

“Protection of Human Rights: Assessment of the working of the National Commission of Human Rights”

Introduction:

Human rights can be defined as the fundamental rights which the humans have by the fact of being human, and which are neither created nor abrogated by any government. Human rights are the rights and freedoms of all human beings. They are fundamental and universal. Human rights consist of civil and political rights as well as economic, social and cultural rights. Supported by several international conventions and treaties (such as the United Nation’s Universal Declaration of Human rights in 1948), these include rights such as right to life, liberty, education and equality before law, and right of association, belief, free speech, information, religion, movement, and nationality. Promulgation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions. Although they were defined first by the UK philosopher John Locke (1632-1704) as absolute moral claims or entitlements to life, liberty, and property, the best-known expression of human rights is in the US Declaration of Rights in 1776 which proclaims that “All men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society they cannot by an compact deprive or divest their posterity.” The term came into wide use after World War II, replacing the earlier phrase “natural rights,” which had been associated with the Greco-Roman concept of natural law since the end of the Middle Ages. As understood today, human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as universal, applying to all human beings everywhere, and as

fundamental, referring to essential or basic human needs. The following definition expresses clearly the meaning of human rights:

“A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human.” An alternative explanation was provided by the philosopher Kant. He said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life.

Protection of human rights in India is a serious concern to everyone. Mahatma Gandhi once said: “It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.” The pressing catchphrase in the aforesaid lines is humiliation. Humiliation of human beings, in every sphere and of all kind must be condemned and protection must be accorded to the weaker and poor sections of the society. It is only then we can safeguard the fabric of our democracy and eternal high profile values relating to human dignity. Human dignity is quintessence of human rights¹. The great teachings of Swami Vivekananda also reiterate that ‘*the self in you is the self everywhere*’. However, considering these ideas on a staid front, every State is duty bound to shield the human rights of the citizens from gross infringements and must ensure that the grand promises and pledges made in the international, constitutional and statutory instruments must not become mere dead letters. The honest fulfillment

¹ Justice J.S. Verma, ‘*Human Rights Redefined: The new Universe of Human Rights*’, Journal of the NHRC, Vol.1, 2002 at p. 1 also available at <<http://nhrc.nic.in/Publications/NHRCJournal2002.pdf>> last visited on 09-12-2010 at 4.20.p.m.

and observance of these sacrosanct norms will verify the fact that the nation is not lying to own conscience.

For this purpose, the States are also required to ensure the energetic enforcement of these human rights in their respective countries. In pursuance of this objective, one of the strong evidence that can be provided by the States in this regard is the establishment and effective functioning of national human rights institutions. The international community members firmly realized the need and importance of these institutions in every democratic set up². The National Human Rights Commission (NHRC) in India is actively involved in the affording protection against such humiliation and fervently advances the great cause of sacrosanct human rights.

National Human Rights commission is an autonomous statutory body designed to bless the people of India with 'better protection of human rights³. The establishment of the Commission was an outcome of the international deliberations and was indeed one of effective implementation as well as a glaring illustration of India's adherence to international norms and standards. Soon after the establishment of the United Nations, a need was felt to introduce the human rights institutions at national echelon in order facilitate the enforcement of human rights in the respective countries. It was felt that these

² For eg. Recently, the UN Commission for Human Rights, in its resolution on National Institutions for the Promotion and Protection of Human Rights emphasized that, 'national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights.' See. *National institutions for the promotion and protection of human rights*, Commission on Human Rights resolution 2003/76, also available at < <http://www.nhri.net/pdf/E-CN.4-RES-2003-76.pdf>> last visited on 13-12-2010 at 11.30. a.m.

³ See. The Human Rights Act, 1993. The preamble of the Act provides as follows- "*An Act to provide for the constitution of a National Human Rights Commission. State Human Rights Commission in States and Human Rights Courts for 'better protection of Human Rights' and for matters connected therewith or incidental thereto.*"

commissions would be endowed with certain powers by virtue of which human rights could be enforced in more effective and efficient way.

