

A Review of Human Rights Act in India

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Aim of the Study: This study is conducted in order to review the HUMAN RIGHTS ACT, 1993. This study reviews about the content of the act including the functions, composition, human rights commission, appointments, former chairpersons and about its international status.

INTRODUCTION

The President of India on September 27, 1993 promulgated an Ordinance for the creation of a National Human Rights Commission. Justice Ranganath Mishra, the former Chief Justice of India, was appointed the Chairperson of the Commission on October 12, 1993. Justice M.N. Venkatachaliah, the former Chief Justice of India assumed office on November 26, 1996 was the Chairperson after the retirement of Justice Ranganath Mishra. Justice J.S Verma, the former Chief Justice of India became the Chairperson on November 4, 1999 when Justice Venkatachaliah attained the age of 70 years. After the retirement of Justice J.S. Verma on January 16, 2003, the former Chief Justice of India Justice A.S. Anand was appointed the Chairperson of the Commission.

Protection of Human Rights Act, 1993 (Act 10, 1994)

The Human Rights Commission Bill introduced in the Lok Sabha on May 14, 1992 was referred to the Standing Committee on Home Affairs of the Parliament. The President of India promulgated an Ordinance, which established a National Commission on Human Rights on September 27, 1993, owing to pressure from foreign countries as well as from the domestic front. Thereafter, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the ordinance promulgated by the President. The Bill became an Act, having received the assent of the President, on January 8, 1994 (Act 10 of 1994) and was published in the Gazette of India, Extraordinary Part II, Section I, on January 10, 1994. Thus, the Protection of Human Rights Act (No. 10 of 1994) came into force. Article 1(3) provided that the Act should be deemed to have come into force on the 28th day of September 1993.

Section 1(2) states that the Act is extended to the whole of India and that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters related to any of the entries enumerated in List I or List III in the Seventh Schedule of the Constitution applicable to that State. The purpose of the enactment is laid down in the Preamble of the Act that is, it provides for the establishment of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights.

Definition of Human Rights under the Act

Section 2(d) of the Act defines human rights as 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. The above definition, however, limits the scope of the functioning of the National Human Rights Commission. India, therefore, ratified the two Covenants - International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. But the Covenants are not directly enforceable as law before the Indian courts. The definition of human rights under the Protection of Human Rights Act 1993 limits human rights strictly to the fundamental rights embodied in part III of title Constitution, which are enforceable by the courts in India. It appears that the main purpose of the enactment was to provide a better protection of human rights.

National Human Rights Commission (N.H.R.C.)

Chapter II of the Act deals with the constitution of the National Human Rights Commission (N.H.R.C.). Section 3 of the Act lay down that the Central Government shall constitute a body known as the National Human Rights Commission.

N.H.R.C. is an eight-member body. The Commission consists of:

- A Chairperson who has been a Chief Justice of the Supreme Court
- One Member who is, or has been a judge of the Supreme Court
- One Member who is, or has been, the Chief Justice of a High Court
- Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- Besides these, the Commission shall include:
 - The Chairperson of National Commission for Minorities
 - The Chairperson of the National Commission for the Scheduled Castes and Scheduled Tribes
 - The Chairperson of the Educational Commission for Women

The Act also makes provision for a Secretary General who shall be the Chief Executive Officer of the Commission, who shall exercise such powers and discharge such functions of the Commission as are delegated to him.

As pointed out by the Supreme Court as Chairperson of the Commission in his capacity as a judge of the High Court and then as a judge of the Supreme Court and also as Chief Justice of India, and so also the two other members of the Commission who have held high judicial offices as Chief Justice of High Courts, have throughout their tenure, considered, expounded and enforced the fundamental rights and are, in their own way, experts in the field. The headquarters of the National Human Rights Commission (N.H.R.C.) is located at Delhi. The Commission may, however, with the previous sanction of the Central Government establish offices at other places in India.

Appointment of Chairperson and other Members

The President appoints the Chairperson and other members of the Commission after obtaining the recommendations of the Committee consisting of:

- Prime Minister - Chairperson
- Speaker of the House of People - Member
- Minister in charge of Ministry of Home Affairs in the Government of India - Member
- Leader of the Opposition in the House of the People - Member
- Leader of the Opposition in the Council of States - Member
- Deputy Chairperson of the Council of States - Member

Term of Office of the Members

The person appointed as Chairperson and the members shall hold the office for a term of five years from the date of their appointment or until he or she attains the age of seventy years whichever is earlier. The Chairperson and the member shall hold office for a period of five years from the date on which they enter upon their office. They are eligible for reappointment for another term.

Removal of a Member from the Commission

The Chairperson or any other member of the Commission may be removed from his office by an order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on enquiry, reported that the Chairperson or such other member ought on any such ground to be removed. But despite this provision, the President may by an order remove from office the Chairperson or any other member if the Chairperson or such other person is:

- a) Adjudged an insolvent or
- b) Engaged during his term of office in paid employment outside the duties of his office or
- c) Unfit to continue in office by reason of infirmity of mind or body or of unsound mind and stands so declared by a competent court convicted and sentence to imprisonment for an offence which in the opinion of the president involves moral turpitude

Powers and Functions

The functions of the Commission are as follows:

The Commission shall inquire on a petition presented to it by a victim or any person on his behalf into complaints of

- (a) violation of human
- (b) negligence in the prevention of such violation by a public servant.

The Commission may involve in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. The Commission shall 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 inmate and make recommendations thereon.

The Commission shall 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 will recommend measures for their effective implementation.

The Commission shall review the factors, including acts of terrorism that inhibit exercise of human rights as well as the safeguards currently in force and make appropriate recommendations. The Commission shall study the treaties and other international instruments on human rights and make recommendations for their effective implementation. The Commission will undertake and promote research in the field of human rights.

