

ASSESSMENT AND CRITIQUE OF THE ROLE AND PERFORMANCE OF THE NATIONAL HUMAN RIGHTS COMMISSION IN INDIA

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ABSTRACT

National Human Rights Commission of India has completed more than 25 years of its establishment. Since its formation on October 12, 1993 under the Protection of Human Rights Act, the Commission took upon itself the responsibilities to monitor and protect human rights in India. Over the years under review, its role and efforts in dealing with human rights issues has been admirable. However, during working of more than 25 years, flouting and ignoring of the Commission's directions, recommendations, reviews and reports by the Governments and public functionaries has also been common which raises question marks on its autonomy, powers and jurisdiction conferred on it. The functions and powers of the Commission have also been strife with various other limitations. Having this background in mind, the present paper discusses working and performance of the NHRC in the area of the protection and promotion of human rights and further aims to examine critically the role played by it. The study would also point out areas which require immediate intervention to make NHRC more effective body to accomplish the task assigned to it. The data for the present study has been taken from the Annual Reports of the NHRC and news, articles and journals published in the area of human rights.

Keywords: Human Rights, Commission, Role, Performance, Criticism

INTRODUCTION

The National Human Rights Commission was set up on October 12, 1993 under the Protection of Human Rights Act. National Human Rights Commission of India (hereinafter called as NHRC) has completed more than 25 years' of working recently. During its 25 years of journey as a statutory body, it has discharged multiple responsibilities relating to protection and promotion of human rights in India. From day one, the role of the NHRC has been significant in combating fake police encounters and other forms of police excesses like custodial deaths, custodial torture, custodial rapes, illegal arrest and detentions etc. Besides, it has also addressed human rights issues relating to women and children, schedule caste, schedule tribes, infirm and disabled persons in India. In all cases, the Commission issued different types of directions and recommendations to governments and public functionaries. Also, the NHRC submitted valuable reports to governments on how to address human rights issues. It has also initiated several moves to spread awareness of human rights in India. Thus, over the years under review, the role and performance of the Commission has been praiseworthy. However, it has also been seen that governments and their instrumentalities do not adhere to the recommendations and directions given by the Commission, which raises questions mark on institutional independence of the Commission and the powers and jurisdiction conferred on it under the Act.

Having this background in mind, the study aims to evaluate in brief the role played by the Commission since its formation in 1993 to 2018 in area of protection of human rights in India. The study also critically examines the performance of the NHRC in area of protection and promotion of human rights. The last part of the paper points out the areas of intervention which requires immediate attention to make this statutory body more effective to discharge the task assigned to it.

ROLE AND PERFORMANCE OF THE NHRC (1993-2018)

The NHRC during its working of more than 25 years has received multiple types of human rights complaints. In the following pages, an attempt has been made to study selected number of stands taken by NHRC during 1993-2018 in the area of protection and promotion of human rights in India.

Registering cases of Custodial Violence

Since its formation, it has been major priority of the Commission to curb custodial crimes such as custodial deaths, custodial rapes, fake encounters, false implications, unlawful arrests and detentions etc. **Table-1** reveals the data relating cases of custodial deaths and rapes registered by NHRC during 2011-2018. The incidents of custodial crimes occurred in police and judicial custody and in custody of para-military forces.

Table-1: Custodial Deaths/Rape cases registered (2011-2018)

Sr. No.	Years	Custodial Deaths/Rape cases in JC/PC/ and Custody of Para-Military Forces
1	2011-12	1436
2	2012-13	1705
3	2013-14	1719
4	2014-15	1722
5	2015-16	1823
6	2016-17	1763
7	2017-18	1785

Source: Annual Reports, NHRC

Table-1 shows that as compared with year 2011-12, reporting and registering of cases of custodial deaths and rapes improved a lot in subsequent years which reached to 1823 in 2015-16 and almost remained constant till 2018. The reasons of improved graph of registration of complaints by NHRC have been its pro-human rights approach. Also, the NHRC has issued guidelines dated 14, December, 1993 in which it was clearly mentioned that incidents of custodial deaths and rapes shall have to be intimated within 24 hours of any such occurrence. Further, NHRC made it clear, that the information on custodial deaths to be followed by a post-

mortem report, a videography report on the post-mortem examination, an inquest report, a magisterial enquiry report and a chemical analysis report etc.ⁱ During 1993- 2003, the NHRC received total 8,596 reports of deaths that occurred in police or judicial custody.ⁱⁱ All cases of custodial deaths and rapes have been reviewed by the Commission, with the help of its Investigation Division, and appropriate orders were passed in respect of them.