Origin of the research problem :

Protection of Human Rights (HR) becomes an important issue after the Second World War and after the acceptance of Universal Declaration of Human Right. The growth of HR Law and Jurisprudence thereafter was spontaneous and continuous. The changes in the global scenario bring new concept of HR protection against violation. Human Rights are not mere privileges given to the subjects by the ruler but are liberties permitted to the 'citizens' in a democracy. The National Human Rights Commission (Commission) was established on October 12, 1993 through an Act of Parliament titled "The Protection of Human Rights Act, 1993"(ACT). It will shortly be completing five years of its existence and it is time to undertake a review of its status, functioning and problems. The Commission undoubtedly has some achievements to its credit. It has succeeded in persuading the Central Government to sign the United Nations Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment or Treatment. It has brought into sharp focus the problem of custodial deaths and taken steps to see that these are not suppressed by the state agencies and that the guilty persons are made to account for their sins of commission and omission. It has also helped in designing specialised training modules on human rights for introduction in the educational and training institutions.

There is, however, a feeling that the Commission has not been able to achieve its full potential. Is it true? Are there any structural deficiencies and inadequacies in its constitutive law? This needs to be examined with reference to internationally accepted standards. At a UN sponsored meeting in Paris in 1991, a detailed set of principles on the status of

national human rights institutions was developed, which are known as the Paris Principles. These principles provide that a national institution must have a broad mandate; pluralism, including representative composition; wide accessibility; effectiveness; independence; sufficient resources; and adequate powers of investigation.

OBJECTIVES OF THE PROJECT:

1. To study functions, Accessibility, effectiveness and credibility of Human Right Commission in perspective of implementation of Human Right enforcement.
2. To study implementation of HRC regulation, in urban and rural areas organization.
3. To find out how social, religious, economical effect are imbibe through Organization.
4. To encourage to national researcher to create further research in this field.

Conclusion & Suggestions

A study of the present Topic reveals that this NHRC illustrates the difficulties faced by a national commission and its potential contribution for advancement of human rights. To a limited extent the NHRC has succeeded in sensitising the central and state governments regarding observance of international human rights norms. It seems to be evolving.

Societal backdrop of South Asia is not conducive to practice of human rights. This region is marked by endemic poverty, illiteracy, societal fragmentation and insensitive authority structure. As Madhavi Basnet has observed that, "South Asian governments have ratified some international human rights instruments, but such policy is not reflected in the national constitution or law of any government. One cannot help but question whether South Asian governments really care about their

citizen's interest in having human rights enforced by domestic law.”⁴ In this context the headway made by the NHRC, though limited is significant.

Coming to the Indian NHRC case study it becomes clear that the commission has been hampered in realising its full potential by external as well as internal factors. External factors are those, which are controlled by or influenced by the state and its agencies. Some of the external factors are numerated below: the NHRC emphasised the need to set up SHRCs and to establish clear functional relationship between the two but the central government has categorically dismissed the commission's proposals.

In the area of child labour, education and other aspects of child welfare the commission has made policy recommendations but the central government has not responded to them.

Dealing with human rights violations committed by armed force personnel but the privileged status of armed forces continues and the government has dismissed all such proposals as unnecessary, even case of death and rape while in the custody of armed forces.

For the last five years the government has not appointed two members.

While **internal factors** are the ones, which the NHRC has, some control but because of various factors has not been able to cash on. For example: while the government was at fault for not complying with the recommendations of the NHRC, the commission was also responsible for not supporting its strong words with action. The NHRC has followed through on only a few of the recommendations issued in its annual reports.

⁴ Basnet Madhavi, 'South Asia's Regional Initiative on Human Rights', The Human Rights Brief, Washington College of Law, American University, Volume 4, Number.2 Winter 1997

- Similarly the commission could have taken number of steps itself to remedy the situation but because of legal formalism and administrative inertia these steps have not been taken.
- Given the NHRC's caseload, it is astonishing that a large number of posts (there are 218 staffers as against the sanctioned strength of 297) are still vacant, which the commission itself is empowered to fill.
- The commission in its various reports has not started the practice of measuring its performance in terms of satisfaction of victims. A victim's perspective of judging its effectiveness is singularly missing.
- The commission has not opened regional offices for adequate regional representation of complaints.
- Large number of cases is dismissed by the commission in limini.
- Pendency of large number of cases and failure of the commission to evolve time-bound transparent disposal mechanisms of complaints.
- In the context of counter insurgency operations in the North Eastern states the issue of state accountability becomes indispensable. The NHRCs reports neglect to highlight this important issue of accountability.

