

Post-Script Of NHRC

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Abstract: The main study is, no doubt, confined to the formative initial five years of the inception of the NHRC. However, it is natural to be curious about its journey so far. Here is an attempt to briefly mention some of the important developments that have occurred affecting the working of the NHRC.

I. STATUTORY REFORMS

One of the most significant development that has taken place is the amendment of the Protection of Human Rights Act, 1993 by an (Amendment) Act, 2006. This amendment has broadened the meaning of the term 'Human Rights' for the purpose of this Act. Earlier, the term 'Human Rights' was restricted to mean only in the context of the two covenants, namely, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR). But as per the new amendment, the definition of human rights has been enlarged so as to include not only the two above mentioned Covenants, but also "such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification specify." It is important to mention that the NHRC had made repeated recommendations to redefine the term 'Human Rights' to enhance the meaning and scope of the term and finally, in 2006, it has materialized in the amended law.

Yet another change has taken place in the constitution of the NHRC under the above mentioned amendment. Earlier, the composition of the NHRC included "the Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women "as the deemed members of the Commission" for the discharge of functions specified in clauses (b) to (j) of section 12. As per the amended law, the composition of the Commission includes "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" as the deemed members. Consequent to this amendment, the number of deemed members has increased from three to four as now there are two separate commissions for scheduled castes and scheduled tribes.

Another significant change under the amended law relates to the functions and powers of the commission. The power of the NHRC to inquire was earlier limited to "suo motu or on a petition presented to it by a victim or any person on his behalf." This power of the NHRC is now enhanced further as the NHRC is empowered to "inquire on a direction or order of any court." Furthermore, the monitoring role of the NHRC has got real boost under the amended law. Because, earlier the power of the NHRC to visit any custodial facility required prior intimation to the State Government resulting in missing the actual situation on the spot. But now, the NHRC is empowered to visit jails or other institutions under the control of State Governments without the requirement of prior intimation thus enabling surprise visits and empowering the NHRC to study the living conditions of the inmates and make recommendations thereon to the Government. The amended law also enlarges the scope of the NHRC that wherever it considers necessary or expedient to do so, it may, by order, transfer any complaint filed or pending before it to the State Human Rights Commission who has jurisdiction to entertain the same. One more amendment relates to the procedure concerning the inquiry into complaints. Under the amended law, Section 18 has been modified as "Steps during and after inquiry" in place of earlier wordings as "Steps after inquiry." It further grants the NHRC the power to recommend the concerned Government or authority" to make payment of compensation or damages to the complainant or to the victim

or the members of his family as it may consider necessary” in cases where the inquiry confirms the violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant. Earlier, the NHRC did not have any specific power to recommend for compensation or damages.

The amended law also makes some minor changes with regard to the constitution of State Human Rights Commissions. Earlier the State Human Rights Commission consisted of four members excluding the Chairperson. But as per the amended law, the State Human Rights Commission comprises of only two members excluding the Chairperson. Earlier, there were two separate categories under Section 21(2)(b) and (c) which required a serving or retired High Court Judge and another member who is or has been a District Judge in that State respectively. Now, it provides only for “one member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge.” One more change has been brought about in the composition of the State Human Rights Commission. Earlier, it provided for two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. But now, it has been reduced to one member. There is also a provision made for appointing a common chairperson or member or both for two or more State Governments. This change is aimed at facilitating cost-effective functioning of the State Human Rights Commissions especially for the smaller states.

From the above, it becomes amply clear that the Protection of Human Rights (Amendment) Act, 2006 has strengthened the NHRC and helped in facilitating its smooth functioning. It has included the various recommendations made by the NHRC emanating from its years of experience to make it more effective in protecting and promoting human rights in India.