Similarly, the issues like fake encounters, illegal arrest and detentions, custodial torture and other police excesses have been extensively dealt by the Commission. In 1996-97, comprehensive guidelines being sent to Chief Ministers in respect of the manner in which fake encounters should be investigated and reported upon. NHRC during 1993-2000, received total 2431 cases of illegal detentions out of which 1157 cases were registered alone during 1999-2000.ⁱⁱⁱ

Protection of Human Rights of Refugees

NHRC is also addressing human rights complaints relating refugees. At several occasions, the Commission took *suo motu* cognizance of the human rights violations of this vulnerable segment of population, based on media reports or other sources of information. For example, in 1994, the Commission had taken up the issue of safety of the Chakma community in Arunachal Pradesh. It wrote a letter to the State government to take care of the person and property of the members of Chakma and Hajong refugee communities. Further, in 1995 the Commission has also filed a petition before the Apex Court for the protection of the human rights of these communities. Having inspired from the Commission's concern on human rights violations of refugees, later in 1996 the Apex Court directed the Arunachal Pradesh governments to ensure human rights of above mentioned refugee communities. The Commission also issued a notice to the Union Ministry of Home affairs over the planned deportation of about 40,000 Rohingya immigrants and asked the government to submit a detailed report within four weeks.^{iv}

Public hearings for Human Rights complaints

The NHRC did not hesitate to hold public hearings for human rights complaints. By doing so, it ensured transparency, fairness and openness in hearing of human rights complaints. The Commission completed approx. 750 spot enquiries relating human rights violations. After

intensive enquiries, it issued directions to the governments and public functionaries to respect human rights of the vulnerable. During 2016-2017, it conducted spot enquiry in 58 cases of alleged violations of human rights. NHRC conducted open and prompt hearing in custodial crimes, bonded and child labour matters and in context of cruelties against Scheduled Castes, Scheduled Tribes, and other disadvantaged groups, inhuman conditions in jails and shelter homes for children.^v

Raising Human Rights Awareness

The NHRC has worked hard to raise human rights awareness among vulnerable in India. Commission popularised environmental rights, rights of children, women and victims of honour killings in India. Recently, during coronavirus pandemic, NHRC came forward to protect and promote human rights of virus affected categories of people. NHRC also worked hard to popularise human rights education in the Country. In this direction, the NHRC is working in tandem with Ministry of Human Resource Development, the National Council for Educational Research and Training (NCERT) and the National Council for Teacher Education (NCTE). In collaboration of these government's institutions, the NHRC prepared materials for education at all levels of schooling. The Commission is also working with the University Grants Commission (UGC) for the development of human rights courses at the university level. This integrated human rights approach adopted by the Commission has been major move in area of spreading human rights education.

Registration and Disposal of Human rights complaints

The NHRC is continuously registering and disposing human rights complaints. **Table-2** depicts details of total number of cases registered in the NHRC during 2002-2018.

Table-2: Human Rights violation cases Registered (2002-2018)

Sr. No	Years	Total Number of Cases registered
1	2002-2003	68779
2	2003-04	72990
3	2004-05	74401
4	2005-06	74,444
5	2006-07	82233
6	2007-08	100616
7	2008-09	90946
8	2009-10	82021
9	2010-11	84605
10	2011-12	95174
11	2012-13	107655
12	2013-14	98136
13	2014-15	114167
14	2015-2016	117808
15	2016-17	91887
16	2017-18	79,612

Source: Annual Reports, NHRC

Table-2 shows that number of human rights violation cases/complaints is showing increasing trends during 2002-2008. In year 2008, the number of registered cases crossed I lakh figure

which was 68,779 in year 2002. **Table- 3** shows that NHRC disposal rate has been quite satisfactory during 2018. Number of cases disposed in 2016 including backlog was 1, 18, and 254 which sharply declined to 86,187 in 2017-18.

Table-3: Number of Cases disposed during (2015 to 2018)

Years	Number of Cases Registered	Disposed (including backlog)
2015-16	117808	1,18,254
2016-17	91887	1,00,699
2017-18	79612	86,187

Source: Annual Reports, NHRC

It can be inferred from the data displayed in **table-3** that the good rate of disposal of human rights complaints by NHRC may be due to the reason that the commission have been adequately staffed during years under review and it disposed substantial number of human rights cases. The rate of disposal of human rights cases declined in 2018 up to 86,187 which was 1,18,254 in 2015.