- The Commission shall spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media and seminars.
- The Commission shall encourage the efforts of non-governmental organisations and institutions working in the field of human rights.
- The Commission may perform any other function it may consider necessary for the promotion of human rights.
- The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter, which in its opinion, is of such urgency or importance that it shall not be deferred till the submission of the annual report. The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.
- The Commission shall perform functions pursuant to the directions issued by the Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution. The Supreme Court stated, "the Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted.

The Commission while inquiring into complaints shall have all the powers of a civil court trying suit under the Code of Civil Procedure of 1908, and in particular in respect of the following matters:

- a) summoning and enforcing the attendance of witnesses and examining them on oath;
- b) discovery and production of any document
- c) receiving evidence on affidavits
- d) requisitioning any public record or copy thereof from any court or office
- e) issuing commissions for the examination of witnesses or documents and
- f) any other matter which may be described.

The Commission has the power to request any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so requested shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code.

The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies from there.

The Commission may, after completing the inquiry recommend to the appropriate Government or authority to take action against the person concerned where the inquiry discloses the violation of human rights. It may also recommend the appropriate Government or authority to grant necessary 'interim relief to the victim or to his family members. The Commission may approach the Supreme Court or the High Court concerned to pass such directions, orders or writs as that court may deem necessary. The Commission provides a copy of the inquiry report to the petitioner or his representative. It shall also send a copy of its inquiry report together with its recommendations to the Government concerned or authority that shall, within a month, forward to the Commission its comments on the report, including the action taken or proposed to

be taken. The Commission shall publish its inquiry report together with the comments of the Government or authority concerned, if any, and the action taken or proposed to be taken by the appropriate authority on the recommendations of the Commission. The Commission in accordance with the power conferred on it by sub-section (2) of Section 10 of the Act made the regulations, which are called National Human Rights Commission (Procedure) Regulations, 1994. These Regulations came into force with effect from March 1, 1994. Regulation No. 8 dealing with procedure for making complaints was substituted by N.H.R.C. (Procedure) Amendment Regulations, 1996."

The Protection of Human Rights Act, 1993 was enforced on 28th January 1993. The National Human Rights Commission in India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. "Human Rights" means 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.

The national Human Rights Commission is in New Delhi. "Commission" means the National Human Rights Commission defined under section 2 subclause (c) and established under section 3 of the Act. The Commission shall be constituted of members as laid under provisions of section 3 sub clause (2) which lay that there shall be a Chairperson who shall be a retired chief justice of India, 2 members who have been a judge in the Supreme Court and other member shall be chief Justice of a High Court apart from this there shall be two other members who have worked in the field of human rights. Apart from the Commission there shall be a National Commission for minorities and National Commission for women. The members of Commission shall be appointed by the President after obtaining recommendations from Prime Minister for appointment of chairperson and the members shall be appointed in consultation with Speaker of the House of the People, Minister in-charge of the Ministry of Home Affairs, 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. The Chairperson shall hold office till a period of five years or till obtaining seventy years of age, whichever is earlier and the members shall be hold office for five years and shall be eligible for reappointment. The act also regulates the conditions of services, salaries, allowance and appointment of additional staff under chapter II of the Act.

The commission is granted powers to look into matter concerning violation of human rights. The commission shall also take action in cases where victim has filed an application for violation of human rights. Apart from this the commission may look into court proceedings pending for violation of human rights, keep a check on jails, spread human rights literacy, and encourage non-governmental organization to work in the field of human rights. The Commission under section 13, while inquiring into complaints under the Act shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. It shall have power to receive complaints, issue summons, receive evidence, examine witness and requisition any public document where after the Commission shall forward the matter to Magistrate who shall further try the matter. Every proceeding before the Commission shall be a judicial proceeding under sections 193, 228, and 196 of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The Commission is bestowed with investigation powers while taking help of government officer's under section 14.

The Commission shall after receiving a notice of violation of human rights shall inquire into the matter. The State or Central Government shall inform commission of any such violation incase there is no such notice from the Government the Commission shall look into the matter. Where the inquiry discloses the commission of violation of human rights or abetment thereof by a public servant it shall notify the government and demand compensation to complainant and initiate proceedings against such officer. The commission may also approach Judicial courts for any directions such as writs, orders etc. Recommend government authorities to look into the matter and initiate relief to victims. The commission shall make a report on inquiry and send the same to concerned authority. Commission under section 19 is granted special powers with respect to human right violations made by armed forces.

Section 21 of the act provides for establishment of state Human Rights Commission headed by Chairperson who shall be retired Chief justice of a High Court, there shall be one other member who shall be a judge either in High Court or district Court. The State Commission shall inquire only into matters listed in List II and List III of seventh schedule. The chairperson of commission shall be appointed by the Chief Minister, the members shall be appointed by speaker of legislative assembly, minister in charge of department of home and leader of opposition. The members shall be appointed for a period of five years. The state shall appoint other officers as it deems necessary. The State Commission from time to time submits report on matters of concern and urgency.

Human Rights court is also established under section 30 of the Act for the purpose of providing speedy trial of offences arising out of violation of human rights. The State Government, with the concurrence of the Chief Justice of the High Court, specify for each district a Court of Session to be a Human Rights Court. A special public prosecutor shall also be appointed to try such cases. The Central and State government shall provide the commission with grants of which the state

and the national commission shall maintain proper accounts which shall be audited by auditor general. The Commission shall not inquire into matters pending in State Commission. The State and Central from time to time shall make rules of regulation for the commission. The Act is legislated to establish the National and State Human Rights Commission. The act gives immense powers to the Commission in furtherance of prevention of violation of human rights.

REFERENCES

1. Annual Report 1993-94 of the National Human Rights Commission
2. The Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006
3. NHRC website.