



## GOVERNANCE OF NATIONAL HUMAN RIGHTS COMMISSION

**Dr.V.Ramaraj**

*The Author is an Eminent Advocate.*

### INTRODUCTION

The term National Human Rights Institution (NHRI) has been defined as a body which is established by a government, under the constitution, or by law, or decree, the functions of which are specifically defined in terms of promotion and protection of human rights. It can refer to number of different institutions: human rights commission or commissioners, ombudspersons, or hybrid bodies, etc<sup>i</sup>.

Human rights have been a core concern of the United Nations since its inception. The responsibility to respect, protect and fulfil human rights lies with States. They ratify international human rights instruments and are required to create mechanisms to safeguard human rights.

The governance of human rights is complex and diffuse. All parts of government are involved, together with other kinds of national institutions and civil society: an independent judiciary, law enforcement agencies, effective and representative legislative bodies, and education systems with human rights programmes at all levels. Among these, national human rights institutions occupy a unique position<sup>ii</sup>.

The National Human Rights Commission (NHRC) of India is an autonomous body constituted on 12 October 1993. Twenty two years had elapsed since the National Human Rights Commission was constituted. Various studies have been made so far, especially in general analyzing on National and State Human Rights Commissions. But, a detailed study in the area of governance of National Human Rights Commission still remains unexplored.

### NATIONAL INSTITUTIONS

In 1946, the Economic and Social Council considered the issue of national institutions, two years before the Universal Declaration of Human Rights became the “common standard of achievement for all peoples and all nations”. Member States were invited to consider establishing information groups or local human rights committees. In 1978, the Commission on Human Rights organized a seminar which resulted in draft guidelines for the structure and functioning of institutions. The Commission on Human Rights and the General Assembly subsequently endorsed the guidelines.

In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Principles relating to the status of national institutions. Today, the Paris Principles are broadly accepted as the test of an institution’s legitimacy and credibility, and have become part of the human rights lexicon. Under the Paris Principles, National Human Rights Institutions are required to: Protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and Promote human rights, through education, outreach, the media, publications, training and capacity-building, as well as by advising and assisting Governments. The Paris Principles set out what a fully functioning National Human Rights Institution is and identify six main criteria that these institutions should meet to be successful: Mandate and competence: a broad mandate based on universal human rights standards; Autonomy from Government; Independence guaranteed by statute or constitution; Pluralism, including through membership and/or effective cooperation; Adequate resources; Adequate powers of investigation.

For the first time National Human Rights Institutions compliant with the Paris Principles were formally recognized as important and constructive actors in the promotion and protection of human rights, and their establishment and strengthening formally encouraged. The 1993 World Conference also consolidated the Network of National Institutions, established in Paris in 1991, and laid the groundwork for its successor, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC)<sup>iii</sup>. ICC is a sub-committee of the Office of the High Commissioner for Human Rights and secretariat to the review process (for initial accreditation, and reaccreditation every five years).

There are over 100 such institutions, about two-thirds assessed by peer review as compliant with the United Nations standards set out in the Paris Principles<sup>iv</sup>. National Human Rights Institutions are administrative bodies set up to protect or monitor human rights in a given country. The growth of such bodies has been encouraged by the Office of the United Nations High Commissioner for Human Rights, which has provided advisory and support services, and facilitated access for National Human Rights Institutions to the United Nations treaty bodies and other committees.



The minimum standards established by the Paris Principles are applied by the International Co-ordination Council of National Human Rights Institutions that relies on the principles to determine accreditation status A – institutions (in compliance with the each of the Paris Principles and recognized full voting rights as member), status B (not in compliance with the each of the Paris Principles and only as observer status) and status C (non-compliant with the Paris Principles)<sup>v</sup>.

## INDIA

National Human Rights Institutions can be grouped as human rights commissions and ombudsmen. While most ombudsman agencies have their powers vested in a single person, human rights commissions are multi-member committees, often representative of various social groups and political tendencies. The Protection of Human Rights Act, 1993, provides multi-member human rights commissions in the National and State level.

