4) If the commission considers it right it can shift a case to SHRC, which was originally brought to it or still not completed. This is subject to the condition that it lies within the purview of the SHRC.
- 5) The State Commission must deal and dispose all complaints transferred under sub-section (6) as if it were originally lodged with it.

Investigation

1. If the government agrees then its officers’ or investigative bureaus’, aids and expertise can be utilized by the commission in order to conduct an investigation.

2. Commission can summon an individual and interrogate him, seek the delivery of any important paper for the same.
3. The investigative bureaus or an officer who was used for the purpose of investigation have to send the report to the commission within a stipulated time.
4. It is the prerogative of the commission to settle all its doubts regarding the rightness of the actualities as well as conclusion given in the report given by the officer or investigative bureau.

Statement made by persons to the Commission

When a person testifies in front of the Commission in order to provide a proof, it cannot be used against him in any civil or criminal proceeding on the condition that the testimony is applicable. In case the commission is of the opinion that the inquiry prejudicially affects the credibility of that individual or it considers it as pertinent to check the behavior of that person, then it can hear out that individual and allow him to give proof in his defense.

Inquiry into complaints

While probing into the grievances of human rights violation, the Commission can ask for any data or report to be provided by Central or state Government or some other authorized agency which is subordinate to it. It can move ahead on its own to probe into the grievance in case it does not receive data or report within the stipulated time. After receiving the information or report if the Commission is contented either with the decision that has been taken by the concerned authority or thinks that that no further inquiry is needed it might not go ahead with the complaint. The complainant is also informed about the same. But it can also initiate an inquiry if it strongly feels about the same.

Steps during and after inquiry

The commission can take opt for the following steps:

If the abuse of human rights or carelessness in avoidance of the same on part of a public servant is proved, NHRC can direct that damages must be paid to the main sufferer or to his or her family member. It can also start to hear a trial against the offender. Since the apex court as well as the high court possess the jurisdiction to issue writs or orders, the commission can go to them for the same. It can also recommend the government or any authorized agency to give provisional respite to the victim. This can be done by the commission at any phase of the investigation. During the trial the applicant can be give a replica of the investigating report.

After the completion of the trial, its report inclusive of suggestions and proposals are forwarded to the government or the concerned department for action to be taken against the concerned official which must be intimated by them to the commission within one month.

In the end it will bring out and print its investigation testimony along with explanations and remarks and the action taken or intended to be taken by the related government or authority on the endorsements of the Commission.

Procedure with respect to armed forces

In case the commission comes across a case which includes abuse of rights of man by the defense forces it seeks an account from the union government with or without an application for the same.

After receiving the report, the commission can either not proceed with the case or make recommendations. If it has made suggestions to the government it demands intimation about the action taken within three months.

The commission has to print its account along with the endorsements and commendations it has made to the government as well as the steps taken by the government which is based on these suggestions.

Conceptual pillars of the commission- Autonomy and Transparency

The Commission must act in an autonomous and transparent manner because it has a wide area and scope of duties to be performed. When the laws of a state set up an organization it builds up peoples' faith in its functioning which result in the credibility of the organization. NHRC is no different. All these years it also has made the people believe and have deep faith in its working. This trust of the people must be maintained and strengthened by the commission via the principles of autonomy and transparency. The origin of the commission from the TPHRA, its structure, mode of selection of its members, term as well as appointment of its investigative staff cumulatively result in lending autonomy to the commission. In addition to this its autonomy in financial affairs further raise the standard of this body.

The commission's transparency emanates from TPHRA as well as the rules made by the commission which define its procedural layout. The procedure of receiving the applications, providing the applicant with copies of its testimonies as well as tabling of its reports in the legislature and publication of the same for the people points towards its transparent mode of operation. Its liaison with NGOs, human rights campaigners, print and electronic media as well as the people emphasize upon its transparent nature.

Role

The establishment of the NHRC is perceived to be a step in the forward direction but in spite of this, on many occasions it fails to deliver the goods in an efficient manner. This happens because it is not self-reliant and does not have its own infrastructure to investigate the matters. That is why it has to depend on the work force of the government. The involvement of the governmental work force can lend an air of biasedness to the commission. In addition to it asking the concerned government to probe the cases of abuse of rights, it also approaches the apex court as well as the high courts to render justice and respite to the victims.

Sometimes India is unnecessarily dragged to controversy on human rights violation when there is none. One cannot deny the fact that India possesses sovereignty i.e. supreme power due to which it is authorized to act against any element which is working in a manner which is hostile towards the state and its people. This is sometimes misconstrued as an abuse of human rights. The need of the hour is to strike a rightful balance between the two. The readiness to work for safeguarding human rights abuse has been explicitly expressed by the commission.

Need for State Human Rights Commissions

Although the protection and promotion of Human rights in India had already found a place in provision of human rights in the Indian constitution, constitutional provision of judicial review, legislations and their interpretations by the courts, it does not suffice for the country being a land of diverse people, culture, language, region, religion, customs and traditions with an ever-increasing population. A need for redressal of grievances regarding human rights violation at the local level was felt. Moreover, the Indian judiciary is overburdened with civil, criminal, constitutional, commercial cases which does not let it focus on the issue of human rights. These issues not only directed the Indian system towards formation of a human rights commission at the national level but also the state level. This in some way also fulfills a democratic set up whereby the decentralization of powers is considered most important. Hence TPHRA, 1993 gives for a NHRC and various SHRCs to India.

“The SHRC’s are empowered to perform all those functions which have been entrusted to the NHRC. However, Para C of Section 29 of the TPHRA excludes the study of treaties and other international instruments on human rights from the purview of the SHRC’s as the study of such treaties has been made the exclusive domain of NHRC. The State Commission may inquire into violation of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule to the Constitution.”^{xi}

The SHRC works under the NHRC and handles cases which fall under their jurisdiction. If required it also transfers the cases to the NHRC, if an appeal is made for the same, the NHRC acts as the Supreme Court and is the highest court of appeal in these issues. At present we have 26 SHRCs in India.

A State Government can form an organization to be established as the State Human Rights Commission to which will work in consonance with TPHRA. the composition, powers and role of the SHRCs are prescribed by the act itself.

Annual and special reports of State Commission

The State Commission tenders its testimony every year to the State Government. Apart from this there can be some issue or problem which is required to be dealt with in a quick manner. For this purpose, the commission can tender a special testimony regarding the same. Now it is the duty of the government to ensure that both the yearly and special testimonies have to be tabled in the legislature. It will be tabled in the Vidhan Sabha if it is unicameral in nature and in both Vidhan Sabha and Vidhan Parishad if it is bicameral in nature. Along with this, the decision which is taken by making the suggestions of the commission as its base as well as cause of refusal of any suggestion of the commission is also tabled.

India witnessed different states establishing their human rights commission in consonance with the TPHRA. At present 26 states have their own human rights commission.

II. Conclusion

The inception of NHRC under TPHRA 1993 was a positive and constructive step towards a check to be put on the violations of human rights committed in the Society .though a lot more needs to be done to provide a better redressal of human rights violations but one definitely can’t undermine the significance of NHRC and the respective SHRCs in India.

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