



## ROLE OF NHRC IN PROTECTION OF CRIME AGAINST HUMAN RIGHTS IN INDIA

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**Abstract:** Human beings are rational beings. By virtue of being humans they possess certain basic and inalienable rights which are commonly known as human rights. They are inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. More or less people are aware about their rights but the question is how these rights will be protected. Yes, we have various mechanisms to protect our rights. In this assignment, an attempt has been made to discuss about one of such mechanisms, i.e. the role of National Human Rights Commission (NHRC) in protection of human rights. After introducing the topic with the meaning of human rights, next part of the assignment deals with the importance of national institutions of human rights in a country and further discussed the various stages at the international level towards establishment of such institutions. After that position in India has been discussed with the enactment of Protection of Human Rights Act. In addition to that the structure and functioning of NHRC has been discussed in brief and how far it has been effective in protecting human rights in India.

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### Introduction:

In the year 1991, a meeting of representatives was held in Paris which is related to UN-sponsored. The meeting concluded a detailed set of principles on the status of national institutions. These are universally known as the Paris Principles. These principles, subsequently recognized by the UN Commission on Human Rights and the UN General Assembly have become the foundation and reference point for the establishment and operation of national human rights institutions. Human rights are the basic inherent rights. These rights are related to values, fairness, justice and good conscience. A human being is a living creature, and in the same manner, humanity is a living and constantly evolving concept. Thus by virtue of their being human possess certain primary and absolute rights which are commonly known as human rights.

Human Rights are the rights which are possessed by all human beings irrespective of their race, caste, nationality. Sex, language etc. Simply because they are human beings. As pointed out by Fawcett, "Human rights are sometimes called fundamental rights or basic rights they are those which must not be taken away by any legislature or any act of government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature.

Another way to describe them would in the world should share, just as the common law in England, for example. Was the body of rules and customs which, unlike customs governed the whole country?"

Human rights occupy a significant place in the U.N. Charter. The Preamble of the Charter reaffirms faith in Fundamental human rights and the dignity and worth of human persons and in equal rights of men and women, It is one of the purpose of the U.N. to achieve international cooperation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. {Art. 13).besides this, it is provided in the Charter that. the General Assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational and health fields and assist in the realization of the human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Art. 13(b)). Further with a view to the creation of the conditions of stability and well beings which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people, the U.N. shall promote universal respect and

observance of human rights and fundamental freedom for all. Articles 62 and 68 also reaffirm the commitment of the U.N. to promote and encourage respect for human rights and fundamental freedoms for all. Article 55 charges the U.N. to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". This provision is further strengthened by Article 56 under which "All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55."

Thus human rights occupy a significant place under the Charter. But writers are divided as to whether human rights have become legal rights under the law of United Nations or not. The correct view probably would be that human rights have now become legal rights. This is due to the adoption of Universal Declaration of Human Rights and coming into effect of the International Bill of human rights.

#### **HUMAN RIGHTS COMMISSIONS:**

The Commission on Human Rights was established by the Economic and Social Council in February 1946. It is the nearest approach to permanent machinery for the supervision of the "Problem of protection" of human rights. It is one of the six functional commissions established by the Economic and Social Council. Under its terms of reference, the commission was directed to prepare recommendations and reports on

- (i) an international instrument of Human Rights;
- (ii) International conventions or declarations on civil liberties; the status of woman, freedom of information and similar other matters;
- (iii) the protection of minorities;
- (iv) the prevention of discrimination on the basis of race, sex, language or religion, and
- (v) Other matters concerning human rights. The commission's terms of reference are extensive; under them, it may deal with any matter concerning human rights. The commission's terms of reference are extensive; under them, it may deal with any matter concerning human rights. The Commission makes studies and recommendations either its own initiative or at the request of the General Assembly or the Economic and Social Council. The commission consists of 32 members elected for three years terms and meets annually for a period of five or six weeks. All commission decisions are made by a majority of the members present and voting. The Commission submits a report on each session to the Economic and Social Council.

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#### **CHARACTERISTICS AND NATURE OF HUMAN RIGHTS**

Following are the characteristics of human rights:

**1. Human Rights are Inalienable** - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

**2. Human Rights are essential and necessary** - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people

**3. Human Rights are in connection with human dignity** – To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For e.g. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.

**4. Human Rights are Irrevocable:** Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

**5. Human Rights are Necessary for the fulfillment of purpose of life:** Human life has a purpose. The term "human right" is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

**6. Human Rights are Universal** – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

**7. Human Rights are never absolute** – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the

individuals. As such each right has certain limitations.

