

Significance of NHRC in India

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Abstract

Human rights are rights inherent to all human beings, irrespective of our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. However, it becomes complex when we try to put this idea into practice. The major role in putting the idea of human rights into practice, respecting it and fulfilling it lies to the State. National Human Rights Institutions are funded by the State but are independent of it.

In 1993 internationally agreed Paris Principle defined the role, composition, status and function of National Human Rights Institution. National Human Rights Commission was established in India according to the provision of Protection of Human Rights Act for the effective enforcement of international and national human rights provision. Moreover, the Act itself has given power to the Commission such as suo motu inquiry, or intervention to the court proceeding if an allegation has been made for human rights violation.

The author postulates the significant role played by the Commission in the protection of human rights in India. The Commission has taken up various important decisions in relation to Gujarat riots, Punjab mass cremation order, Indian Council of Legal Aid, Arunachal Pradesh and starvation death in Orissa etc. The author will critically examine the role played the National Human Rights Commission in the protection and promotion of human rights in India.

Key Words: *Human Rights, India, National Human Rights Commission, Promotion, Protection*

1. Introduction

Human rights are the rights, which are guaranteed to every person irrespective of their caste, religion or any other differences. These rights are universal, inherent and inalienable for human beings. The doctrine of human rights aspires to provide a universal framework for determining the basic civil, economic and political as well as social conditions required for all individuals to lead a healthy life. A State cannot use national sovereignty as a shield or a legitimate means to permanently opt out from their fundamental human rights based commitments.[1]

The first generation rights reflect on civil as well as political rights and deals with negative rights such as freedom of religion, speech, fair trial etc. Also, the second generation illustrates human rights, which focuses on economic, social as well as cultural rights and deals with positive rights. It also includes the right to education, employment, healthcare etc. The third generation reflects focus on social procedure, encouraging international rights etc.[2]

At the international level, we see international documents such as the Universal Declaration of Human Rights (UDHR), which was then adopted by the United Nations General Assembly. It is at present the fundamental pillar for encouraging the practice of protection and promotion of human rights. It encourages universal acceptance and the morality of human rights around the globe.[3] It encourages its member States to actively participate in such activities and encourage friendly relations with other nations.[4]

At present India is a party to various international treaties, conventions, and declarations, which focuses on the protection and promotion of human rights. Around the globe, many countries have enacted their own legislative framework in order to fulfill their commitment toward it. Sadly, we still hear the news in relation to human rights violation worldwide.[5] There are many people around the globe who are challenging the authoritative government so as to ensure justice and equality in society. The successful overcoming of this impasse and the realization of this unfulfilled pursuit of equality and freedom constitute the greatest challenge to the theory and practice of human rights.[6]

2. Protection of Human rights: India

In the Indian scenario, when we study the Indian Constitution we see that its preamble focuses on the principles of equality, justice, liberty, and fraternity. The Indian Constitution reflects through its preamble, the chapters concerned on fundamental rights and directive principles of State policy where the emphasis is made on the protection of human rights in India.[7] Article 14 of the Indian Constitution provides the right to equality before the law and equal protection of the law to every citizen. Similarly, Article 15 prohibits the State from discriminating against any citizen on the ground of religion, race, caste, sex or place of birth.[8]

Recently, Protection of Human Rights (Amendment) Bill 2018 got approved from the Indian Cabinet for better protection and promotion of human rights. In India, we have National Human Rights Commission (NHRC) and State Human Rights Commission (SHRC), which focus on Paris Principles in order to have wide functioning and independence in its working process for promoting human rights.[9] It has been well stated by the Prime Minister of India that NHRC plays a vital role in guarding human rights in India.[10]

Nevertheless, there are issues like caste and religion based discrimination, illegal detention, custodial death, freedom of speech and expression, atrocities of the military and extrajudicial killing which are prevailing in the society at present. Moreover, the Report of Human Right Watch raised serious concern about the treatment of minorities, impunity, woman and child's right, sexual as well as gender identity and restriction on freedom of speech in India, which is against the human rights principle.[11] Human rights lie at the heart of a democratic society based on the rule of law and it is fundamental for the Indian government to erase these prejudices so as to create a just and equitable society.[12] Therefore, there is needed to make effective and efficient efforts by the responsible authorities in order to uplift people standards of living in the society for better results.

