

# **National Human Rights Commission of India: Assessment of its Effectiveness in the context of Women Rights**

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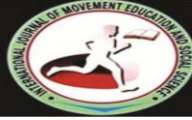
Man is a social being who lives in harmony with his fellow beings. But the animal instinct which is intrinsic in man forces him to violate other people's rights which disturb the peace and order of the society. Hence different ways of protecting human rights are adopted. An accountable Parliament, an Executive who is ultimately subject to the authority of elected representatives and an independent and impartial judiciary do the needful. Despite their effectiveness, the violation of rights especially of the vulnerable section of society i.e. women and children continues. Hence it was realized that there is a need for other mechanisms apart from these basic institutions whose establishment and strengthening will enhance the existing mechanisms. Equality for women is integral to human rights.

The United Nations Charter adopted by world leaders in 1945 provides for equal rights for all as its fundamental principle and necessitates it as a responsibility of all States. As per Census of India 2011, women constitute 48.46 per cent of the total population. Hence women are also an equally important human resource.

After attaining independence the Constitution of India which was adopted on 26 November 1949 and enacted on 26th January 1950, also contains provisions for their empowerment development, protection and participation. Apart from this India is a party to the Convention on the Elimination of all Forms of Discrimination against Women, 1993 (CEDAW). Yet, women continue to experience blatant violation of their rights.

The intention of different types of governments in differently natured political systems to abide by the International Human Rights norms exhibits itself in the establishment of NHRCs. Therefore these are supported by the international community, especially the UN bodies.

## **Historical background of NHRC in India**



Human Rights commissions have been created in Asia mostly to appease international audiences. “One potential problem is that for many governments, human rights commissions have the potential to become merely cosmetic exercises aimed at boosting the government’s human rights image in the eyes of the global community<sup>1</sup>.

Till early 1990s, the Indian Government was indifferent to local human rights and civil liberties organizations. The scathing reports of Amnesty International and Asia Watch had sharpened the international visibility of these human rights abuses<sup>2</sup>. Hence the government could not afford to turn a blind eye towards the blatant violation of human rights which were flashed worldwide by the media

Although Indian parliament had already created a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women in 1990, as well as a National Commission for Minorities in 1992 and The State of Madhya Pradesh itself had created a State Human Rights Commission in 1992, the country as a whole was splattered with incidents of human rights. Hence the congress government under the stewardship of the then Prime Minister Mr. P V Narasimha Rao started working on its creation. On 14<sup>th</sup> May 1993, the final day of the Budget Session of the Lok Sabha, the government of India introduced “The Human Rights Commission Bill, 1993” (Bill No. 65 of 1993). Referred the bill to the Parliamentary Standing Committee of the Home Ministry, where it soon faded. The President, under Article 123 of the Constitution promulgated the Protection of Human Rights Ordinance on 28th September 1993. Two months later; a fresh bill was submitted to Parliament. The Government of India was clearly in a hurry to establish the NHRC through an ordinance without going through the normal Parliamentary procedures<sup>3</sup>. On 8th January 1994, after a relatively indifferent Parliamentary discussion, the “Protection of Human Rights Act, 1993” received assent from the President. The Act came into force with retrospective effect from 28th September 1993. The government did not initiate broad-spectrum substantive public discussion, nor did it include major human rights non-governmental organizations in the limited number of government-sponsored consultations and discussions on the commission. Hence NHRC came to be a weak, inept and a toothless institution established only to appease the US and western diplomats. The Protection of Human Rights Act, 1993, also calls for the establishment of State Human Rights Commissions in order to complement the functioning of the NHRC as also to ensure that redress mechanisms are within easy reach of complainants across the country.

### **Organizational set up of NHRC**

The Human Rights Act, 1993, section 3 specifies that the Chief Justice of the Supreme Court will be the chairman of the commission. It will also comprise of four members including 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. Two members having knowledge of, or practical experience in matters relating to human rights<sup>4</sup>. The Chairpersons of the

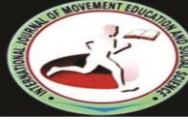
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<sup>1</sup> p. 23 as quoted in Abul Hasnat Monjurul Kabir, ‘Establishing National Human Rights Commissions in South Asia: A Critical Analysis of the Processes and the Prospects’, Asia –Pacific journal of Human Rights and the Law, 2001, Volume 2, Number 1, p.45

<sup>2</sup> See May 1991 report, ‘Kashmir Under Siege’, Asia Watch, Human Rights Watch Report of 1991 available at [http://www.hrw.org/reports/1992/WR92/ASW-07.htm#P540\\_207732](http://www.hrw.org/reports/1992/WR92/ASW-07.htm#P540_207732).