**8. Human Rights are Dynamic** - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

**9. Rights as limits to state power** - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

#### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:

In 1948, the General Assembly passed the Universal Declaration of Human Rights. This has been hailed as a victory of individuals in respect of human rights and Fundamental freedoms. For example, Article 1 provides, "All human beings are born free and equal in dignity and rights, they are endowed with reasons and conscience and should act to one another in spirit of brotherhood."

It is said that it has moral force behind it which inspires states and the people to enforce and observe human rights and fundamental freedoms. It has greatly influenced the practice of states in respect of human rights. Some writers have expressed the view that the Universal Declaration has now assumed legal value. For example, Dr. Nagendra Singh has remarked: "..... The declaration was not a mere resolution of the General Assembly but a continuation of the charter and had the dignity of the charter." This seems to be the correct view.

There are different ways of protecting human rights. A pluralist and accountable parliament, an executive who is ultimately subject to the authority of elected representatives and an independent, impartial judiciary are necessary; but not sufficient, institutional prerequisites.

There are different ways of protecting human rights. A pluralist and accountable parliament, an executive who is ultimately subject to the authority of elected representatives and an independent, impartial judiciary are necessary, but not sufficient, institutional prerequisites. Besides these basic 'institutions' there may be other mechanisms whose establishment and strengthening will enhance the existing mechanisms. As a general point in this dissertation, I will be looking at the national human Rights Commission as an alternative way of protecting human rights.

Lately National Human Rights Commissions (NHRCs) have become prominent actors in the national, regional and international human rights arena. The UN bodies and other funders in international donor community have directly encouraged and supported both technically<sup>2</sup> and financially the growth of these institutions- The international community lends its support because it considers the process of establishing NHRCs to be an indication that a government is willing to abide by international human rights norms.

The first Conference of National Human Rights Institutions of South Asian Countries on "Human Rights Awareness and National Capacity Building", organized by

1. Brain Burunited Nations and Anne Gallagher, "The United Nations and National Human Rights Institutions", Human Rights-2/1998. A Quarterly Review of the office of the UN High Commissioner for Human Rights, p 21.

2. For example, a project entitled 'Action Research Study on the Institutional Development of Human Rights in Bangladesh (IDHRB) was undertaken by the UNDP to assess the need of establishing the NHRC.

The National Human Rights Commission of India was held in New Delhi from 16-18 April, 2009. The representatives of the following Commissions participated in the Conference:

1. Afghanistan Independent Human Rights Commission
2. Bangladesh National Human Rights Commission
3. Maldives Human Rights Commission
4. Nepal Human Rights Commission
5. Sri Lanka National Human Rights Commission.
6. National Human Rights Commission of India.

**Reaffirming** the commitment to protect and promote human rights as enshrined in domestic laws and International Human Rights Conventions;

**Noting** the legal framework, institutional arrangements and measures undertaken by the participating countries in the region for promotion and protection of human

rights;

**Recognizing** the need for further National Capacity Building of NHRCs to address Human Rights challenges faced by the countries in the region;

**Recognizing** the need for further sustained efforts to build Human Rights awareness;

**Emphasizing** the need for cooperation between NHRIs of South Asian countries on issues of mutual interest;

**Welcoming** the initiative taken by the National Human Rights Commission of India to hold the first Conference of NHRIs of South Asian Countries on "Human Rights Awareness and National Capacity Building" in New Delhi from 16-18 April, 2009;

**Reiterating** the need for closer mutual cooperation between NHRIs on capacity building and promotion of human rights awareness;

The participating NHRIs hereby agree:

- a) To work towards national capacity building through sharing of experiences, information and best practices on Human Rights.
- b) To take steps to promote human rights awareness.
- c) Towards this end, hold conferences at least once

In two years, apart from exchange of visits. Training programmer and bilateral or regional cooperation between the NHRIs.

- d) To work together to identify and cooperate on

Capacity building for dealing with human rights issues like human rights awareness; human trafficking and migrant Labour.

- e) To work collectively at UN forums, including the

Human Rights Council, for an independent status for NEIRIs, distinct from NGOs.

- f) Appeal to the respective Governments for support and provide necessary wherewithal to NHRIs to ensure that they become fully compliant with Paris Principles, which includes administrative and financial autonomy. NHRIs have an advocacy role in this regard.

## **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

The following are some of the important activities undertaken by the Commission to monitor the economic, social and cultural rights.