II. ADMINISTRATIVE REFORMS

Apart from these statutory reforms, the administrative set-up of the NHRC too has undergone a modernization process. The NHRC has a secretariat headed by the Secretary-General. Earlier, it comprised the administrative division, the policy research, projects and programme division, the law division, the investigation division and the information and public relations units besides the library and the computer cell. In September 2003, a new division has been created to disseminate information and focus attention on sensitizing various agencies and sections of the civil society by conducting human rights training programmes. This division is named as the Training Division. The Division is headed by a Chief Coordinator who is a Joint Secretary rank officer. The Chief-Coordinator is assisted by a Senior Research Officer and other secretarial staff. It imparts diverse training on various human rights issues in collaboration with national level institutes, State level institutes, Law Universities and NGOs of repute working in the field of human rights. The activities of the Training Division of the NHRC have expanded manifold since its inception and it is doing a great

job in cultivating the culture of human rights and promoting human rights education.

The working of the existing divisions too has been streamlined to impart efficiency, accountability and transparency in the functioning of the NHRC. The Law Division deals with the receipt and disposal of human rights complaints. Earlier, this Division was also entrusted with the job of imparting training to the NHRC staff as well as the outside departments. Now, with the establishment of separate Training Division, the Law Division is fully devoted to complaint handling job which is quite enormous in itself. The Division has set up a Rapid Action Cell to attend to complaints that require immediate attention and action.

Similarly, the Information and Public Relations Unit works to disseminate information relating to the activities of the NHRC through the print and electronic media as well as to provide feedback to the NHRC on media reports relating to human rights issues. This unit is also responsible for the website besides the various publications of the NHRC. A Public Information Officer has also been appointed for the purpose of facilitating information under the Right to Information Act, 2005 and the Joint-Secretary (Personnel & Administration) in the NHRC as the Appellate Authority.

In 1994, the library of the NHRC was primarily established for research and reference purposes. Over the years, it has developed into a full-fledged Documentation Centre equipped with computer and internet facilities. It now offers the complete database of books, documents and articles on the internet and intranet. It also has SCC (Supreme Court Case) Online and Library Management System Software Package (e-granthalaya). An Online Public Access Catalogue (OPAC) has been specially developed to facilitate quick availability and location of any book available in the library. The NHRC is an institutional member of the British Council Library and DELNET (Developing Library Network) which promotes resource sharing among the libraries.

The workload of the NHRC is constantly increasing and its set-up is expanding accordingly. In 1993, it started with a minimal staff of 44 persons which increased to 282 in 1998. Today, it has a sanctioned strength of 343 workers. The NHRC has adopted modern technology to make its working more efficient. The NHRC with the assistance of the National Informatics Centre (NIC) has developed a user-friendly package for monitoring the status of complaints (COMMONS) which has been further upgraded to computerized Information Management System (CMIS) which is now adopted by both States Human Rights Commissions (SHRCs) and National Human Rights Institutions (NHRIs) across the globe.

Right from the time of its inception, the NHRC was aware of the need to follow-up at the field level on the recommendations and directions made by it together with the need for stronger linkages with governmental and non-governmental authorities and others. For this purpose, it instituted a system of special rapporteurs to assist it in the discharge of its more demanding and sensitive responsibilities. These Special Rapporteurs, chosen from amongst persons of highest repute, unimpeachable integrity and a pronounced commitment to human rights have been of immense help to the Commission. They constitute a group, outside the formal administrative structures of the commission and act as the eyes

and ears of the Commission, to follow up on the endeavours of the Commission at the highest levels and with its full authority, and to undertake such special studies and other assignments as may be requested of them from time to time. These special rapporteurs deal with specific issues relating to human rights such as custodial justice, bonded labour, child labour & disability etc., or a zone comprising a group of States to look into human rights concerns and violations.

Another mechanism adopted by the NHRC to enhance its functioning is taking advice of the experts on complex technical issues by constituting Core Groups of experts on selected subjects. Currently, there are about ten such Core/Expert Groups working on subjects like health, mental health, Disability, NGOs, legal issues, right to food, emergency medical care, refugees, silicosis & unsafe drugs and medical devices etc.