<sup>3</sup> Asia Human Rights Documentation Centre (SAHRDC), ‘Judgement Reserved: The Case of the National Human Rights commission of India’, September 2001, p.1-3. SAHRDC can be accessed at <http://www.hrdoc.net/sahrdc/>

<sup>4</sup> The protection of Human Rights Act, 1993, 3 (2)



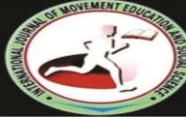
National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes (SCST) and the National Commission for Women are all deemed (ex-officio) members of the commission. Hence one observes that the NHRC is a high powered commission with 3 out of 5 members as judges. On one hand the appointment of a retired chief justice of India as the chairman lends it a degree of credibility, on the other hand invokes a reaction that it is a hub of retired people.

The Chairperson and the Members of the Commission are appointed by the President of India, on the recommendations of a Committee consisting of the prime minister as the chairperson, the speaker of Lok Sabha, the minister of home affairs, leaders of opposition both in Rajya Sabha and Lok Sabha and deputy chairman of Rajya Sabha.

The Chief Executive Officer of the Commission is the Secretary-General, an officer of the rank of Secretary to the Government of India. The Secretariat of the Commission works under the general supervision of the Secretary-General. There are six Divisions in the Commission namely the administrative division, accounts branch, general section, hindi section, law division and the training division. Though each of these have been entrusted specific tasks, the Divisions work in close consultation and coordination with each other.

#### **Functions of NHRC**

- To inquire into matters of human rights violation or its abetment.
- To inquire into negligence in such matters on part of the public servant.
- To intervene in any proceeding involving allegation of violation of human rights pending in court with the permission of that court.
- To visit any jail or any other institution under the state government where persons are detained or lodged for the purposes of treatment, reformation or protection for the study of living conditions of the inmates and accordingly make recommendations to the government.
- To review the safeguards provided by the constitution or any other law in force regarding protection of human rights and suggest measures for their effective implementation.
- To review the factors including acts of terrorism that inhibits the enjoyment of human rights and recommend appropriate remedial measures.
- To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- To undertake and promote research in the field of human rights.
- To spread human rights literacy and promote awareness about the safeguards available for the protection of these rights through publications, media and other available means.
- To encourage the efforts of non-governmental organizations and institutions working in the field of human rights.
- To perform such other functions as may be considered necessary for the protection of human rights.



### **Powers**

The NHRC has the following powers.

- As vested in a Civil Court trying suit under Civil Procedure Code, 1908.
- To regulate its own procedure for disposal of complaints
- To utilize the services of any officer or investigation agency of the Central/State Government - with concurrence - for conducting any investigation pertaining to any inquiry.
- To make recommendations to the concerned Government authority suggesting action to be taken against guilty public servant
- To recommend payment of relief/compensation to the victims
- To approach the Supreme Court or High Courts for appropriate directions/orders/writs.
- To communicate the inquiry report - petitioner/victim/representative - Government authority for comments/ action taken/proposed.

The international community has increasingly realized the importance of human rights implementation at the national level and the UN started addressing the issue of human rights institutions since 1946. The national human rights commission of India was set up in India under the Protection of Human Rights Act, 1993. Significance of the present research article lies in the analysis of its role and limitations of NHRC, in context of women's rights. The researcher will give few suggestions so that NHRC can become more effective in India covering its weaknesses with regard to women rights.

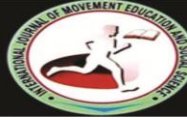
### **Objectives**

1. To analyze the role of NHRC in controlling crime against women.
2. To find out limitations of NHRC with regard to its execution of powers.

### **Effectiveness of NHRC in recent times**

#### **1. Research**

NHRC undertook a two year research study in collaboration with the Centre for Women's Development Studies (CWDS), New Delhi in August 2014 with an objective of analyzing the existing literature on perceptions of crimes against women from an inter-disciplinary perspective with particular focus on India as well as profile a sample of perpetrators of such crimes including juveniles, adults, under trials and convicted offenders. Not only this it also aimed at tracking of specific cases in order to understand the viewpoint of specific victims and analyzing response of the criminal justice system towards the changing contours of crimes against women and their perpetrators. A presentation was also made by the CWDS in the Commission on 9 July 2015 whereby it became evident that the study was confined to juveniles between the age of 16-18 years while unilaterally removing other perpetrators of crimes/violence against women including adults. Besides this the research only focused on socio economic background of the perpetrators and totally ignored the psychological factors



## 2. Cases handled by NHRC

A complaint was lodged by Chief Editor, Human Rights Observer in March, 2010 that a 70 year old man Balram from a village in District of Sonipat, Haryana bought a 12 year girl from Village Ghogia, District Chhapra, Bihar and married her, the girl was sold by her parents due to severe poverty, issued a notice to the State authorities who reported that a case was registered under the Prohibition of Child Marriage Act, 2006 and Hindu Marriage Act, 1955.