### **Human Rights Awareness Programme in 28 backward Districts**

The Commission selected 28 backward districts in the country, one in each State, for direct interaction

with their field level functionaries with a view to spread human rights awareness at cutting edge level in the administration and also to facilitate better assessment of enforcement of various measures related to human rights. In this effort, special attention will be on (i) food security, (ii) right to education (iii) right to health, hygiene and sanitation, (iv) custodial Justice, (v) human rights issues of Scheduled Castes (SCs) and Scheduled Tribes (STs), (vi) right to culture and protection of Community Assets and (vii) right to life, living conditions and nature of responsibility of Government and Panchayat (unit of local self-government)

In pursuance of this programme, the Chairperson and officers of (AMC visited Chamba District in Himachal Pradesh from 1<sup>st</sup> to 5<sup>th</sup> July, 2008 and had detailed discussions with district level functionaries, elected representatives in local bodies and NGOs.

### **Right to Health**

The Commission has been stressing that health and education are two basic human rights and are part of our fundamental rights. Keeping in view the rights approach, the Commission has been impressing upon the State functionaries that they are duty bound to do their best to realize these rights.

With a view to discuss the availability of trained manpower in remote parts of the country, a meeting with the Medical Council of India, Indian Nursing Council and Ministry of Health & Family Welfare, Govt. of India was held on 30 August, 2007 in the Commission. After extensive deliberations, the Commission recommended to the Government to make necessary changes in the Indian Medical Council Act to have one year compulsory rural attachment of the MBBS students before their registration. To increase intake of students for Psychiatry courses, the Commission has recommended to the Medical Council of India to relax its norms. With a view to improve the emergency medical service in the country, the Medical Council of India approved a course in M.D. (emergency medicine) on the recommendation of the Commission.

The Indian Nursing Council, on the recommendation of the Commission, approved the syllabus of Nursing, Midwifery to ensure effective service to the population. The Commission has also taken up among others, the issues of unsafe drugs and medical devices, silicosis and availability of anti-rabies vaccines.

The representatives of the Commission have been visiting Mental Hospitals across the country to monitor the implementation of its recommendations on 'Quality Assurance in Mental Health'. To review and update the Manual on Quality Assurance in Mental Health, the Commission organized a



conference of all Health Secretaries and State Mental Health Authorities at Bangalore in May, 2008 in collaboration with the National Institute of Mental Health and Neurosciences, Bangalore (NIMHANS).

#### **HIV/AIDS and Human Rights**

In order to spread human rights awareness among people, the Commission has taken the initiative of producing a series of short films on selected human rights issues. One such film and a video spot are on the rights of persons infected/affected by HIV/AIDS. This film and video spot were telecast by Doordarshan (National Channel) and other private channels. This is also shown in various awareness programmes.

#### **Persons with Disabilities**

The National Human Rights Commission of India played a major role in the drafting of the UN Convention on Rights of Persons with Disabilities and advocated for inserting Art.33 relating to national implementation and monitoring mechanisms. Therefore, it advocated for its early ratification with the Government of India, which has since been done in the year 2007. As a follow up action, the Commission appointed a Special Rapporteur on Women, Children and Disability related issues and constituted a Core Advisory Group on Disability to advise the Commission

On matters connected with and incidental to the promotion,

protection and monitoring of rights mentioned in the Indian Constitution and laws for persons with disabilities and also envisaged in Art.33 (2) of the UN Convention on the Rights of Persons with Disabilities.

In the light of its role as envisaged in Art.33 of CRPD, the MIRC, India is organising regional workshops during the year in different parts of the country to assess the enforcement of rights of the persons with disabilities with particular reference to their education, employment, access and services. The Commission has evolved a format to collect detailed information with regard to right to education, employment, access and services being provided to persons with disabilities.

The Commission, deeply concerned about the education of deaf children, identified the lack of training in sign language as the major constraint. In order to standardize the sign language for deaf persons which can be introduced in teachers training? The Commission played a catalytic role to evolve a project entitled "Indian Sign Language for Deaf Persons" through the National Institute of Hearing Impaired, Mumbai.

#### **Rights of the Internally Displaced Persons**

To discuss the human rights implications of displacement following conflict, development projects, and natural and manmade disasters, the

Commission organized the National Conference on "Relief and Rehabilitation of Displaced Persons" on March 24-25, 2008 at New Delhi. All key stakeholders, including Chairperson/Members of State Human Rights Commissions, government officials of both the Central and State governments, officials of the National Disaster Management Authority, UN agencies and MILTs participated in this conference. The participants deliberated on various human rights issues related to displacement and **Made** several recommendations on land acquisition and relief and rehabilitation of displaced persons from human rights perspective. The Commission is currently finalizing the recommendations which will be sent to all concerned agencies.