3. NHRC- Indian Parameter

The journey began with the United Nations Economic and Social Council (UNECOSOC), which promoted the idea of establishing a local human rights committee. Further, it recognized the distinctive role, which institutions can play in the promotion and protection of human rights. Throughout the next three decades, the United Nation prepared the feasibility report on working of such an organization.[13] In 1991 an important international workshop took place which was based on National Institute for Protection and Promotion of Human Rights which was held in Paris during that time. In order to achieve their goals, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments.[14]

The participant drafted important guiding principles relating to the status of national institutions which is also known as the Paris Principle. These principles were afterward adopted by the United Nations General Assembly in its resolution 1992/54 of 1992. Paris Principles define the role, composition, status and functions of National Human Rights Institutions (NHRIs). NHRIs must comply with these principles, which identify their human rights objectives and provide focuses on their independence, broad human rights mandate, adequate funding as well as an inclusive and transparent selection and appointment process.[15] NHRIs are independent bodies, which were established to fight for those who are in need of protection and to hold the governments to account for their human rights obligations. They are established by the law or constitution of the respective country, they operate in independence from the government.[16]

In India, the Protection of Human Rights Act was enacted in 1993 to fulfill the commitment made by India to protect and promote human rights. The Act focuses on the establishment of the National and State Human Rights Commission in India.[17] The National Human Rights Commission (NHRC) consist 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 and two other member to be appointed from amongst persons who have knowledge either have experience in human rights aspects.[18] The Chairperson of National Commission for Minorities, National Commission for the Scheduled Caste, National Commission for the Scheduled Tribes and the National Commission of Woman are deemed members of the Commission.[19]

Furthermore, Section 12 and Section 13 of the Act empowers the Commission with various powers and functions such as to inquire, take suo moto cognizance of human right violation or its abatement, intervene in any court proceeding which involves any allegation of violation of human rights, to take measures as it may consider necessary for the protection of human rights.[20] Moreover, Section 20 states that the Commission shall submit an Annual Report to the Central government as well as to the State government concerned and the Central and State government as per the situation the Commission's Annual and Special Reports will be presented before both houses of the Parliament either it will go to the State legislature as per the circumstances and focus will be also be made on the memorandum which will focus on the actions which are considered or have been suggested to be considered by the Commission as a recommendation as well as reasons can be given for not accepting these recommendations when it is required.[21]

4. Significance of NHRC

NHRC is an independent body, which is established to protect and promote human rights in India. It has been more than 24 years since its establishment and it has been playing a prominent role in keeping the faith of a common man in the justice system in India.[22] This part of the article will depict the effective efforts that were taken by NHRC in order to safeguard the interest of the people in India.

(i) Chakma Tribals in Arunachal Pradesh

National Human Rights Commission v. State of Arunachal Pradesh [23] is a landmark judgment where concern was made on enforcement of fundamental rights for the people belonging to Chakma tribals. By focusing on Article 21 of the Indian Constitution the Commission has filed the petition on the basis of this ground. There were a large number of refugees, which were displaced because of Kaptain Hydel Project. They comprised of people belonging to East Pakistan during 1964. They had taken shelter in the northeastern States of India later onwards namely in Assam and Tripura.[24]

The prime concern was in relation to their citizenship and there was a danger of persecution by certain sections of the people of Arunachal Pradesh. The fact shows that the Commission has contented it has found serving of quit notices by All Arunachal Pradesh Students Union (AAPSU) to the people belonging to Chakma tribals and enforcement was supported by the officers of Arunachal Pradesh and further stated that the State government has intentionally delayed the disposal of the dispute by not making necessary efforts and response to NHRC. It also assisted in having the enforcement of eviction of the Chakmas from the State. The court has stated that it is the responsibility of the government of Arunachal Pradesh to protect the fundamental rights of their people. In this, the focus has to be made on the people belonging to Chamka who have been living in the Arunachal Pradesh.[25] This show the efforts have been made during that time in relation to safeguarding the interest of refugees. This judgment has played a significant role in protecting and safeguarding the interest of foreigners so that they can enjoy the fundamental rights stated under Article 21. From this, we are able to save the lives of thousands of people in this manner through this decision.[26]

(ii) Gujarat Communal Riot

When we look back we see that the NHRC took a suo moto cognizance of the alarming media reports about the communal violence, which took place in Gujarat that began with the Godhra incident, which took place on 27 February 2002. Later Justice J.S. Verma, who was the Chairperson of the Commission that time, went along with the other members and visited Ahmedabad, Vadodara, and Godhra in March.[27] The Commission also sought for the Report from the State government of Gujarat indicating the action taken by the government so far and that in contemplation along with the assurance from the State government of strict implementation of the rule of law.[28] It is important to note that the violence in Gujarat started on 27 February 2001 when a train was carrying Hindu pilgrims which were attacked by a Muslim mob and it caught fire. Sadly, in this incident, almost 59 people were killed. This caused tension between the public and resulted in the further slaughtering of Muslims by Hindu mobs. Unfortunately, the situation was uncontrollable and thereafter-Hindu mobs affected the lives of

Muslims. This resulted in thousands of Muslim people got displaced and made them homeless.[29]

On the basis of the facts, the Commission later prepared the Report on the riot where the Commission observed that the State has failed in discharging its primary duty and inescapable responsibility to protect the rights to life, liberty, equality, and dignity of all of those who constitute it.[30] Due to serious of this matter, the Commission had approached the Apex Court in order to hear the plight of the victims of Gujarat riot.