III. QUANTUM OF WORK-LOAD OF THE NHRC

There is no doubt that the quantum of workload of the NHRC is constantly increasing with each passing year. In the first six months of its inception, the NHRC received a total of 496 complaints, out of which 274 complaints were rejected and 174 complaints were inquired into with 48 matters finally disposed off with necessary directions. In the year 2009-2010, the NHRC had a total of 1,00,167 cases for examination. These figures include cases that were brought forward from previous years as well as fresh cases registered during the said period. It disposed off 85,587 cases. These figures include 5,929 cases which were transferred by the NHRC to the State Human Rights Commissions (SHRCs) in accordance with the provisions of the Protection of Human Rights Act.

Despite the ever-increasing number of complaints received by the NHRC, the working of the NHRC is better streamlined today. The status of complaints, disposal of complaints and the recommendations made with regard to each of these complaints together with the compliance status of these recommendations is a pointer to the efficient, transparent and prompt working style of the Commission. Initially, the NHRC felt restraints to make recommendations for the payment of compensation or damages to the complainant or to the victim or the members of his family. But now under the amended Act, the NHRC has been empowered to recommend for the payment of compensation or damages to the victim of human rights violation. This has, no doubt, enhanced the effectiveness of the NHRC in taking actions against the human rights violations. It cannot be accused now of being a toothless body. In the year 2009-10, the NHRC recommended a total amount of Rs. 6,29,33,000 as payment of monetary relief / compensation to the victims / next of kin of the deceased in 398 cases. Compliance reports were received in 132 cases and a total amount of Rs. 1,98,83,000 was paid to the victims / next of kin of the deceased.

As per the guidelines issued by the NHRC, every death in police and judicial custody is to be reported to the NHRC for its scrutiny irrespective of such death being natural or otherwise. This has resulted in the maximum number of complaints / intimation under the single category, i.e. custodial

deaths. Similarly, the state of Uttar Pradesh continues to be the largest contributor of complaints for the NHRC. It accounts for 62% of the total complaints received by the NHRC. It points out that the establishment of State Human Rights Commission has so far not brought out any significant reduction in the number of complaints being received by the NHRC as more than 85% of the complaints received were from the States having their own Human Rights Commissions. The reason behind this trend may be that State Human Rights Commissions are not as active as the NHRC and also, that the State Human Rights Commissions have not earned the trust of the people.

The NHRC has adopted a pro-active role with regard to the promotion of human rights by spreading human rights literacy, sensitizing the common man and government functionaries and providing training and technical assistance to various institutions and organizations. It also acts as the facilitator for assessment and enforcement of human rights programme in selected districts of India. It has also taken initiative on the issues of food security by deliberating upon the question of providing legal remedy at affordable cost and simple mechanism; enforcement of right to food; regulation of private sectors; monitoring the implementation of right to food at micro and macro levels; defining the standards of food security; and research and resource support for addressing the issue of right to food. Similarly, it is actively engaged in resolving health issues such as the shortage of doctors in rural areas; illegal medical practices of doctors having fake certificates / degrees, adverse effects of pesticides on the health of common man, occupational diseases such as Silicosis affecting labourers, and problems concerning mental health. Considering right to health as a human right, the NHRC is constantly monitoring the health policies of the government, working of mental health hospitals, health-care facilities in rural and tribal areas and also to suggest for affordable medical care in general.

Another function performed by the NHRC is to review domestic legislations and international conventions. It held consultations with stakeholders on the Prevention of Torture Bill 2010 which sought to provide punishment for torture inflicted by public servants or any person who inflicts torture with the consent or acquiescence of any public servant. This bill is an enabling legislation to ratify the UN Convention against torture and other cruel, inhuman and degrading treatment or punishment. The NHRC has also advocated to the Government of India to reconsider the issue of accession to the 1977 Protocols additional to Geneva Conventions of 1949 relating to new rules on international armed conflicts and humanitarian law on non-international armed conflicts and Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

The pro-active role of the NHRC is further reflected in its broad reach training programmes, specially after the establishment of separate Training Division under the Secretariat. These programmes are in the form of internship, summer-training in universities / institutes, training programme for Indian Foreign Service probationers, in-house training for new inductees (officers & staff) in the Commission since April 2007, Workshops, and online training programme on human rights for police personnels. Besides

these training programmes, the NHRC supports conferences, seminars, symposia and lectures to raise awareness about human rights.