#### **Trafficking**

The National Human Rights Commission of India is working relentlessly to help in prevention and combating of human trafficking. Special attention is being given, to the plight of women and children being exposed to such a heinous crime. At the request of the UNHCHR as well as Recommendation of the APF of NHRIs, the NHRC, India nominated one of its members as a focal point on Human Rights of women, including human trafficking. The Commission in collaboration with the National Commission for Women has assisted the Ministry of Women and Child Development in the Government of India in formulating a Plan of Action to Prevent and Combat Trafficking with special focus on women and children.

#### **Food Security**

The National Human Rights Commission has consistently maintained that the Right to food is inherent to living a life with dignity. The Commission has expressed the view that the Right to Food includes nutrition at an appropriate level. It also implies that the quantum of relief to those in distress must meet those levels in order to ensure that the Right in Food is actually secured and does not remain a theoretical concept. The Commission is of the view that mortality alone should not be considered as the effect of starvation but destitution and the continuum of distress should be viewed as indicators demonstrating the prevalence of starvation. There is thus an accompanying need for a paradigm shift in public policies and relief codes in this respect. The Commission has constituted a Core Group on Right to Food with experts in the field. In last meeting of the Core Group, it was observed that Panchayats, being burdened with so many other responsibilities may not be in a position to pay focused attention to this aspect in all the areas as their jurisdiction. Hence a need for the constitution of watch committees at various levels in States was felt. The purpose of these independent committees is to see implementation of the related schemes, availability of food grains and their proper

distribution and report to the concerned authorities in the State or to the SHRC/NHRC directly in some select cases, as the ease may be.

### **CIVIL & POLITICAL RIGHTS**

Besides evolving stringent reporting system and Guidelines, Commission continued to monitor custodial deaths. Rapes, deaths in alleged fake encounters etc. Besides redressing individual complaints, the Commission also stressed the need for systemic reforms in the Police and Prisons. The Commission continued to monitor conditions in prisons. The Commission took up, among others, overcrowding in prisons, medical treatment of prisoners, and sensitization of prison staff. In October, 2007, the Chairperson, NHRC, India addressed a letter to Chief

Ministers of all States and Union Territories highlighting the need for modernization of jails and also the Chief Justices of all High Courts requesting them to take steps for speedy trial and we are receiving the response for the same.

There are 15021 deaths in judicial custody and 2222 in police custody since 1.9 1993. These deaths are reported within 24 Hours to NHRC and analyzed by NHRC. Out of the above. 10658 deaths in judicial custody and 1485 deaths in police custody are due to natural causes but in 153 deaths in judicial custody and 158 deaths in police custody, the NHRC has recommended interim relief, prosecution and departmental action against defaulting personnel.

### **Functions and Powers of the Commission**

Wick powers and function 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 courts.<sup>18</sup> Section 12(c) empowers the commission to visit any jail or other institution prior intimation to the State Government, for the purposes of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to SUM: Governments on the basis Of such visits. The Commission found after visiting many jail that pathetic conditions prevailed in jails in which prisoners are famed to live. In its view this is not due to a lark M: 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 thin human dignity must not be left when a

18. The commission has decided to intervene in the pending court proceeding in the Punjab & high court relating to the disappearance of Harjit Singh. Human rights newsletter, vol.2 n.7 (1995), p.1

Report of the all India jail Manual committee of 1957-59; the Report of the all- India committee on jail Reforms 1980-83 chaired by the justice A.N. Mulla (popularity known as Mulla committee Report); The Report of the National Experts Committee on Women prisoners of 1987 Chaired by justice V.R. Krishna lyer; The Report of the Group of officers on prison Administration Chaired by Sri R.K Kapur in 1987. In addition to this the commission remains mindful the need for the country to abide by the United nations Standard Minimum Rules for the Treatments of Prisoners of 1957.

Person enters the gates of a prison.<sup>20</sup> Section 12(d) empowers the Commission to review the safeguards provides under the Constitution or any Law for the Lime being in force for the protection of human rights and also to recommend measures for then' effective implementation under Section! 2(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 fur 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.

**NHRC takes *suo motu* cognizance of attack on Swami Agnivesh and journalists by police and Saiwa Judum activists in Chhattisgarh<sup>37</sup>**

The National Human Rights Commission, NHRC, has

taken *suo motu* cognizance of a media report alleging that a large group comprising special police officer of Chhattisgarh police and members of the Saiwa Judum attacked Social Activists, Swami Agnivesh on the 26th March, 2011 as he attempted to deliver relief to a village reportedly torched by the security forces in Dantewada district.

