

NATIONAL HUMAN RIGHTS COMMISSION, GOOD GOVERNANCE AND HUMAN RIGHTS

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ABSTRACT

Good governance and Human rights are reinforcing and good governance is instrumental in ensuring an environment for human rights protection. It deals with the institutional processes, legislations, adjudication and service delivery. The NHRC is an administrative authority that acts as a sound system to protect human rights in consonance with good governance and administrative law. Formed under the Protection of Human Rights Act, 1993, the commission is constituted by the government and functions under the hold of the State. Therefore it suffers from several structural and procedural institutional and beaurocratic weaknesses that has rendered it to be a toothless tiger.

This paper talks about the importance of good governance in a democracy and highlights the factors that the NHRC must tackle to create a human right respecting civil society. Given the importance of good governance in a democracy, the paper advocates good governance as a right in itself and not just a means to achieve other human rights. For this purpose, the *just, fair and reasonable* notion of Maneka Gandhi vs Union of India is discussed in depth. Further the paper discussed good governance in tandem with human rights and how a human rights respecting governance and benefit the civil society. In the conclusion, the paper shall highlight certain suggestions for better functioning of NHRC.

The objective of this paper is to establish a link between good governance and humans rights so that the institutional weaknesses existing in the NHRC in India can be addressed. The paper aims to answer the following research questions with the hypothesis that NHRC has failed in good governance owing to certain limitations in its genesis and administration.

1. Whether the NHRC acts as a sound instrument to create an environment where the human rights are protected and respected in a sustainable manner ?
2. Whether good governance is a rights in itself in democratic nations or it is just a means to achieve other rights ?

The research is analytical and shall be based on both secondary and primary sources. The research shall encompass provisions of the Protection of Human Rights Act, 1993 and international conventions that protect human rights. The paper shall study different judicial decisions that promote good governance and address the issues of human rights in India. For the purpose of the research the secondary sources shall include books, journals, articles and web sources.

1. INTRODUCTION

A culmination of several national and international factors resulted in the establishment of National Human Rights Commission in India in 1993. During this period, the internal conflicts in India were at its peak. Punjab, Kashmir and the North eastern states were all under turmoil and were witnessing grave human right violations. A collective dissatisfaction against the actions of police and other security forces was raised by the media houses and activists alike.

Moreover in 1991, representatives from various countries met at a UN sponsored conference to lay down the guidelines for the National Human Rights Commissions of different nations to follow. These principles were known as Paris Principles and they became the foundation for the establishment and operation of National Human Rights Institutions.¹ In wake of these events, the Protection of Human Rights Act, 1993, was enacted in India, with a view to bring about greater accountability and strengthen the dominion of human rights in the country.

The Act provides a broad mandate for Human Rights Commissions, mostly in consonance with the Paris Principles. It includes inquiries into instances of human rights violations by public servants, research, supporting efforts to increase awareness about human rights and inspecting police lock-ups, prisons and juvenile homes where people are interred. While human rights

¹ ASWINI K. RAY. "Human Rights Movement in India: A Historical Perspective." 38 ECONOMIC AND POLITICAL WEEKLY, 3409-3415, 2003

commissions have contributed greatly to human rights in India, it is debatable whether they can currently do more, considering the structural and practical limitations that are faced in India.

The NHRC being a statutory body, formed under the Human Rights Act, 1993 is a governmental authority. The legitimacy and accountability of the commission lies on its ability and success in addressing problems related to human right violations in India. While there is a lot of consensus on the role that Human Right Commissions are supposed to fulfil, their institutional effectiveness depends on nation to nation. The success of a Human Rights Commission is based on several bureaucratic factors like level of funding, functional independence, and institutional autonomy guaranteed to the HRC.² Therefore the NHRC is often stuck between its noble objectives and the bureaucratic deficiencies. The culture which exists in the government often causes structural ineffectiveness as it delays the work done by the commission.

As an administrative body, the essential function of NHRC is to promote good governance by virtue of protecting human rights. Inquiries, investigation and recommendations to promote, protect and safeguard human rights are the basic roles played by the commission. The NHRC ensures good governance by acting as a check on the actions of public servants and other individuals indulging in human right violations.

