

COMPOSITION , FUNCTION AND POWERS OF THE HUMAN RIGHTS COMMISSION

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The Human Rights Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993. Fourteen Indian States have also set up state human rights commissions to deal with violations from within their territory. The Act contains broad provisions related with its function and powers, composition and other related aspects.

Section 2 (d) of the Act defines human rights as rights relating to life, equality and dignity of the individual guaranteed by Constitution or embodied in the international covenants and enforceable by Courts in India. The Indian Constitution provides certain rights for individuals in Part III of the Constitution, which are known as the fundamental rights. Part IV sets out the Directive Principles of State Policy. While the former guarantees certain rights to the individual, the latter gives direction to the State to provide economic and social rights to its people in specified manner. The word fundamental means that these rights are inherent in all the human beings and basic and essential for the individual. However, the rights guaranteed in the Constitution are required to be in conformity with the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a party to these Covenants by ratifying them. The justiciability of fundamental rights is itself guaranteed under the Indian Constitution. The responsibility for the enforcement of the fundamental rights lies with the Supreme Court by virtue of Article 32 and by Article 226 to the High Courts.

1. The Constitution of the Commission dealt with in Chapter II of the Act. Section 3 of the Act says, “ the Central government shall constitute a body to be known to the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
2. The Commission shall consist of
 - (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 the High Court;
 - (d) Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
3. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.
4. There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers

and discharge such functions of the Commission as it may delegate to him.

5. The headquarters of the Commission shall be Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

The appointment of the Chairperson and other Members are elaborately discussed under Section 4 of the Act. The other provisions relate to the removal of a member of the Commission, the term of office of Members, a member to act as a Chairperson or to discharge his functions in certain circumstances, the terms and conditions of service of members, vacancies, etc., not to invalidate the proceedings of the Commission, the procedure to be regulated by the Commission, the officers and the other staff of the Commission.

Wide powers and functions have been given to the Commission under section 12 of the Act. The paragraph (a) of section 12 provides, that the Commission can enquire suo motu action against any public servant against whom a complaint has been registered for violation of human rights. Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court. Section 12(c) empowers the Commission to visit any jail or other institution prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to State Governments on the basis of such visits. The Commission found after visiting many jails that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to a lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons. The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The

Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison. Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation. Under Section 12(e) there is a separate provision to review the causes of terrorism, which inhibits the enjoyment of human rights, and to recommend appropriate remedial measures. Section 12(f) provides for the study of all treaties related with international human rights instruments and the making of recommendations for their effective implementation. Section 12 (g) provides for promotion of research in the field of human rights. Section 12(h) empowers the Commission to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means. Section 12(i) empowers the Commission to encourage the efforts of Non- governmental organizations (NGOs) working in the field of human rights. Lastly, Section 12(j) provides, such other functions as it may consider necessary for the promotion of human rights.

There is a well organised investigation division within the Commission. The primary duty of this investigation division is to look into complaints received by the Commission. For this purpose the investigation team makes on the spot investigations. The Act outlines the investigative role of the Commission. Subsection 1(b) of Section 11 provides, "Such police and investigative staff under and officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission."

A considerable increase in public awareness of the work of the Commission has been observed. This is reflected in the vast increase in the number of the complaints of human rights violations received by the Commission over the years. Many of the cases received by the Commission were of great

poignancy, but they could not be entertained by the Commission because of the Regulation 8 of the Commission. The Commission broadly divides the cases in these following categories:

CUSTODIAL DEATHS

- Police excesses (Torture, Illegal detention\ unlawful arrest, false implication etc.;
- Fake encounters;
- Cases related to Women and Children;
- Atrocities on Dalits\Members of Minority community\ Disabled
- Bonded labour
- Armed forces\ para military forces and
- other important cases.

Once the Commission accepts a complaint, it seeks comments from the concerned government or authority regarding complaint. After receiving the comments of the concerned authority a detailed note on the merits of the case is prepared for the consideration of the Commission. After this, directions and recommendations of the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

In some of the cases the Commission may opt for a personal hearing with the petitioner or any other person on behalf of petitioner for appropriate disposal of this matter. This personal hearing will provide an opportunity for examining any witnesses, if any, in support of the complaint and hearing evidence in support of the petitioner's stand. Once the Commission or any other person under its authority undertakes an investigation, the report of the investigation should be submitted within a week of its completion. In some cases, the Commission may allow further time for the submission of reports. If the Commission is not satisfied with any report it may direct fresh investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may

direct inquiry to be carried out by it and receive evidence in the course of such inquiry.

Lastly under Section 8(12), the Commission or any of its members when requested by the Chairperson may undertake visits for on-the-spot study and where such a study is undertaken by one or members, a report thereon shall be furnished to the Commission as early as possible.

On the completion of inquiry, the Commission may take any of the following steps under Section 18 of this Act, namely:

1. Where the inquiry discloses, the commission of violation of human rights
 - a. or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
2. approach the Supreme Court or the High Court concerned for such directions, orders or units as that Court may deem necessary.
3. recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
4. subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;
5. the Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority who shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission.

6. The Commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the Commission.

- The Protection of Human Rights Act (NHRC, New Delhi)
- *Bharat ka Rastriya Manav Adhikar Ayog* (Arun Roy, Radha Publication , New Delhi)
- *Manav Adhikar* (Dr. H.O. Agarwal, C.L. Publication , Allahabad)

REFERENCES

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