Considering the issues raised in the report, the Commission today on the 30th March, 2011 observed that the entire incident is a matter of great concern, and issued notices to the Chief Secretary and Director General of Police, Chhattisgarh calling for their factual reports within four weeks in the matter.

The report carried on the 27th March, 2011 referred to the aftermath of an incident in which three men were killed; three women were sexually assaulted and about 300 homes, granaries and woodsheds were torched by the security forces during a five day anti-Maoist operation in the villages of Tarmetla, Timapuram and Morpalli.

Swami Agnivesh had gone there to deliver clothes, blankets and other relief materials to the affected villagers, when he was attacked twice in six hours by a mob at a Saiwa Judum camp at Dornapal. Quoting Swami Agnivesh it was reported that the mob surrounded him and pelted raw eggs on him. His turban was knocked down and he was pushed around. The reporters at the spot were also manhandled by the mob. Allegedly, the security provided to him proved futile forcing his return from the place.

Subsequent to the incident the SSP and Collector, Dantewada were reported to have been transferred. Earlier, the Commission on the 28th March, 2011 had sought the reports from the Chief Secretary and Director General of Police, Government of Chhattisgarh as well as Secretary, Ministry of Home, Government of India, New Delhi while taking *suo motu* cognizance of a media report alleging wide destruction of tribals' property in violation of their right to life by the Koya Commandos of Chhattisgarh police and COBRA battalion of CRPF.

#### **NHRC takes suo motu cognizance of a media report on a police encounter in Faridabad**

The National Human Rights Commission, NHRC, has taken *suo motu* cognizance of a media report alleging that two criminals were killed in an encounter with the police personnel of Crime Branch in Faridabad district of Haryana.

Having received no intimation about the encounter within 48 hours as per NHRC guidelines, the Commission issued notices to the Director General of Police, Haryana, District Magistrate, Faridabad, and Commissioner of Police, Faridabad to take appropriate action with regard to the investigation of the case as per the guidelines laid down by the Commission in the letter dated 12th May, 2010

written

By the Chairperson, NHRC to the Chief Secretaries of all states.

It has sought magisterial enquiry report, inquest report, post-mortem report along with report of independent investigation and explanation for not sending the intimation to the Commission about the encounter.

The report carried on the 28th March, 2011 quoted Superintendent of Police; Mr. Anil Dhawan that Nitin Sharma, a resident of village Baheen along with his two accomplices Jagdeep (Kosi) and Randhir (Kharrot) was going on the motorcycle towards Palwal from Bharatpur, Rajasthan to collect extortion money of rupees twenty lakhs from a jeweller.

On receiving information, police officials of crime branch Palwal started checking near Karman Border. While doing so they saw three persons on a bike and tried to stop them, but they reportedly opened fire and tried to run away. Police opened fire in retaliation, resulting in the death of Nitin and Jagdeep on the spot while Randhir managed to escape from the spot. Allegedly, Randhir is the younger brother of notorious criminal Bacchu Singh and he is also involved in the murder of a Sub-Inspector.

#### **NHRC takes suo motu cognizance of a media report alleging killing of Tribal & destruction of their property by Chhattisgarh police and CRPF**

The National Human Rights Commission, NHRC, has taken *suo motu* cognizance of a media report alleging that in the first week of March 2011, the Koya commandos of Chhattisgarh police and COBRA battalion of CRPF, while conducting an operation to destroy an arms factory reportedly being run by Maoists at Morpalli in Dantewada district of Chhattisgarh, torched 37 houses, sexually assaulted several women and killed three persons.

The report carried on the 23rd March, 2011 also alleged that the Koyas also burnt about 50 buildings, including homes and granaries in Chintalnar. Quoting some villagers, it was also reported that the Koyas went to another village Tarmetla and burnt about 200 structures, including homes, granaries and woodsheds. Koya is a tribal corps of surrendered Maoists and local youth.

Considering the matter today on the 28th March, 2011, the Commission observed that the contents of the press report, if true, raise serious issues of violation of human right to life of the tribal communities in Chhattisgarh and

Ordered that notices be issued to the Chief Secretary and Director General of Police, Government of Chhattisgarh as well as Secretary, Ministry of Home, Government of India, New Delhi calling for their reports in the matter within two weeks.