The paper discusses the role played by NHRC in the administrative domain as the protector of Human Rights in India. Further the commission acts as a tool for good governance by promoting transparency and efficiency. Good governance and human rights are mutually enforcing and human right principles provides certain values for the government to function. The red light theory of administrative law deals with curbing the actions of State authorities so as to protect the individual rights. NHRC propagates and practices this theory of administrative law and in turn promotes good governance. Good Governance is the genesis of a democratic institution and is based on important principles of participation, accountability, transparency and State responsibility. We shall observe how NHRC protects human rights and thus acts as

² C. RAJ KUMAR, *Human rights commissions in India*, <http://www.thehindu.com/todays-paper/tp-opinion/Human-rights-commissions-in-India/article14850018.ece>, Last accessed on 26 January 2018

a flag bearer for good governance. Further the expanding scope of this paper shall discuss good governance as a human right itself.

2. FUNCTIONING OF NHRC

To start the discussion on good governance and human rights we shall first deliberate upon the objectives behind the constitution of the commission. Formulated under Section 3 of the Human Rights Act, the commission's objectives are laid down in its preamble. The basic purpose behind NHRC is better protection of human rights in India. Human rights are certain universally accepted rights that are inherent to human beings and cannot be alienated or denied. 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.³

The Act also provides for the constitution of the commission and prescribes it to be presided by a retired Chief Justice of India. Further there are several other members that work in association with the commission. This creates a beaurocratic environment in the commission which causes several institutional weaknesses that we will look upon in the latter half of this paper.

In consonance with the Paris Principles, the commission is entitled to inquire into all matters of human right violations. Further the authority to advice and recommend the government is inherent to the jurisdiction of NHRC. The functions of the commission are mentioned in Section 12 range from inquiring, intervening and reviewing human rights violations in jails and other governmental institutions. With regard to the inquiry and investigation powers of the commission, it is authorised to summon and ask for production of documents.

Despite being the worlds largest democracy and ardent follower of Universal Declaration of Human Rights, India is often critiqued for having a non autonomous Human right commission. The commission operates under the ministry of Human Rights and is therefore stuck in the beaurocratic set up of the government. The NHRC has failed to impact governmental proceedings on a large scale and is often referred to as toothless tiger. The commission has

³ Section 2 (1) d, Protection of Human Rights Act, 1993

hardly finalised any reports and has not made many conclusive recommendations to the government. The reliance and dependence of the commission on other institutions makes its functioning as the protector of human rights in India stringent. The Paris principles had mandated 'Independence' as the prime factor of the Human Right commissions. However the lack of independence in India has not allowed the commission to function in full flow. Lack of autonomy makes the commission prone to political influence and leads to several structural and practical limitations.

The commission makes recommendations on a plethora of matters like disciplinary proceedings against delinquent officials and payment of compensation to the victims. However the State often ignores the recommendation completely or furnish a long bureaucratic discourse on how compliance with the recommendation is not in the public interest. Moreover these recommendations also suffer from partial and delayed compliance which renders it meaningless. Another institutional weakness of the commission is the appointment of its members by the government. The Human Rights Act creates a vacuum with regard to the person that shall be the constituents of NHRC. The vagueness in the Act with regard to people having expertise in the filed of human rights leaves scope for people with political clout to enter the commission through the backdoor. Furthermore the fact that these commissions are functioning with less than the prescribed five members shows the amount of seriousness that the government associates with it. These drawbacks of the commission are directly in violation of basic administrative law principles like Separation of power, transparency and accountability.

Another noticeable flaw in the administrative work of NHRC is the lack of fairness in its functioning. The bar against the violations committed by armed forces is a visible deviation from the principles of fairness and rule of law. Rule of law is the hallmark and building block of administrative law in a democracy. It provides for the State to be governed by the supreme law and that law shall prevail. NHRC has often highlighted its stand that rule of law is must to protect human rights.⁴ This exception made in favour of armed forces is a notable violation of

⁴ Rule Of Law Must To Respect Human Rights: NhrC Chair, <http://www.nepal24hours.com/rule-law-must-respect-human-rights-nhrC-chair/>, Last accessed on 29 January 2018

the rule of law which as highlighted by Dicey promotes equality in the eyes of law.⁵ The accountability of NHRC further comes under question because of the time bar against complaints made one year after its commission. Scepticism among the victims to make the violations against them initially leads to several genuine cases being unnoticed.