From study of the secondary sources and ten personal interviews conducted by the Researcher it is apparent that despite limitations the NHRC India has made significant progress in holding the government accountable specially its activism in Gujarat cases, suo moto cognisance, prison reforms, child labour and prostitution, mental health etc. Its success in complaints redressal mechanism is affected by legal formalism and disposal of cases 'in limini' procedure, lack of transparency and its failure to have regional offices in south India and northeast. The performance of the commission has a few purple patches

in an otherwise dismal landscape of apathy to human rights norms at societal level.

Surprisingly, the NHRC itself seems to be actually aware of what it calls its 'challenges'. After the establishment it is the period of consolidation for the commission where the commission has observed in its annual report 1998-1999 that how it has to deal with challenges of credibility, scale and expectation, variety, good governance and entrenched attitudes. However, no blueprint for effective action is outlined in its documents.

As illustrated by Epp⁵163 the existence of Supreme Court in a setting like India may not be a panacea for attending to rights based litigation, in the absence of strong support of legal mobilisation at societal level. Institutions like the NHRC are the only means, which theoretically at least, hold promise of affordable access to justice for the poor and the vulnerable which constitute at least one third of India's population. Hence in such social settings institutions like the NHRC fill an important void in a poor person's search for justice.

Despite limitations, highlighting the structural inadequacy of Indian society by focusing on economic, social and cultural rights the NHRC has made great strides in making the Indian state aware of attending to economic, social and cultural rights.

The real significance of the commission is advocacy, to build constant pressure and act as reminder of the state obligations towards the rights. Due to the commission's insistence these economic, social and cultural rights have acquired constant public discourse in evaluating the effectiveness of the Indian state.

⁵ Epp Charles R, 'The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative perspective', The university of Chicago Press, Chicago and London, 1998

As observed earlier in this study that the courts are not sufficient in themselves in attending rights because of weak support structure for legal mobilisation. The view that courts and existing national institutions are sufficient to attend to the human rights agenda is based on the assumption that that support for legal mobilisation is uniform throughout. However as analysed by the Epp, this is not true in some social settings as India in particular and South Asia in general. In addition, the social composition is such that the poor and the vulnerable groups form significant components in these societies. These very social segments are hardly in the position to utilise the courts as an institution to full their fundamental rights, much less their economic, social and cultural rights. In such social settings institutions like the NHRC are very much needed to keep exclusive focus on need for fulfilment of these rights and internalisation of international human rights norms.

The case study of Indian NHRC has international significance because India with its one billion population is too important to be ignored. At regional level of South Asia it has its own importance as a trendsetter in human rights field. The case study illustrates difficulties in establishing an independent body entrusted with internalising international human rights norms in a hostile domestic context and great potential for such an institution to advance human rights agenda. The need for the international community, to sustain such an institution and keep advocating greater institutional autonomy in concept as well as in practice, hardly need to be emphasised. This will help in consolidation of the work done by the NHRC and gradually establish a culture of human rights norms in India.

ACHIEVEMENTS FROM THE PROJECT:

There shall be better implementation Human right by Human Right Commission,

SUMMARY OF THE FINDINGS :

- National Human Right Commission partially successful in its role to protect and enforcement of Human Rights in India.
- In India, functioning of NHRC is not so effective and receptive relating to poor and deserted peoples.
- National Human Right Commission could have taken number of steps itself to remedy the situation but because of legal formalism and administrative inertia these steps have not been taken.
- Given the NHRC's caseload, it is astonishing that a large number of posts (there are 218 staffers as against the sanctioned strength of 297) are still vacant, which the commission itself is empowered to fill.
- The commission in its various reports has not started the practice of measuring its performance in terms of satisfaction of victims. A victim's perspective of judging its effectiveness is singularly missing.
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