The Commission has also directed them to inform on the following points as well:

- i) What steps have been taken for rehabilitation of those families whose houses have been burnt?
- ii) Whether any monetary relief is being considered for the victims whose human rights have been violated.

**NHRC takes suo motu cognizance of a media report alleging abducted small girls being pushed into sex trade by administering hormones**

The National Human Rights Commission, NHRC, has taken suo motu cognizance of a media report alleging that members of Banchra tribes in Mandasaur district, Madhya Pradesh are abducting young girls; pumping them with hormones and steroids to hasten their physical growth; and selling them into the flesh trade. According to the report carried today on the 24th March, 2011, the police had recently rescued 21 abducted girls, aged between one and eight, from brothels in a series of raids. Some of the persons arrested in the raids have admitted to giving Estrogen (a hormone) and steroids such as Pednisolone Dexona and Kenacort Dexona to their victims at frequent intervals.

The impact of the drugs can be devastating on the young ones, the report adds. Quoting a senior endocrinologist at the All India Institute of Medical Sciences, AIIMS, New Delhi, the report says that administering of such drugs would have harmful effects such as abnormal hair growth in the form of a beard or moustache, and a lot of unnecessary weight in girls as young as one year of age.

The Commission in its proceedings today on the 24th March, 2011 observed that the contents of the media report, if true, raise serious issue of violation of human rights of young girls and issued notices to the Chief Secretary and Director General of Police, Madhya Pradesh calling for detailed reports in the matter within four weeks.

**NHRC files a PIL in Allahabad High Court against Uttar Pradesh Government's notification denying benefit of revised wages to four categories of brick kiln labourers**

The National Human Rights Commission, NHRC, has filed a Public Interest Litigation (PIL) in the Allahabad High Court, Uttar Pradesh seeking directions to the Uttar Pradesh Government for quashing its communication dated 16th June, 2006, under which four categories of brick kiln labourers including nikasiwala, pathera, bharaiwala and chunaiwala were denied the benefit revised wages.

While enquiring into a complaint of bonded labour, it was noticed by the Commission that the wages of the above mentioned four categories of brick kiln workers had not been revised by the Government of Uttar Pradesh since the 8th August, 1990. The State

Government did issue a notification on the 24th February, 2006 revising the wages of the brick kiln labourers, but the notification was subsequently withdrawn on the 16th June, 2006 with the result that the poor labourers working in brick kilns were doomed to a state of penury and reduced to the status of bonded labourers. To compel the State Government to

Perform its statutory duty under the Minimum Wages Act; the NHRC filed the writ petition in the High Court.

Considering the issue raised by the NHRC on the 9th March, 2011 the Court observed that under the provisions of Minimum Wages Act, revision of wages has to take place under Section 3(1) (b) of the Act at intervals not exceeding five years. It also observed that it has come across a large number of writ petitions, wherein the bonded labour is engaged and that it had issued directions from time to time and the State Government has also been called upon to give its response in the matters.

The Court ordered that the State Government is directed to file counter affidavit explaining as to why the four categories of labourers were excluded from the notification for revised wages and the steps taken to revise the wages in terms of the Minimum Wages Act. The next date of hearing is fixed on the 30th March, 2011.

**The National Human Rights Commission Is an expression of India's concern for the protection and promo human rights. It came into being in October, 1993**

How are human rights defined in the Protection of Human Rights Act, 1993? What functions have been assigned to the Commission under the Act?

- What powers have been vested with the Commission relating to inquiries? Does the Commission have its own investigation team?
- Is the Commission Autonomous?
- How does the Commission inquire into complaints?
- What steps are open to the Commission after inquiry?
- What procedure is prescribed under the Act with respect to armed forces?
- Can the complaint be in any language?
- What kind of complaints is not entertained by the Commission?
- What is the responsibility of the authority/ State/Central Governments to which reports / recommend have been send' by the Commission?
- What are the kinds of issues on which



complaints have been received?

- What has been focus of the Commission's Working?
- What are its major initiatives?
- What is the composition of the Commission?
- Where the Commission located and what are are its contact numbers?

**Responsibility of the authority/ State/ Central Governments to which reports / recommendation been send by the Commission?**

The authority/ State Government/ Central Government has to indicate its comments/action taken on the report/record-----of the Commission within a period of one month in respect of general complaints and within three months i-----complaints relating to armed forces.