The beaurocratic framework of the Commission because of the governmental staff either on deputation or reemployment post retirement causes the strict hierarchy to be maintained. Therefore the Commission meant for a noble cause of protecting human rights is rendered to be like any other governmental institution. The complainants are also not able to trace the situation of their complaints due to the levels of personnels. The NHRC also suffers from immense practical issues like lack of fundings and overburdening with complaints.

Therefore NHRC suffers from several administrative inefficiencies that make it a mere titular body that has not completely achieved its objective of protecting human rights in India. Despite these deficiencies, the abundant potential that the commission has to act as a sound system for furthering good governance cannot be doubted. In order to realise this potential, the commission must adhere to administrative law principles like rule of law, accountability and discretionary autonomy. In the next chapter, we shall see the relation between good governance and human rights.

3. GOOD GOVERNANCE AND HUMAN RIGHTS

Governance can be referred to as the decision making process of the State wherein there is interaction between the government and the civil society. Good Governance flows from rule of law and independence of administrative authorities. Functions are carried out as per the rules and essential principles of law without which the actions are unjustified. The definition of good governance cannot be limited to a white and blank understanding and is said to encompass political pluralism, transparency, rule of law and full respect and protection of human rights. Therefore the real objective of good governance can be achieved only when the human rights of all citizens are well protected. Good Governance is the norm for the State and the right for

⁵ VIVEK RANJAN, Rule of Law and Modern Administrative Law, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1761506

the citizens of a country in which more specific conditions have been formulated.⁶ Democracies worldwide acknowledge the importance of maintaining good governance as a key duty of the State.

Good governance is the bedrock of a democratic nation and can be demanded by citizens as a matter of right. When an individual entrusts his trust on the State, he expects a certain kind of behaviour in return. The European Union Charter of Fundamental rights recognises that every citizen has a right to have his affairs to be handled impartially, fairly and within a reasonable time the State. Therefore good governance is not limited to a means to realise other rights but a fundamental right itself. Administrative rules associated with good governance are a fundamental aspect of the working of national institutions. Therefore being phrased as a subjective individual right and a citizen's right, good administration not only requires administrators to act in accordance with legal requirements, but also provides citizens with protection in the form of an enforceable right which they can rely on in their relations with administrative bodies.⁷

The right thus imposes a correlated duty on the administrative authorities to respect the affairs of the citizens and provide timely remedy. Slack in governance was noted during the emergency in India in 1975 wherein a number of human right violations were recorded against the tyrannical government of Indira Gandhi. However the liberal judicial decisions post the emergency period has pointed towards good governance as a right in a democratic country. In *Maneka Gandhi vs Union of India*, the Supreme Court of India, while discussing the Passport Act, 1967, pointed out towards the importance of checks on actions of the State as a fundamental aspect under the part III of the Indian Constitution. The Court had stated that Section 10(3)(c) of the Act, was arbitrary in nature and violative of the golden triangle of Article 14, 19 and 21 and it conferred unlimited power on the passport authorities to use discretionary powers to impound passports. The court stressed a lot on 'procedure' under Article 21 thus emphasising upon the importance of fair and transparent State action. It provided that a person may be deprived of the right to personal liberty if the law is fair, just

⁶ Human Right & Good Governance, Asialink Project on Education in Good Governance and Human Rights, 2010, [http://bem.law.ui.ac.id/fhuiduide/uploads/materi/human-rights-and-good-governance-\(eng\).pdf](http://bem.law.ui.ac.id/fhuiduide/uploads/materi/human-rights-and-good-governance-(eng).pdf)

⁷ MARGRÉT VALA KRISTJÁNSDÓTTIR, *Good Administration as a Fundamental Right*, STJÓRNMÁL, <https://skemman.is/bitstream/1946/16071/1/a.2013.9.1.12.pdf>

and reasonable. This decision of the Apex Court was later upheld in *Sunil Batra vs Delhi Administration* wherein the Court illuminated the essential criteria of reasonableness behind State Action.⁸ Thus Good Governance can be seen as a procedural right of every citizen which act as a means to archive the other substantive rights as enshrined in the Constitution.

