



## Role of national human right commission and the constitution of India

Gagandeep Dhaliwal<sup>1</sup>, Dr. Ashwani Kumar<sup>2</sup>

<sup>1</sup> Research Scholar, Political Science, NIILM University Kaithal, Haryana, India

<sup>2</sup> Assistant Professor, Political science, NIILM University Kaithal, Haryana, India

### Abstract

Indian national right commission (NHRC) was produce in 1993, as a response to increasing international awareness of human rights, once Indian entered the world arena. The international organisation Human Rights Commission adopted the “Paris Principles”, a famous person of breakdown international human offer. For India it had been essential to secure international trade partnership and show compliance with world labour normal as well as a refusal to support unethical practices like child labour. Whereas right were enshrined within the Indian Constitution, it had been the dearth of a system to shield and safeguard against exploitation that created it necessary to support charities fighting for children’s rights in India.

**Keywords:** human rights, NHRC, article, economic rights, social rights, cultural rights, political rights, juvenile justice

### Introduction

On 10th Dec. 1948, UN adopted the Universal Declaration of Human Rights and subsequently adopted two more covenants (one on Economic, Social and Cultural Rights and Other on Civil and Political Rights) on 16th Dec 1966 and they came into force on 3rd Jan 1976 and 23rd march 1976 respectively. Both the covenants were binding on the rectifying states. Another major development occurred in Sep.1978 when Commission on Human Rights organized a seminar in Geneva where a set of guidelines were evolved regarding the functions of National Human Rights Institutions (NHRIs) these guidelines were endorsed by the UN General Assembly. It created a lot of pressure on the member state to constitute NHRIs<sup>[1]</sup>.

The Human Rights Commissions Bill was introduced in the Lok Sabha on May 14, 1992. The Bill was referred to the Standing Committee of the Parliament on Home Affairs. However, urgency of the Commission arose in view of the pressure from the foreign countries and from the domestic front, the President of India on September 27, 1993, promulgated an Ordinance for the creation of a National Commission on Human Rights (NCHR) and Commissions at State level. After having made certain amendments, the protection of Human Rights Bill was passed by both the Houses of the Parliament to replace the Ordinance. The Bill became an Act after it received the assent of the President on January 8, 1994, which is known as the Protection of Human Rights Act. The purpose of the enactment is laid in the Preamble of the Act i.e., to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Court for better protection of Human Rights and for matters connected therewith or incidental thereto.

“Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights and keep them. Our strength is our unity of purpose. To that high concept there can be no end save victory.”

— Franklin D. Roosevelt

### Objective of research paper

- To examine the constitutional provision for protection of human rights.
- To examine the role of national human right commission in protection of human rights.
- To study the function of national human right commission.

### Constitutional Context of Human Rights

The important developments along with the adoption of Universal Declaration of Human Rights (1948), and prior establishment of Human Rights Commission in February 1946, which had been assigned the function of preparing, Inter-alia, an International Bill of Human Rights had started a movement for the promotion, and protection of Human Rights all over the world. India being an original member of the U.N. and member State which voted 100 for the adoption of Universal Declaration of Human Rights on 10 December, 1948 could not be oblivious of all these developments yet the Constitution of India is conspicuous by its absence of the words ‘Human Rights’. It is difficult to say whether this Commission was deliberate or just incidental.

The Indian Constitution bears the impact of the Universal Declaration of Human Rights and this has been recognized by the Supreme Court of India. While referring to the Fundamental Rights contained in Part III of the Constitution, Sikri, C.J., of unable to hold these provisions show that rights are not natural or inalienable rights. As a matter of fact, India was a party to the Universal Declaration of Right In addition, that Declaration describes some fundamental rights as inalienable.

<sup>1</sup> See, www.dic.acin/filedmin/ DU/Academics/course material/hrge \_02 visited on 11th Oct.2010.