The proposal for a Commission was originally contained in a Human Rights Commissions Bill which was introduced in the Lok Sabha on 14 May 1993. However, the powers, functions and manner of functioning of the proposed Commission, as contained in that Bill, were extensively criticized, most notably when that Bill was considered by the Parliamentary Standing Committee on Home Affairs. The Ordinance of 28 September 1993 was drafted in the light of the comments made on the original Bill, as was the resubmitted Bill, which was presented to Parliament on 25 November 1993 to replace the Ordinance<sup>vi</sup>.

Specialised national institutions exist in many countries to protect the rights of a and linguistic minorities, indigenous, children, refugees persons with disabilities or women. National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Other Backward Classes, National Commission for Women and National Commission for Protection of Child Rights Commission are specialised national human rights institutions India.

Eradication of corruption is one of the basic human rights. The proposed Lokpal institution of India and Commission for the Public Services shall be deemed as a specialised national human rights institution. Right to information is a tool for good governance. Good governance is essential factor to promote and protect human rights. Central Information Commission of India are also added in the list of specialised national human rights institution.

## COMPOSITION

The NHRC shall consist of a chair person, four full time members and three ex-officio members such as.

- a. A Chairperson who has been a Chief Justice of the Supreme Court;
- b. One Member who is or has been, a Judge of the Supreme Court;
- c. One Member who is, or has been, the Chief Justice of a High Court;
- d. Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairperson of the National Commission for Minorities, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes and the National Commission for Women will be ex-officio members of the Commission.<sup>vii</sup>

There are five full time members in the commission, which deals with the investigation and trial of human rights cases. There are three ex-officio members in the commission. This is the governing team of the national commission.

Good governance is very important to administer the human rights justice. The National Human Rights Commission is the supreme organ of the administration of human rights justice in India. The specialized institutions of the human rights in India must have some role in the governance of the human rights institutions. Hence, chair persons of the above four specialized commissions are included in the composition.

When the National Human Rights Commission was constituted. National Commission for Protection of Child Rights Commission Central Information Commission are not established. There is no proposals for Lokpal and Commission of Right to Public Services. Hence, it is appropriate to add the chairpersons of these commission as ex-officio members in the NHRC.

## TRIAL CHAMBER

The 'central concept of modern constitutionalism' the theory of separation of powers enjoys a position of almost unparalleled global reputes as foundational tenet of liberal democracy . The theory of Separation of Powers argues that the three powers

of the government should be used by three separate organs. Legislature should undertake law making powers, Executive should only law use only enforcement functions and Judiciary should perform only Judicial functions. Their powers and responsibilities should be clearly defined and kept separate. This is essential for securing the liberty of the people. French philosopher Montesquieu, in his book "The Spirit of The Laws (1748)", enunciated and explained the theory of Separation of Powers. Likewise, the theory of separation of powers has to adopted in the human rights institutions also.

Statutorily, the NHRI shall perform all or any of the following functions, namely:-

- (a) Inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court, into complaint of
  - I. Violation of human rights or abetment thereof; or
  - II. Negligence in the prevention of such violation, by a public servant;
- (b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) Visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;
- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) Undertake and promote research in the field of human rights;
- (h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (j) Such other functions as it may consider necessary for the protection of human rights.<sup>viii</sup>

The functions of the NHRC is enquiry of complaints and other activities like investigation and promotional works on human rights. It may be noted that investigation wing is functioning under the NHRC. It has to be separated as trial chamber and advisory chamber. The enquiry of complaints has to kept with trial chamber, i.e., the functions of (a) to (c) of the above. The other functions, i.e., the functions of (d) to (j) of the above, have to be kept with advisory chamber.

In addition to the above the trial chamber has to perform the following;

- (a) Transferring the case from the State human Rights Commissions;
- (b) On request of the first chamber of the State Human Rights Commissions, it has to make advisory directions;
- (c) Hearing and deciding on the appeals;

The NHRC shall consist of a chair person and four full time members only such as,

- (a) A Chairperson who has been a Chief Justice of the Supreme Court;
- (b) One Member who is or has been, a Judge of the Supreme Court;
- (c) One Member who is, or has been, the Chief Justice of a High Court;
- (d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

Naturally, this team is the trial chamber. This team has to administer the human rights justice.