The commission observed that

1. The police delayed the registration of FIR by one year which led to violation of the victim's rights.
2. The Bihar government did not recommend the payment of monetary relief u/s 18 of the Protection of Human Rights Act, 1993

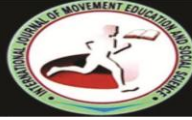
The commission issued a show cause notice to the Bihar government for the same. After receiving reply to its notice NHRC recommended that the state government must pay an amount of 25,000 rupees to the victim who ultimately was untraceable. Hence the case was closed by the Commission on 28 June 2016.

Global Human Rights Communications alleged in a complaint filed on 7 August 2013 that a Class V student residing in Bhogpara Primary Sevashram, which is an educational institution run by the Odisha Government had given birth to a female child in the toilet. The school authorities tried to hush up the matter and immediately sent the girl to her parents place with least concern for the minor mother and new born baby's health who should have ideally been taken to the hospital. This amounts to blatant violation of human rights. The complainant pleaded for due compensation. The commission took prompt action and asked for reports from various government authorities in Odisha. The reports were subsequently submitted and it was alleged that the girl had physical relation with one of her relatives when she had gone home. This resulted into her pregnancy. A case was registered under Section 376(2)(i) IPC with Section 4 of the Protection of Children from Sexual Offences Act (POCSO) and the relative was charge sheeted and the school's Headmaster was suspended with initiation of departmental action against him. the commission observed that a young girl aged 14 years had suffered both at the hands of her relative as well as authorities of a school. It thus appeared to be a fit case where monetary compensation deserves to be granted to the victim.

The commission observed that:

Monetary compensation was not recommended to be paid to Ms. Sarita Minz,, daughter of Buddhu Minz, for the alleged violation of her human rights and the rights of her new born baby.

The commission issued a show cause notice to the Odisha government for the same. the State Government pleaded for exemption which was subsequently rejected by the commission which reiterated the recommendation for a sum of Rs.1,00,000/- (Rupees One Lakh only) be paid to Sarita Minz for the alleged violation of her human rights. The compliance report in the case is awaited.



Dr. Lenin, General Secretary, Manavadhikar Jan Nigrani Samiti, Varanasi, Uttar Pradesh lodged a complaint dated 9 April 2012 alleging that a teacher in a school in Haryana, teased a girl student for allowing her extra time for completing the question paper, and made sexual advances to her during the Board examination. The matter was reported to the Department of Education and the Police. The Police registered a case against the Teacher. The complainant requested the Commission to intervene in the matter for action against the guilty Teacher. The accused confessed his mistake, in an affidavit. As a consequence, the accused Adesh Kumar, JBT Teacher was suspended with immediate effect. The outcome of departmental enquiry was awaited.

The commission observed that:

Registration of criminal case and thereafter a charge sheet in court, prima facie indicates that the accused Teacher outraged the modesty of Ritu Podia, which is a clear National Human Rights Commission Annual Report - 2015-2016 176 case of violation of human rights. But the accused was given benefit of doubt and acquitted by the Additional Chief Judicial Magistrate.

Commission had issued a notice and recommended monetary compensation u/s 18(a) (i) of Protection of Human Rights Act, 1993.

After going through the cases mentioned in NHRC's annual report of 2015-16, one observes that it has unilaterally handled sexual offences against women while her rights are also violated in several other ways.

### **3. Current Data related to crime against women in India**

According to NCRB data of 2016, Delhi contributed one in every three cases of all the crimes against women that happened in metropolitan cities and 4% of all the such cases in the country, with 13,803 cases. Delhi reported 1,996 rape cases in 2016, up from 1,893 in 2015.

Mumbai was a distant second with 5,128 cases registered in 2016. In neighbouring Ghaziabad, 1,031 such cases were reported in 2016.

Rape, the most horrendous crime against women too have seen a surge as a total of 38,947 rapes were reported in 2016, compared to 34,651 in 2015.

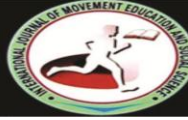
It has been learnt that in 94.6 per cent cases, the accused was known to the victim and in many cases they were relatives as close as being the father, brother, and uncles<sup>5</sup>.