(iii) Punjab Mass Cremation case

Between the time period of 1984 and 1994 the Punjab security forces engaged in counter-insurgency operations. It has included activities in relation to human rights abuses in the form of torture, disappearances, and extrajudicial executions.[31] Under such environment, the Supreme Court had referred the case to the NHRC in December 1996 after the disappearance of human rights activist Jaswant Singh Khalra, who had brought in the light that a large number of youths were killed in encounters and they were cremated by the police. Unfortunately, they were listed as unidentified in records.[32] NHRC investigated this mass cremation case which included 2,017 cases. Only 1,513 cases could be identified among them. The NHRC closed the case in 2012 and recommended the Punjab government to provide a total of 27.94 crores as a monetary relief to the next kins of the identified 1,513 deceased. [33]

(iv) Starvation Death in Orissa

On December 1996 the Commission received a letter from the Union Agricultural Minister regarding the deaths which were caused due to starvation in Orissa. Prior to the letter, a writ petition was already filed in the Supreme Court under Article 32 of the Indian Constitution by the Indian Council of Legal Aid and Advice.[34] The Commission acted quickly and initially prepared an interim measure for the two year period and also requested the Odisha State government to constitute a Committee to examine all aspects of the land reform question in the KBK districts.[35]

Furthermore, the other major issues taken up by the Commission includes the right to work and labor rights, sexual violence, human trafficking, child marriage, an excessive power of the armed and police force, lesbian, gay, bisexual and transgender rights and the problems faced by scheduled caste as well as scheduled tribes and other minorities.[36] In order to have a healthy and peaceful atmosphere, it has been suggested by NHRC in their Report to make the right to education compulsory in India in order to prevent social evils such as child marriages.[37]

Additionally, the Commission is actively involved in a variety of functions which includes investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, creating awareness, promoting interaction, exchange, and better coordination among other national human rights institutions in the region and worldwide, promoting interaction and exchange with non-governmental organizations, and publishing Annual Reports.[38] It is essential to understand that the number of reported cases has been increased and people have begun to have faith in the working process of NHRC. Therefore, the number of disposing of cases has risen this reflects the effective measures that have been taken by NHRC to protect human dignity.[39]

5. Conclusion

There has been an unfortunate event due to which NHRC has been considered as a toothless tiger.[40] This has drawn the attention of the authorities to overcome the flaws, which existed in its mechanism. On the other hand, when we look at the brighter side, we see that NHRC undoubtedly deserves credit for creating a positive human rights jurisdiction in India. However, has it done enough or has it been able to realize its full potential still remains a question. One of the main reasons why the Commission still lacks in some aspects can be because of some structural deficiencies. For instance, Section 2 (d) of the Protection of Human Rights Act defines human rights as rights relating to life, equality, and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India. Thus, this narrow definition requires the NHRC to concentrate more on civil and political aspects than on social and economic rights.[41]

Subsequently, Section 19 of the Act lies down that the NHRC cannot directly inquire into complaints against the Indian Armed Force. It has to seek a Report from the Central government and send its recommendations on such Report to the government.[42] Since atrocities by the armed forces have been the major source of human rights violation in India, this Section automatically weakens the working of the Commission. Hence, this Section should be amended.[43]

The other problem is that even after more than 21 years of promulgation of Central legislation on human rights still, many States in India have not set up SHRC. Last year, the Chief Justice was found raising serious concern over Delhi not having SHRC though it has the second highest number of human rights violation cases reported to the NHRC. The State should be encouraged to establish a State Commission for more effective countering of human rights violation.[44]

NHRC during its inception was first of its kind in South-Asia region. Over the year, it has again set up an example of a prominent human rights body in the country. If some of the structural inadequacies are removed, we can be more optimistic about the situation of human rights in the country. Recently, NHRC has sent their team to Dinajpur in order to inquire about the unfortunate incident took place related to the death of two students, which was caused due to clashes in their school. Not only there has been a loss of two lives but other students have also got injured. The Commission investigated if the police have acted properly or not which has caused harm to these students and their rights were not safeguarded and protected even in the presence of police. This shows there is an urgent need to make people aware of their rights in order to overcome the fear they have in their mind about their safety.[45] With this perspective in mind, H. L. Dattu has stated that the body is flooded with a large number of complaints and issues. In order to provide a healthy environment, it is necessary that the government and the police must behave in a cooperative manner. One needs to change people's mindset in order to promote human rights.[46] The society must make efforts to understand the significance of human rights and even after 25 years of NHRC we still need to make joint efforts to make India a safer place to live for coming generations.[47]

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