**What are the kinds of issues on which complaints have been received?**

Since its inception, the Commission has handled a variety of types of complaints. In the latest period, the major type complaints have been; In respect of police administration; Failure in taking action; Unlawful detention; False implication; Custodial violence; Illegal arrest; Other police excesses; Custodial deaths; Encounter deaths; Harassment of prisoners; jail conditions; Atrocities on SCs and STs; Bonded labour, child labour; Child marriage; Communal violence; Dowry death or its attempt; dowry demand; Abduction rape and murder; Sexual harassment and indignity to women, exploitation of women; Numerous other complaints which cannot be categorized, have also been taken up.

**What has been focus of the Commission's Working?**

Inquiring into complaints is one of the major activities of the Commission. In several instances individual complain the Commission to the generic issues involved in violation of rights, and enabled it to move the concerned a-----systemic improvements.

However, the Commission also actively seeks out issues in human rights which are of significance, either *suo motu* brought to its notice by the civil society, the media, concerned citizens, or expert advisers. Its focus is to stir---extension of human rights to all sections of society, in particular, the vulnerable groups.

The Commission's purview covers the entire range of civil and political, as well as economic, social and cultural facing terrorism and insurgency, custodial death, rape and torture, reform of the police, prisons, and other institution juvenile homes, mental hospitals and shelters for women have been given special attention. The Commission h provision of primary health facilities to ensure maternal and child welfare essential to a life with dignity, basic n potable drinking water, food and nutrition, and highlighted fundamental questions of equity and justice to the le namely the

Scheduled Castes and Scheduled Tribes and the prevention of atrocities perpetrated against them. I disabled, access to public services, displacement of populations and especially of tribals by mega projects, food allegation of death by starvation, rights of the child, rights of women subjected to violence, sexual hand-----discrimination, and rights of minorities, have been the focus of the Commission's action on numerous occasions.

**Functions of National Human Rights Commission of India**

1. Proactively or reactively inquire into violations of Human rights or negligence in the prevention of such violation by a public servant
2. Visit 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 and make recommendations
3. 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
4. Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures
5. Study treaties and other international instruments on human rights and make recommendations for their effective implementation
6. Undertake and promote research in the field of human rights
7. Spread 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
8. Encourage the efforts of NGOs and institutions working in the field of human rights
9. Such other function as it may consider it necessary for the protection of human rights.
10. Take suo motu action, if required in a case if the victim is not in a position to access a court.

**Powers of the Commission**

The Commission exercises the following powers while inquiring into the violation of human rights

1. The Commission while inquiring in the violations of the human rights exercises the same powers of a Civil Court trying a suit under the Civil

Procedure Code, 1908. They are especially in respect to:

2. Summoning and enforcing the attendance and examining them on oath;
3. Discovery and production of any document
4. Receiving evidence on affidavits
5. Requisitioning any public record or copy thereof from any court or office
6. Issuing commissions for the examination of witnesses or documents;
7. Any other matter which may be prescribed
8. The Commission if in its opinion arrives at a conclusion that any information may be useful for or relevant on any such aspects or matters under its consideration it can direct any person to submit such information required to it. Any such person directed by it, in whatever capacity he may be, is legally bound to furnish such information as directed by it within the meaning of Sections 176 and 177 of the Indian Penal Code.
9. The Commission or any other officer authorised by it can enter into any building or place, wherein, if in the opinion of the Commission that any document relating to the subject matter of inquiry may be found and to seize such a document or to take extracts of copies therefrom subject to the provisions of Section 100 of CrPC to the extent it may be applicable.
10. The Commission is though empowered to exercise the powers of a civil court only during the course of inquiring into the complaints, it can also record the facts constituting the offence and the statement of an accused person as is described in Sections 175, 178, 179, 180 or 228 of the IPC. The Commission after recording the facts constituting the offence and the statement of the accused as specified in CrPC has to transmit the case to a Magistrate having jurisdiction to conduct the trial. Since all the proceedings before the Commission are considered as judicial proceedings, the Magistrate to whom the case is referred bound to conduct the trial.

#### **Shortcomings of National Human Rights Commission**

Though the NHRC is in existence since 1993, millions of people suffer from violations of human rights everyday. Due to some glaring defects and lacunae in the Protection of Human Rights Act, 1993, role and functioning of NHRC in protecting and promoting human rights is seriously affected. There is a dire need for certain radical modifications in the 1993 Act in order to make it more effective and so as to achieve the desired objectives in true manner.

1. The method of selection of the members of the Commission needs attention. The selection of the members is wholly weighed towards the ruling

party and the principal opposition, both at the centre and state level. The NHRC does not have power to appoint its own staff.