Stance on backlog of human rights complaints

Backlog of cases has been major hurdles in efficient working of NHRC. The reason may be multiple like computerisation of the entire case-load, fast-tracking of certain categories of human rights complaints, appointment of special representatives of exceptional calibre to assist the Commission, specialized training to the staff of the Commission and representatives of NGOs, associated with the work of the Commission

Rights of Marginalized and Vulnerable Sections of Society

The Commission placed special emphasis on securing the rights of Dalits, Adivasis, manual scavengers, elderly persons, disabled and project affected people in the Country. Besides, it also took serious note of disaster induced displacement. In 1996-97, the Commission has taken first initiative relating to manual scavenging. Also, the plight of people displaced by the Bargi

dam in 1996-97 was viewed as serious human rights issue. The Commission in 2000-2001 spelt out the need for a revised National Policy for Rehabilitation and Resettlement of Project Affected People. The NHRC has urged that the resettlement and rehabilitation of persons displaced through the acquisition of land for such projects should be part of the provisions of the Land Acquisition Act.

Similarly, the Commission focused on the need to assist individuals experiencing harassment, intolerance or discrimination on grounds of disabilities. In a notable case concluded in 2002 after a number of hearings, a medical student, who had lost his eyesight while still studying for an MBBS degree at the All India Institute of Medical Sciences (AIIMS), was enabled to complete his studies and take his final examination. A Core Group on Disability was appointed in 2001-2002, as also a Special Rapporteur to assist the Commission in the better fulfilment of its responsibilities. The Commission also participated in the work of the National Council for Older Persons and commented on the Action Plan (2000-2005) prepared by the competent Ministry.

The Commission has also taken upon its self the responsibility to promote and protect economic and social rights of people displaced due to natural calamities. For example, it took *suo motu* cognisance of the situation arising from the devastating cyclone that struck Orissa in October 1999. The positive consequences of the Commission's intervention in Orissa set the precedent for similar action by the Commission in the aftermath of the catastrophic earthquake that devastated large areas of Gujarat in January, 2001.

Review of Legislation and Treaties

In area of reviewing laws and treaties, the Commission played commendable role. It has commented on some twenty acts, bills or ordinances having human rights implications - related, inter alia, to anti-terrorism legislation, the special powers of the armed forces, certain provisions of the Indian Penal Code and the Criminal Procedure Code, the Police and Prisons Acts, the rights of women and children, bonded labour, the rights of Dalits and Adivasi's, issues relating to health and education, refugees, and the right to information.

CRITICAL APPRAISAL OF THE WORKING OF THE NHRC

The above discussion made it clear that NHRC is doing its best to protect and promote human rights in India. However, certain administrative, legal and infrastructural hassles are there, which restrict the NHRC from discharging its role effectively. The following are some of the shortcomings noticed which affect its role and working and make it a weak statutory body.

At the outset, the recommendations and notices of the NHRC are not followed by public functionaries, State Governments and Central Government. During 2016-2017 pertaining to monetary relief, the NHRC had made recommendations in 531 cases and out of this only in 96 cases the recommendations were complied with.^{vi} Also, the NHRC has no authority to ensure its directions against governments, hence the Commission has become mere a recommendatory body.

Further, the NHRC has failed to hire person having legal expertise and a person having a good record in disposing of human rights complaints. The protection of Human Rights Act, 1993 requires that three of the five members of the human rights commission must be former judges but the Act does not specify whether judges should have a proven record of human rights activism or expertise or qualifications in the area.^{vii}

Again, most of the vacancies of members and supporting staff in the NHRC are not filled on regular basis. The scarcity of funds required for the NHRC to discharge its functions smoothly and in time bound manner has also created problems to the NHRC to handle human rights complaints. Due to shortage of staff, the NHRC is used to transfer cases to State Human Rights Commissions (hereinafter called as SHRC) which are already remains either dysfunctional or short staffed. **Table-4** depicts the status of cases transferred to SHRC by NHRC.