Good governance is the most important part of administrative law and the NHRC acts as a sound instrument that provides good governance to the citizens by creating an environment where human rights are protected. In essence, good governance has certain main characteristics that comprises of policy making i.e. open and predictable. It further includes a bureaucracy acting in furtherance of the public good and the rule of law. Also participation of the civil society and transparency are key to good governance.⁹

As already discussed above human rights and good governance are mutually enforcing and without good governance, human rights cannot be protected. Good governance can be linked to several rights enshrined in international human rights conventions. Article 21 of the Universal Declaration of Human Rights recognises the importance of a participatory government and Article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised.¹⁰

Hence good governance and human rights are linked by the way of four essential elements. Firstly when the State is led by values of human rights, then the institutions are organised to include multiple social groups in decision-making processes and to promote the participation of the civil society.¹¹ Secondly, efficient service delivery by the State in the realm of good governance reforms advance human rights. It increases the States proficiency to fulfil its responsibility to provide public goods which is essential for the protection of a number of human rights, such as the right to education, health and food. Lastly, human rights concerning

⁸ *Sunil Batra vs Delhi Administration* , 1980 SCR (2) 557

⁹ *World Bank, Governance: The World Bank Experience*, (operations policy, Document, Final Draft, Nov, 23, 1993).

¹⁰ MICHEL STREICH, *The Universal Declaration of Human Rights*, Art 21 & 28, ALLEN & UNWIN, 2008

¹¹ OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, *Good Governance Practices for the Protection of Human Rights*, UNITED NATIONS PUBLICATIONS, 2007

good governance acts in an anti corrupt manner and performs its initiatives as per the rule of law.¹²

In the Indian Context, the preamble of the Constitution provides that the most important goal of the State is to secure to all its citizens justice social, economic and political. The Part III of the constitution provides certain basic and essential rights to the citizens whereas part IV provides the guidelines for the State to govern. The independence of judiciary has played an important role in safeguarding the right of individuals and in good governance. Various legislations have been drafted to fight corruption in the bureaucracy and to ensure transparency.

4. CONCLUSION

NHRC aims to juxtapose good governance and human rights to provide a healthy environment for the citizens of India. It was formed by the Protection of Human Rights Act, 1993 to inquire and intervene into human rights violations taking place in India. The commission aims to check the arbitrary actions of State officials that violate basic human rights of citizens in India. The Act provides for the formation of Human Rights Courts that adjudicate upon cases of human rights violations. The objective of the NHRC can be effectively achieved in the presence of a healthy atmosphere created by good governance. Good governance as we have discussed in this paper deals with certain basic principles in the actions of State agencies. These principles include democratic public participation of the civil society, State service, transparency and rule of law.

As discussed above good governance is not just a means to attend other human rights, but a right in itself for the citizens of a democracy. The right to participate in governance and to ensure that the affairs of each citizen is carried out in a transparent and fair manner is a basic expectation and right. Therefore the functioning of NHRC shall be carried out in a just, fair and reasonable manner. The importance of a just and reasonable law was emphasised in *Menaka Gandhi vs Union of India*.

However the NHRC has failed to realise its full potential due to certain institutional weaknesses that restrict good governance. Despite being based on the Paris principles, the NHRC has no

¹² Id.

autonomy at all to function independently and is caught up in beaurocratic inconsistencies. It suffers from several substantive and procedural issues that make the functioning a mere lip service. The recommendations made by the commission is hardly paid heat by the government and due to these problems, the Supreme Court has often referred to the commission as a toothless tiger. Certain aspects of the working of the NHRC is not in line with the basic principles of administrative law.

Good governance refers to the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation. Human rights principles provide a set of values to guide the work of Governments that create an environment for every citizen to prosper and realise their potential. Therefore human rights cannot be respected in a sustainable manner in the absence of good governance.

The limited control and political influence on NHRC has made good governance stringent. This has led to several human rights violations cases to go unnoticed. Several reforms are necessary in the NHRC to make the investigation bodies more autonomous in line with the Paris principles. Funding and appointments are a major concern which need to be looked upon. Moreover the recommendations of NHRC needs to carry more force and shall be taken seriously. A committee to review the work of NHRC in the administrative domain as an instrument of good governance shall be done. The commission has immense scope to create a just and humane environment for human rights protection.

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