In order to appreciate the concept of human rights under Indian Constitution, it is also pertinent to look to the aims and objects of the preamble, which are indeed the aims and objects of Indian Constitution. The preamble reflects the high purposes and noble objectives of the framers of the Constitution. The words of the preamble embody the hopes and aspirations of the people and capture and seek to reproduce the social, economic and political philosophy underlying the Constitution and running through the Warf and woof of the entire fabric. Through the preamble the people of India has resolved to secure to all citizens the following four objectives:-

- Justice, Social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and opportunity, and to promote among them all;
- Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

### Specifically Enumerated Rights

Universal Declaration of Human Rights Indian Constitution

- Right to Life, liberty and security of person (Art. 3) Article 21
- Prohibition of Slavery, slavery trade etc. (Art. 4) Article 23
- Equality before law and non-discrimination (Art. 7) Article 14 and 15 (1)
- Right to effective remedy (Art. 8) Article 32
- Right against arbitrary arrest, detention etc. (Art. 9) Article 22
- Right against ex-post factor Laws Art. 11(2) Article 20 (1)
- Right to freedom of movement Art. 13(1) Article 10(1)-(d)
- Right to own property and not to be deprived of property (Art. 17) (But it was omitted by the constitution (42 Amendment) Act, 1978) Article 19 (1) (f)
- Right to freedom of thought, conscience and Religion (Art. 18) Article 25 (1)
- Right to freedom of opinion and expression (Art. 19) Article 19 (1) (a)
- Right to freedom of peaceful assembly and Association Art. 20 (1) Article 19(1) (b)
- Right to equal access to public service Art. 21(2) Article 16 (1)
- Right to social security (Art. 22) Article 29 (1)
- Right to form and to join trade unions Art. 23 (4) Article (19)(1) (c)

### Rights not specifically Enumerated or other Rights

It would not be correct to contend that the above rights are the only rights incorporated in Indian Constitution. However, some rights, which do not find express mention in the Constitution, do exist. These are either subdued under the existing fundamental rights or have been held to emanate from the existing rights under the theory of emanation 108.”

Supreme court of India elaborating the meaning of expression; religion, dharma, religious education religious instruction and religious pluralism has highlighted the need of religion in Aruna Roy For example, it has been held that right to life and personal liberty enshrined in Article 21 of Constitution is of widest amplitude and several un-enumerated rights fall within Art. 21. These right are:

- Right to go abroad;
- Right to Privacy;
- Right Against Solitary Confinement;
- Right Against Bar Fetters1;
- Right to free legal Aid in criminal trial
- Right to Speedy Trial;
- Right against Handcuffing;
- Right Against delayed execution;
- Right Against custodial violence;
- Right against Public Hanging
- Right to Health care or Doctor’s assistance;
- Right to shelter;

### Other Rights which have been held to emanate from Article 21 are following

- Right to know;
- Right to compensation;
- Right to Release and Rehabilitation of Bonded Labour;
- Right Against Cruel and Unusual Punishment;
- Right of Inmates of Protective Homes.

### Economic, Social and Cultural Rights:-

Universal Declaration of Human Rights Indian Constitution

- Right to work, to free choice of employment, to just and favourable conditions of work etc. Art. 23 (1) Article 41
- Right to equal pay for equal work Art. 23(2) Article 39(d)
- Right to just and favorable remuneration Art. 23 (3) Article 43
- Right to rest and leisure Art. 24 Article 43
- Right of everyone to a standard of living adequate For his and his family Art.25(1) Article 47& 39(a)
- Right of education and free education in the elementary and fundamental stages Art. 26(1) Article 41&45
- Right to a proper social order (Art.28) Article 38

### Classification of Human Rights under Indian Constitution

A perusal of Indian Constitution shows that human rights have been classified under Indian Constitution into the following categories

- Fundamental Rights and Rights to freedom (Fundamental Freedoms)
- Civil, Political, Economic, Social and Cultural Rights,
- Human Rights for all and Human Rights for Citizens only.
- Justiciable Human Rights and Non-Justice able Human Rights
- Enumerated Human Rights and un-enumerated Human Rights.

**Following are some of the rights which have been evolved by being parts or having emanated from one or more of fundamental rights**

- Right to travel abroad; (Art. 21)
- Right to privacy; (Art. 21 and 19 (i) (d))
- Right against solitary confinement; (Art. 21)
- Right against bar fetters (Right to human dignity)(Articles 21, 14 and 19)
- Right to free legal aid in a criminal trial; (Art 21, Art. 39-A)
- Right to Speedy Trial; (Art. 21)
- Right against Handcuffing; (Art.. 21)
- Right against Delayed execution; [Art. 21]
- Right against Custodial violence; Art. 2
- Right against Public Hanging; (Art.. 21)
- Right to Health care or Doctor's Assistance; (Art. 21)
- Right to Shelter; (Art. 21)
- Right to pollution free environment; (Art. 21)
- Right to education of a child till he attains the age of 14; (Arts 21, 45 and 41)
- The Freedom of Press; (Art. 19 (a))
- Right to know; (Art. 21)
- Right to compensation; (Art. 21)
- Right to Release and Rehabilitation of Bonded Labor; (Art. 21, 23)
- Right of Inmates of Protection Homes (Arts. 21).