A comparative analysis of the NCRB data portrays a grim picture of crimes against women with an alarming 83% increase from 2007 to 2016. The total crime rate—number of crimes per one lakh of the population—against women has gone up from 16.3 in 2007 to 53 in 2016. Rapes have risen by 88% since 2007, in terms of incidences, while the crime rate has spiked from 1.8 to 6.3. Crimes under the category of 'Assault on Women

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<sup>5</sup> <https://www.indiatimes.com/news/india/ncrb-data-shows-how-women-are-getting-more-unsafe-here-are-11-measures-that-may-help-them-to-feel-safe-335043.html>





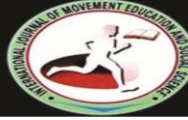
with Intent to Outrage her Modesty' have seen a 119% increase. This category, covered under Section 354, was expanded in 2013 to include four new crimes. These crimes are Sexual Harrassment (Sec 354A), Assault or Use of Criminal Force to Women with Intent to Disrobe (Sec 354 B), Voyeurism (Sec 354C) and Stalking (Sec 354D). Back in 2007, the rate of crimes recorded under Section 354 was 3.4, which rose to 13.8 in 2016. Meanwhile, there has been a 45% rise in incidences of 'Cruelty by Husband or his Relatives' (Sec 498A)<sup>6</sup>.

### **Limitations faced by NHRC**

1. NHRC is generally under staffed which limits the capacity of the commission to deal promptly with complaints.
2. Scarcity of resources is another big problem. Bulk of the budget of the commission goes in the upkeep of the office which leaves meagre amount for performing of functions such as research and rights awareness programs.
3. Since NHRC draws its staff from government departments either retired or on deputation, hence it lends an air of babudom.
4. It becomes difficult for the complainants to obtain seek information about the status of their case due to the rigid hierarchical system.
5. NHRC undergoes difficulties in discharging its duties, including non-cooperation from State governments and lack of staff.
6. NHRC's orders are passed by persons who have had long term experience as members of the judiciary which did not go well to the ground level due to the lack of protection by the human rights act of 1993 to penalize authorities which do not implement its orders.
7. The commission has to turn a blind eye towards human rights violations in the state of Jammu and Kashmir since it is not applicable there.
8. NHRC is not empowered to act when human rights violations through private parties take place.
9. Three of the five members of a human rights commission are former judges but it is not specified in the act whether these judges should have a expertise in the area or a record of human rights activism.
10. If the complaint was made more than one year after the incident the commission is not empowered to act which leads to the genuine cases being ignored.
11. NHRC has a very restricted approach towards violations of human rights by the armed forces in the manner that it can only seek a report from the Government and then issuing recommendation.
12. "It was helpless in taking any coercive measures since it has no power to take action against persons or authorities who do not follow the guidelines laid down by it [NHRC] nor does it have power to give directions or pass orders but can only make recommendations. The Hindu, July 9, 2016. In short NHRC submitted that it is a toothless tiger.

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<sup>6</sup> www.ncrb.gov.in accessed on 30-07-2018



These grievances and submission were noted by the Supreme Court of India in July, 2016 while hearing the PIL petition on extra-judicial killings of 1,528 persons in militancy infested Manipur and the plea for repealing the Armed Forces (Special Powers) Act.

The apex court also upheld that it does not go well with Indian democracy to have a National Human Rights Commission (NHRC) which was helpless to redress human rights violations as states seldom implemented its recommendations.

NHRC chairman and former Chief Justice of India H L Dattu had said: "The NHRC is a toothless tiger. We painstakingly investigate human rights cases, sometimes in remote areas, with our limited resources. The evidence collected is put to forensic judicial adjudication by its chairman and members. But at the end, when NHRC arrives at a finding, it can only recommend remedial measures or direct the state concerned to pay compensation<sup>7</sup>.

### **Suggestions**

- Government should take immediate decisions in order to enhance effectiveness of the commission. This will lead to saving its considerable time and energy of the commission.
- Since NHRC's orders are passed by persons who had served as judges of the Supreme Court and high courts, possessing legal experience and expertise. Hence the government must hold their decisions in high esteem.
- The laws of the state bind NHRC from independently investigating complaints against the military and security forces despite the fact that a large number of human rights violations occur in areas where there is insurgency and internal conflict. This increases the gravity of the problems. It is essential that commission is able to summons witnesses and documents.
- Inception of ex-bureaucrats as non-judicial members should be reduced as it makes NHRC as an extension of the government rather than independent agency exercising oversight.
- NHRC direly needs to develop an independent cadre of staff with appropriate autonomy since staff on deputation from different government departments possess very little knowledge and understanding of human rights issues. This affects the efficiency of the commission.

### **Conclusion:**

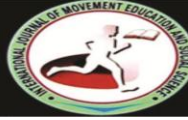
Although Human Rights Commissions are not a solution for all problems in a society. Their effectiveness depends on the level of funding, functional independence, and institutional autonomy guaranteed to the HRC. It is almost 25 years since the National Human Rights Commission (NHRC) was established in India through the adoption of the Protection of Human Rights Act, 1993, by Parliament. Hence one should start working in the direction of challenges relating to human rights and work towards meeting them in the future.

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<sup>7</sup> "<https://timesofindia.indiatimes.com/india/NHRC-a-toothless-tiger-Panel-chief/articleshow/52544350.cms>





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