Table-4: Cases Transferred to SHRCs by NHRC (2008 to 2016)

Sr. No	Years	Number of Cases Transferred to SHRC
1	2007-2008	31881
2	2008-09	18146
3	2009-10	14580
4	2010-11	11617
5	2011-12	15090
6	2012-13	23072
7	2013-14	28886
8	2014-15	41050
9	2015-2016	40766

Source: Annual Reports, NHRC

The NHRC also lacks independence. The chairperson and the members of the Commission are appointed by the President on the recommendations of a committee. The recommending committee includes the Prime Minister of India. The upper hand given to the executive and legislature to appoint chairperson of the Commission raises doubts in the minds of many about the institutional autonomy or independence of the Commission. Besides, most of the complaints entertained and investigated by it belong to police personals. The NHRC comes under the Home Ministry under whom police departments also comes. It raised every possibility of ignoring the directions given by it in matters where police personals are found involved.

The Commission statistics as presented above clearly shows that the registration of cases is picking high during the years under review. But sharp rise in pendency of human rights

violation cases has also been viewed giving impression that structural barriers experienced by NHRC may be the reason for increasing pendency of human rights violation cases before the NHRC.

Table-5: Pendency of Cases in NHRC during 2007-2018).

Sr. No	Years	Pendency of Cases
1	2007-08	31881
2	2008-09	18146
3	2009-10	14580
4	2010-11	11617
5	2011-12	15090
6	2012-13	23072
7	2013-14	28886
8	2014-15	41050
9	2015-16	40766
10	2016-17	32085
11	2017-18	25775

Source: Annual Reports, NHRC

Similarly, the NHRC has become a weak body because of understaffing. It has been seen that most of the time; the Commission remains short-staffed. Also, it lacks funds to run its functions smoothly. These reasons further contribute towards pendency of cases before the commission. Also, the Commission lacks required infrastructure to handle human rights complaints. In a submission made to the Supreme Court in 2017, the NHRC admitted that despite 1455 percent increase in complaints between 1995 and 2015, its staff strength had decreased by 16.94

percent in the same period.^{viii} In 2015, the Commission's staff strength was 49 while the number of complaints in the same period saw a massive increase to 1, 14,167 from 7843.^{ix} How, the Commission can handle huge cases in absence of full staff strength. Besides, the commission has been struggling stop gap arrangement of staff. Besides, some of the staff of the commission remains on deputation in other departments which affect hearing of human rights complaints effectively. The officers keep changing, leaving the commission constantly. It has caused problem of under staffing to the commission.

CONCLUSIONS

The foregoing discussion makes it amply clear that the Commission during its working of more than 25 years has done wonderful job in area of protection and promotion of human rights. The number of registration of human rights cases has been on the rise but pendency of human rights complaints has also been high. Certain legal, infrastructural and administrative hassles in the Commission have been responsible for it. Governments and police departments are used to flout recommendations of the NHRC. Also, NHRC lacks infrastructure and funds to handle and dispose of human rights complaints in more effective way. Short staffing in the Commission has further made this statutory body weak. Also, lack of appointment of judges having good track record and efficiency to handle and dispose of human rights complaints made Commission's working and performance slow. In order to overcome aforesaid hurdles, there is an urgent need to give the National Human Rights Commission more powers. The Commission should be given powers of judicial superintendence, and powers similar to power given to Supreme Court under Article 136 of the Constitution. The Commissions should be given contempt powers so that governments' officers flouting its recommendations and directions can be punished and held liable. Similarly, separate budget/funds should be released every financial year in the name of the NHRC. Its infrastructure is required to be made fully technology driven. Techno savvy staff needs to be appointed in the Commission to register and handle inflow of human rights complaints. Full time highly qualified judges, staff, environmentalists and human rights activists are needed to be associated with the Commissions having good salaries and perks. By doing so, autonomy of the Commission can be ensured. Hope that the NHRC would keep equipped with excellent legal and administrative staff

throughout the year. Its infrastructure would also be made best one to make it more efficient in its working.

ENDNOTES

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- i Annual Report of National Human Rights Commission, 2001-2002.
 - ii Annual Report National Human Rights Commission, 2002-2003.
 - iii B.R. Sharma and Pratima Sharma, "Critical Appraisal of the Working and Performance of National Human Rights Commission in India", *Amritsar Law Journal* 158 (2000).
 - iv Annual Report of NHRC, 2013-2014
 - v Annual Report of NHRC, 2016-2017.
 - vi *Ibid.*
 - vii Mandeep Tiwan, "Needed: More Effective Human Rights Commissions in India" CHRI News, summer 2004 at 3.
 - viii See, Apurva Vishwanath, "NHRC Turns 25-and that's pretty much all it has achieved," October 2018.
 - ix *Ibid.*