#### **ADVISORY CHAMBER**

Chair persons of the National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women (four specialized commissions) are not full time members. A second chamber has to be created as a advisory chamber to the National Human Rights Commission. The advisory chamber of NHRC has to be consist of following chairpersons, only such as,

- (a) Chairperson, National Commission for Minorities;
- (b) Chairperson, National Commission for Scheduled Castes;
- (c) Chairperson, National Commission for Scheduled Tribes;



- (d) Chairperson, National Commission for Women;
- (e) Chairperson, National Commission for Protection of Child Rights;
- (f) Chairperson, National Commission for Other Backward Classes;
- (g) Chairperson, Central Information Commission of India;
- (h) Chairperson, proposed Lokpal institution of India;
- (i) Chairperson, proposed Commission for Public Services of India;

The chair person of the NHRC has to be the chair person of this advisory council. The advisory chamber of NHRI has to meet not less than two times in every month and place as the Chairperson thinks fit.

The second chamber has to perform the following functions also.

- (a) Supervise the functions of the State Human Rights Commissions;
- (b) Decide the matters relating with establishment of regional benches of NHRC;
- (c) The second chamber should not intervene in the matters of trial of the first chamber; but, it has to administer the investigation and prosecution of human rights cases;
- (d) Administration of investigation and prosecution agencies;

The decisions has to be taken at the advisory chamber by way of majority of the members, who attend the meeting of the chamber. The bifurcation of trial and advisory chambers in the National Human Rights Commission will lead into:

- (a) Independent judicial inquiry of the human rights cases;
- (b) Independent investigation of the human rights cases;
- (c) Independent prosecution of the human rights cases;
- (d) Independent administration over the State Human Rights Commissions;
- (e) Independent promotional activities on human rights;

The system of advisory chamber of human rights institutions in the National level has to be followed in the State Human Rights Commissions also. At present, there no room for chairpersons of the specialized institutions in the State human Rights Commission. A bicameral legislature is one in which the legislators are divided into two separate assemblies, chambers or houses. As of 2015, somewhat less than half of the world's national legislatures are bicameral. The bicameral system in the NHRI will be useful one.

## CONCLUSION

To strengthen governance of National Human Rights Commission of India, the following measures are essential.

- a. A change in the composition of the National Human Rights Commission is essential.
- b. The National Human Rights Commission has to be split into two chambers. One for the trial and another one for the advisory nature.
- c. The National Human Rights Commission should not have ex-officio members in the trial chamber.
- d. The Chairman of the specialized institutions has to be accommodated in the advisory chamber .
- e. The advisory chamber of the NHRC has to deal with the supervision of State Human Rights Commission, administration of investigation and prosecution agencies and promotion activities on human rights.
- f. The bi-chamber system has to be adopted in the State Human Rights Commissions also.

It is duty of the parliament to make needful amendments in the existing human rights law to make the changes in the composition of National Human Rights Commission of India.

## REFERENCE

<sup>i</sup> Mashood A. Baderin, Manisuli Ssenyonjo(Ed.), *International Human Rights Law: Six Decades After the UDHR and Beyond*, Ashgate Publishing Company, Burlington, USA, 2010, p.306.

<sup>ii</sup> National Human Rights Institutions: History, Principles, Roles and Responsibilities, United Nations, New York, 2010, p.2.

<sup>iii</sup> National Human Rights Institutions: History, Principles, Roles and Responsibilities, op.cit., p.7.

<http://www.ohchr.org/en/countries/nhri/pages/nhrmain.aspx>.

<sup>v</sup> Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, UK, 2011, p.782.

<sup>vi</sup> Annual Report, National Human Rights Commission ,New Delhi, 1993- 1994, p.1.

<sup>vii</sup> Asish Kumar Das and Prasant Kumar Mohanthy, *Human Rights in India*, Sarup & sons, New Delhi, 2007, p.175.

<sup>viii</sup> Ibid, p.176-177.