

55 National Human Rights Commission

ESTABLISHMENT OF THE COMMISSION

The National Human Rights Commission is a **statutory (and not a constitutional) body**. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993¹.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants² and enforceable by courts in India.

The specific objectives of the establishment of the commission are³:

- (a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner;
- (b) To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and
- (c) To complement and strengthen the efforts that have already been made in this direction.

COMPOSITION OF THE COMMISSION

The commission is a multi-member body consisting of a chairperson and five members. The chairperson should be a retired chief justice of India or a judge of the Supreme Court and members should be a serving or retired judge of the Supreme Court, a serving or retired chief justice of a high court and three persons (out of which atleast one should be a woman) having knowledge or practical experience with respect to human rights. In addition to these full-time members, the commission also has seven ex-officio members—the chairpersons of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs, the National Commission for Women, the National Commission for BCs and the National Commission for Protection of Child Rights and the Chief Commissioner for Persons with Disabilities.

The chairperson and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the chairperson and members are not eligible for further employment under the Central or a state government.

The president can remove the chairperson or any member from the office under the following circumstances:

- (a) If he is adjudged an insolvent; or
- (b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) If he is unfit to continue in office by reason of infirmity of mind or body; or

- (d) If he is of unsound mind and stand so declared by a competent court; or
- (e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairperson or any member on the ground of proved misbehaviour or incapacity. However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairperson or a member.

The salaries, allowances and other conditions of service of the chairperson or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS OF THE COMMISSION

The functions of the Commission are:

- (a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- (b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- (c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- (d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- (e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- (f) To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- (g) To undertake and promote research in the field of human rights.
- (h) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- (i) To encourage the efforts of nongovernmental organisations (NGOs) working in the field of human rights.
- (j) To undertake such other functions as it may consider necessary for the promotion of human rights.

WORKING OF THE COMMISSION

The commission's headquarters is at Delhi and it can also establish offices at other places in India. It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the Central and state governments or any other authority subordinate thereto.

The commission has its own nucleus of investigating staff for investigation into complaints of human rights violations. Besides, it is empowered to utilise the services of any officer or investigation agency of the Central government or any state government for the purpose. It has also established effective cooperation with the NGOs with first-hand information about human rights violations.

The commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence⁴.

The commission may take any of the following steps during or upon the completion of an inquiry:

- (a) it may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
- (b) it may recommend to the concerned government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- (c) it may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
- (d) it may approach the Supreme Court or the high court concerned for the necessary directions, orders or writs.

ROLE OF THE COMMISSION

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the concerned government or authority. But, it should be informed about the action taken on its recommendations within one month. In this context, a former member of the Commission observed⁵ : 'The government cannot wash away the recommendations made by the Commission. The commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. It is, therefore, improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendation'.

Moreover, the commission has limited role, powers and jurisdiction with respect to the violation of human rights by the members of the armed forces⁶. In this sphere, the commission may seek a report from the Central government and make its recommendations. The Central government should inform the Commission of the action taken on the recommendations within three months.

The commission submits its annual or special reports to the Central government and to the state government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the commission and the reasons for non-acceptance of any of such recommendations.

PERFORMANCE OF THE COMMISSION

The various human rights issues taken up by the Commission are as follows:

1. Abolition of Bonded Labour
2. Functioning of the Mental Hospitals at Ranchi, Agra and Gwalior
3. Functioning of the Government Protective Home (Women), Agra
4. Issues Concerning Right to Food
5. Review of the Child Marriage Restraint Act, 1929
6. Protocols to the Convention on the Rights of the Child
7. Preventing Employment of Children by Government Servants: Amendment of Service Rules
8. Abolition of Child Labour
9. Guidebook for the Media on Sexual Violence against Children
10. Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation
11. Sensitisation Programme on Prevention of Sex Tourism and Trafficking
12. Maternal Anemia and Human Rights
13. Rehabilitation of Destitute Women in Vrindavan
14. Combating Sexual Harassment of Women at the Work Place
15. Harassment of Women Passengers in Trains
16. Abolition of Manual Scavenging
17. Dalits Issues including Atrocities Perpetrated on them
18. Problems Faced by Denotified and Nomadic Tribes
19. Rights of the Disabled Persons
20. Issues Related to Right to Health
21. Rights of Persons Affected by HIV / AIDS
22. Relief Work for the Victims of 1999 Orissa Cyclone
23. Monitoring of Relief Measures undertaken after Gujarat Earthquake (2001)
24. District Complaints Authority
25. Population Policy - Development and Human Rights

26. Review of Statutes, including Terrorist & Disruptive Activities Act, and (Draft) Prevention of Terrorism Bill, 2000
27. Protection of Human Rights in Areas of Insurgency and Terrorism
28. Guidelines to Check Misuse of the Power of Arrest by the Police
29. Setting up of Human Rights Cells in the State / City Police Headquarters
30. Steps to Check Custodial Deaths, Rape and Torture
31. Accession to the Convention against Torture, Additional Protocols to the Geneva Conventions.
32. Discussion on Adoption of a Refugee Law for the Country
33. Systemic Reforms of Police, Prisons and other Centers of Detention
34. Review of Laws, Implementation of Treaties, and the International Instruments on Human Rights
35. Promotion of Human Rights Literacy and Awareness in the Educational System
36. Human Rights Training for the Armed Forces and Police, Public Authorities and Civil Society
37. Action Research on Trafficking.
38. Research through well-known academic institutions and NGOs on various issues relating to human rights.
39. Constitution with NGOs and experts / specialists on human rights issues.

NOTES AND REFERENCES

1. The president promulgated the Protection of Human Rights Ordinance on September 28, 1993. Subsequently, the Protection of Human Rights Bill, 1993, was passed by both the Houses of Parliament and received the assent of the President on January 8, 1994. The act came into force with retrospective effect from September 28, 1993.
2. 'International covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and

Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966 and such other Covenant or Convention adopted by the General Assembly of the UN as the Central Government may specify. The Indian government acceded to these two International Covenants on April 10 1979.

3. T.K. Thommen, 'Human Rights Commission', Cochin University Law Review, Vol. XVII, nos. 1 and 2, March-June 1993, p. 67–68.
4. A.M. Ahmadi Committee set up by the Commission recommended that the Commission should be empowered to inquire into any matter after the expiry of one year, if there is sufficient reason for not filing the complaint within the said period.
5. Justice V.S. Malimath, 'Role of Human Rights Commission', Human Rights in India: Problems and Perspectives, B.P. Singh Sehgal (ed.), Deep Publications, 1995, p. 17–20.
6. Under the Act, 'armed forces' means the naval, military and air forces and includes any other armed forces of the Union. A.M. Ahmadi Committee set up by the commission recommended that the definition of the 'armed forces' should be changed in a way that it includes only navy, army and air force, not para-military forces.