**Functions of NHRC**

The National Human Rights Commission in its 15 annual reports has shown deep concern over the increasing incidents of custodial deaths and torture in the criminal administration. The commission has continued to act with determination to end the terrible occurrences of custodial death, rape and torture that has hampered the order apparatus of our country. The commission has suggested several measures. The commission supported the insertion of section 114 B in Evidence Acts, as recommended by the Law Commission in its 113th report. Also, in section 197 of Code of Criminal Procedure, 1973, to relate the necessity of governmental sanction for the prosecution of a police officer where prima facie case has been established in an enquiry conducted by a Sessions Judge.

The various functions performed by NHRC are to:

**The function of the National Human Rights Commission is to**

- Inquire suo-moto or on a petition presented to it by a victim or any person on his behalf, into complaint of:-
  - Violation of human rights or abetment thereof.
  - Negligence in the prevention of such violation, by a public servant.
- Intervene in any proceedings 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 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 Constitution

or any law for the time being in force for the protection of Human Rights and recommended measures for their effective implementation;

- Review the factors, including Acts of terrorism, to inhibit the enjoyment of human rights and make recommendations for their effective implementation;
- 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 publication, media, seminars and other available means;
- Encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- Such other factors as it may consider necessary for the promotion of human rights;

**Role of NHRC**

The National Human Rights Commission of India has played a very vital and important role in up keeping the faith of a common person in the criminal justice system of India.

**Death in Police Custody**

The commission observed that death in police custody is one of the worst kinds of crimes in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society.

Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. The National Police Commission in its 4th Report of June, 1980, noticed the prevalence of custodial torture and observed that nothing is “so dehumanizing” as the conduct of the police in practicing torture of any kind on the person in their custody, based on the following cases:

- Death of Sher Mohammad in police custody by torture: Uttar Pradesh
- Custodial death of Haji Mohammad Tent wala in police custody: Ahmadabad, Gujarat
- Illegal detention, torture and death of Shah Mohammad in police custody and negligence on the part of doctors for not conducting a thorough post mortem: Madhya Pradesh

The National Human Rights Commission having been constituted under the 1993 Act for better protection of Human Rights and civil liberties of the citizen has not only the jurisdiction but also an obligation to grant relief in appropriate cases to the victims or the heirs, whose Right to Life under Article 21 of the Constitution has been flagrantly infringed by the State functionaries by calling upon the State to repair the damage done by its officers to the Human Rights of the citizens. The Hon'ble Supreme Court in the case of-Neelbati Behra v. State of Orissa, 1993, SCC 746, observed and ordered as under:

- The commission has taken a consistent stand that the obligation of the State to ensure safety of persons while in its custody is strict and absolute and admits no exception. The infeasible Right to Life of every citizen, including

convicts, prisoners or under trials cannot be taken away except in accordance with the procedure established by law, while the citizen is in the custody of the State.

- It is now an established law that the failure of the State to take all possible steps to protect the life of the citizens while in its custody makes the state vicariously liable for its action or omission.
- “Immediate interim relief” envisaged in section 18(3) of the Act has to be correlated to the injury or loss which the victim or members of his family have suffered owing to the violation of Human Rights by public servants. A meaningful and harmonious construction of this clause would leave no doubt that the Commission is entitled to invoke its benevolent sweep on prima-facie view of the matter irrespective of whether there is any litigation- civil or criminal relating to the matter.
- The idea of immediate interim relief does not therefore, presuppose the establishment of criminal liability of the offender in a court of law as a precondition for the grant of the relief nor does it depend on whether any civil litigation is either pending or prospective

### **Death in Judicial Custody**

When the death of the deceased takes place in the police custody, Commission issues a show-cause notice to the State government as to why an immediate interim relief under section 18 (3) of The Protection of Human Rights Act, 1993 be not granted to the next of the kin of the deceased. The Commission held that the State is vicariously liable for the death of the under trial prisoner and if the death of the deceased was due to the negligence on the part of the jail authorities, State had to pay a sum reasonable to the next of the kin of the deceased under section 18(3) of the Act.