In its endeavour to better protect human rights, the NHRC holds annual meetings since 2001 with the Chief-Secretaries and Directors General of Police to overcome the geographical barrier of distances and to emphasize the importance of the need for quick and expeditious action from the State governments on references made by the NHRC, to resolve the difficulties, if any, faced by the states in complying with the directions etc. Similarly, the NHRC has also initiated the process of holding annual meetings with the State Human Rights Commissions with a view to expand the scope of coordination with the State Human Rights Commissions, identify possible areas of joint partnerships for the purpose of dealing effectively with the issues of human rights facing the country. Besides the annual meetings, the NHRC regularly holds periodic meetings on issues, with the Government officials, both at the State level as well as at the Centre. The purpose of these periodic meetings is to monitor regularly the progress or compliance of the directions made by the Commission.

The NHRC carries out the task of promotion and protection of human rights in association with credible non-government organizations and civil society organizations and treats them as the most important allies and most honest critics. Together with the Special Rapporteurs appointed by the Commission, the NGOs have provided a “multiplier effect” to the efforts of the NHRC, giving to it a vast infusion of high ability and public support. To facilitate its interaction with the NGOs and civil society organizations, it has formed a Core Group of NGOs comprising leading representatives of NGOs and Civil Society Organizations actively engaged with human rights issues. This Core Group meets half-yearly to apprise the activities undertaken by the NHRC and to promote collaboration between the NHRC and the NGOs for the purpose of furthering the protection and promotion of human rights.

The symbiotic relationship between the NHRC and the judiciary has further strengthened the efforts made by these institutions for the protection and promotion of human rights. The NHRC has approached the courts in several cases to protect human rights of the vulnerable people including in pending cases. One such case is ‘Best Bakery Case’. Likewise, the Supreme Court reposing confidence in the NHRC in number of cases, which were under its consideration, remitted them to the Commission. Some of the important matters remitted by the Supreme Court to the NHRC include starvation deaths in Orissa, monitoring of programmes to end bonded and child labour, the “mass-cremation” of persons in certain districts of Punjab, the proper management of institutions of the mentally challenged in Ranchi, Gwalior and Agra and also the Protective Home for women in Agra. The latest in this series is the *Salva Judum*.

The NHRC is not confined to the territorial boundaries of the country. It is actively engaged in interaction with international bodies and foreign countries as well. Numerous foreign delegations visit the NHRC throughout the year. Apart from these visits to the Commission, the NHRC plays an active role internationally in two groupings, namely, Asia-

Pacific Forum of National Human Rights Institutions and International Coordinating Committee of National Human Rights Institutions for the Protection and Promotion of Human Rights. Furthermore, the NHRC actively coordinates with the Government of India and plays a key role in the preparation of India Country Paper for submission to the UN High-Commissioner for Human Rights for Universal Periodic Review, besides submitting separate brief paper on India on behalf of the Commission. The NHRC also routinely participates in conferences, seminars, workshops abroad and exchange visits abroad.

To conclude, one may say that the NHRC’s commitment to its mandate is truly sincere and serious. Right from the time of its inception, it has been constantly and steadfastly trying to make improvements in its working with a view to ensure the best protection and promotion of human rights. Its innovative approach, progressive attitude and use of modern technology has ensured efficiency in its working.

The task assigned to the NHRC is greatly challenging one. The independent and impartial functioning of the NHRC is critical to succeed. To work in a fair, just, equitable and sensible manner, the NHRC has found able support from the judiciary and the non-governmental sectors too. Its credibility is enhanced by the trust reposed by the victims of human rights violations who are approaching it in ever-increasing number every year with their complaints confident of getting justice at last. This is no mean achievement.

The NHRC has emerged as a role-model of national human rights institution for other countries. It has been described as one of the best in the world by Mary Robinson, former United Nations High-Commissioner for Human Rights. Yet, it is conscious of the difficulties with which it has to contend. It is an ongoing journey full of unknown challenges demanding relentless commitment to the cause of protection and promotion of human rights from the NHRC.

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