2. The composition of NHRC is least balanced as three out of five members must be judges both, in the National as well as the State Commission and all would have to be political appointees. So, at least two members are required to be appointed from among the person having knowledge of, or practical experience in the matters related to human rights. Representations should be given to the NGO and human rights activists to instil confidence in the minds of people.
3. The relation between NHRC and the State Commissions should be made amply clear because sometimes questions arise over jurisdiction and control. The revisional powers over the State Commission should be enumerated as of the powers of NHRC. The essence of the revisional power is to have control by way of supervision, especially the power to call for records. The need is to make special provision to make clear cut demarcation in the areas of their functioning and their administrative relation with each other.
4. Another major drawback is the lack of independent budget of the NHRC. The present scenario is that the purse of NHRC is totally dependent on the government to meet the expenses of investigation and research apart from the allowance and salaries. Actually there should be provision for drawing the salaries directly from the consolidated funds so as to ensure greater autonomy and transparency. The financial independence will make the NHRC independent in the true sense of the term. It will ensure smooth and effective performance of NHRC.
5. There is inherent drawback in Section 12(c) of the Act. The necessity of intimation severely inhibits and defeats the investigation of the Commission. It is such a loophole that makes the whole exercise eyewash. It is therefore recommended that the requirement of informing the State government about the Commission's visit to such place should be waived off. This shall certainly help the Commission to make spot inquiries and present the true picture of human rights violation.
6. Further Section 13 of the Act deals with powers of NHRC relating to inquiries. There is nothing in this section regarding the transfer of cases, it is suggested that NHRC may be given the power to transfer any of the complaints filed or pending before it to the State Commission of the State from where the complaint arises, whenever it considers expedient.

7. The Commission suffers from the limitation on its own function. It can intervene in any proceedings pending before a court regarding violation of human rights as and when any matter is reported to it but it has to seek prior approval of concerned authority. This hinders its functioning as the concerned authority may linger it unnecessarily to avoid the commission. Therefore in the interest of discouraging the human rights violations, an amendment should be made in the Act to the effect that the prior approval should be time bound or the requirement of approval should be completely waived off.
8. Section 36(1) of the Act provides that the NHRC shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. This obstacle should be removed by the amendment in 1993 Act, because many a time government deliberately hands over the case to another Commission for side-lining the Commission. For any reason whatsoever, if the government intends to deprive the Commission of the jurisdiction to inquire into any violation of human rights, it can do so by constituting a separate Commission under any law in force. Another major impediment in the working of NHRC is imposed by Section 36(2) of the Act.
9. The Commission under the 1993 Act is not empowered to take any punitive action against the violator. It is also not bestowed with any contempt power for defying its order by the government officials. It can only make recommendations for the action to be taken by the concerned authority. For getting better results from the working of NHRC, it should be given wider powers to call for the explanation, initiate the proceedings for prosecution against the violator and take appropriate action including the awarding of compensation to the victim.
10. Another provision that needs attention is that the Commission under the 1993 Act merely acts as an instrumentality between the victim and the government for lawful solution to the violation of human rights, and make its own recommendations, leaving the results to the government or the courts. The Commission does not have any authority to award compensation or extend any other relief immediately required by victim especially in terms of monetary assistance. The government is also not being obliged to accede to the recommendations made by the Commission. Thus due to lack of effective mechanism recommendations of the Commission are not being taken seriously. This is one of the most glaring drawbacks in the 1993 Act which

makes the Commission toothless and non-effective. If the working of the Commission is to be made good and effective, an amendment should be made in the 1993 Act so that the Commission's recommendations must be totally accepted by the Government and implemented accordingly.

### Conclusion

In spite of its glaring defects in the Act, NHRC has made significant contributions to bring a human rights approach to legislation, policy and programs in our country. It would not be out of place to mention that NHRC as a watchdog had done reasonable work in propelling and protection of human rights. Its contributions in India have gone beyond the expected role of investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, providing advice and assistance to governments, creating awareness, promoting interaction, exchange, and better coordination among other state and international human rights institutions and publishing annual reports. It has been pertinent towards strengthening the Human Rights Jurisprudence in our country. NHRC has set the agenda towards a rights based approach at an international level as well. In the era of globalization the NHRC has a key role to play in ensuring that the all sections of society can productively engage with the expansion of opportunities. By ensuring equal opportunities and protecting citizens against discrimination and inaction, the NHRC can provide a level playing field to all our citizens and help in shaping our country protecting citizens against discrimination and inaction. The objective assessment of the Commission's endeavours must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances. The performance of a national institution has to be assessed in terms of not only its successes in achieving its stated objectives, but also the constraints within which it has worked.

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