The following cases has been reported:

- Death of an under trial prisoner, Tachi Kaki: Arunachal Pradesh
- Custodial death of under trial prisoner, Harjinder, due to negligence: Uttar Pradesh
- Death of Sanjay Sharma in District jail, Mathura: Uttar Pradesh
- Death of Jasveer Singh in judicial custody due to negligence in providing timely medical aid: Uttar Pradesh

### **Juvenile Justice**

The Juvenile Justice towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system.

### **Rights of Juveniles**

Condition of Child inmates in Juvenile Home, Meerut: Uttar Pradesh-

The commission on 26th Sep. 2005 took suo-motu cognizance of a news item published in “Amar Ujala” on 21st September 2005, captioned “Massoomo k e Liye Kale se Kam Nahi Hai Jail”. According to the news item, 59 child accused were taken to the Meerut court for appearances before the magistrate on 20 September 2005. The van carrying 59 children was parked in an open area outside the court premises under direct sun for five hours and the inmates were not given

food and water.

It is a serious issue about violation of Child Rights the Commission directed its investigation team to visit Govind Ashram located at Juvenile court Saket. The team inquired about the factual allegations contained in newspaper within two weeks.

The commission considered the report with a further spot investigation report in the light of assurance before the enquiry team. Action taken report called from the chief Secretary, Government of U.P. is awaited.

The Former Chairman of the National Human Rights Commission (NHRC) Chairman Justice A.S. Anand stated, “Overcrowding throws every system out of gear and is found to be the root cause of the deplorable conditions in our jails”

Justice Anand has written letters to the chief justices of all high courts suggesting regular holding of special courts in jails and their monitoring by either the chief justices themselves or a senior judge.

Asking the Judiciary to address this problem, Justice Anand has proposed fast track courts to be held inside the prisons for the benefit of the under trails, which alone will help decongest the prisons.

The survey mentioned that “Slow progress of the cases and operation of the bail system to the disadvantage of the poor and illiterate is responsible for the plight of others who continue to suffer all the hardships of incarceration although their guilt is yet to be established”.

The Commission chairman has proposed a four-track strategy to deal with the situation. Beside special courts to be held inside jails, and wants the courts to release under trail on the personal surety bonds, in case of self-confessed first timers and petty offenders.

### **Conclusion and Suggestion**

After going through the whole study in this segment, we find that the structure of the commission shows, it is a fully independent body and based on two conceptual pillars, i.e., autonomy and transparency. From the establishment of the NHRC, it played very important role to protect the Human Rights in the functions of Criminal Administration of Justice. After going through the cases decided by the NHRC mentioned in this segment we find that the commission many times took action on the various complaints by the affected person, on the information received from the state mechanism, took action on the demand of NGO’s, conduct investigation on the direction of the Supreme Court and many a times took suo moto action on the News published in the various Newspapers.

Therefore being a recommendatory and investigatory body, the recommendation of the commission are of great importance to the Government in order to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial object it has in view.

The creation of NHRC in India can be an important mechanism to strengthen Human Rights protection but can never replace nor should it in any way diminish the safeguards inherent in comprehensive and effective legal structure enforced by an independent, impartial and accessible judiciary.



### Suggestion Regarding NHRC

The National Rights Commission should be authorised to take action against the persons who are found guilty of making false complaint against security personnel, armed forces, Para military forces and other law enforcement agencies. Due to false complaints some time, they have humiliations, which are violation of their human rights.

Finally, it is suggested that the knowledge and awareness of human rights is most important for a democratic country. Accused should be made aware of the human rights available to them under the International human rights instruments as well as National Laws.

Both the print and electronic media owe the responsibility and the duty towards the society, in controlling the crime effectively. The various political parties, activists, human rights organizations etc. should come forward to make accused aware of human rights.

Like the National Human Rights Commissions at the national level, Human Rights Commission are also required to be created in all the states as envisaged in the Protection of Human Right Act, 1993.

Lawyers should also play a constructive role in bringing justice to the individuals.

Hence, a collective effort is required to justify the existence of human rights.

Human rights like Fundamental Rights are paramount, safe and transcendental in nature and ought to be treated as inalienable and inviolable for preserving the dignity of the people.

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