



DESIGNING THE STATE HUMAN RIGHTS COMMISSIONS

Dr.V.Ramaraj

The Author is an Eminent Lawyer.

Human rights are paramount, sacrosanct, eternal and transcendental in nature and ought to be treated as inalienable and inviolable for preserving the dignity of the people, however, cannot be imagined without the security and existence of a well regulated society. Society and the State can alone guarantee human rights to the individual but also demand observance of social norms from the citizensⁱ.

Universal Declaration of Human Rights was proclaimed on 10th December, 1948 in the United Nations' General Assembly. The United Nations Organization demanded its members to enact a law on human rights and provide independent institutions for the promotion and protection of human rights. The Protection of Human Rights Bill was passed by both the house of Parliament and it came on the Statute as the Protection of Human Rights Act, 1993.

The main objectives of the Act is to provide for the constitution of the National and State Human rights Commissions and Human Rights Courts for better protection of human rights and for matters concerned therewith or incidental thereto. Thus, it has a twin objectives to fulfill, namely, establishment of institutional structure, both Central and State levels, and to create enforcement machinery in terms of Human Rights Courts for better protection of human rightsⁱⁱ.

The Protection of Human Rights Act was enacted in India, after Forty four years of the international declaration. Twenty two years have elapsed since the Act came into force in India.

The States of Assam, Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Goa, Himachal Pradesh, Jammu and Kashmir, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Uttar Pradesh, Tamil Nadu, West Bengal, Jharkhand, Sikkim, Uttarakhand and Hariyana have established their State Human Rights Commissions.

States of Arunachal Pradesh, Delhi, Meghalaya, Mizoram, Nagaland and Tripura have not set-up State Human Rights Commissions even after two decades have passed since the enactment of the Protection of Human Rights Act,1993. It is appropriate to examine the initiations to setting up the State Human Rights Commissions in the non-actor States and essential measures to constitute the same.

According to the Section 3 of the Protection of Human Rights Act,1993, the National Human Rights Commission was established in the year 1993. The Section 21 of Act has left the power to constitute the State Human Rights Commissions as discretionary of the State government. On simple reading, the Central government has no power to compel the State government to establish the State Human Rights Commission or constitute the same in case of the State government, which is not willing to form the State Commission .

Non-establishing State Human Rights Commissions touches the right of the affected citizens to "access justice" and the denial of such access by reason of non-setting up of the Commissions. Human rights violations in the States that are far removed from the National Human Rights Commissions headquarters in New Delhi itself makes access to justice for victims from those States an illusion. While theoretically it is possible that those affected by violation of human rights can approach the NHRC by addressing a complaint to the National Human Rights Commissions for redressal, it does not necessarily mean that such access to justice for redressal of human rights violation is convenient for the victims from the States unless the States have set-up their own Commissions that would look into such complaints and grant relief.

The National Human Rights Commission's following annual reports shows that its initiations to set up the Human Rights Commission in all the States in India. The National Human Rights Commission's annual report 2002-2003 had observed in its preceding report that among the North-Eastern States, Assam and Manipur had established State Human Rights Commissions and that the other States of the region were, in principle, in favour of having Commissions. However, financial and administrative reasons were holding them back and there was need to think further how best the States of the North-Eastern region could have access to one or more Human Rights Commission. Unfortunately little progress appears to have been made in that respect even though, it would clearly be of benefit to the region if such Commissions were established. The Ministry of Home Affairs is therefore, once again, requested to consult with the State governments concerned so that appropriate arrangements are made for the North-Eastern States. The wellbeing of the people of those States is of the greatest consequence to the countryⁱⁱⁱ.



The recommendation was made to set up State Human Rights Commissions in the National Human Rights Commissions's annual report for the year 2003-2004. It said: The Commission, however, notes with regret the delay on the part of the State governments in the setting up of State Human Rights Commissions and providing necessary staff and infrastructural support for their smooth functioning^{iv}. National Human Rights Commission has taken steps to constitute the human rights mechanisms in all the States. In this connection, National Human Rights Commissions recommendations published in its annual report for the year 2004-2005, where the commission observed: The Commission would like to reiterate its view that the 'better protection of human rights' can be ensured if all the States set up Human Rights Commission^v.

The NHRC annual report, 2005-2006: National Human Rights Commission hopes that all the States expeditiously set up State Human Rights Commissions^{vi}. The NHRC annual report 2006-2007: The Commission has been urging all those States, which have not yet constituted Human Rights Commissions^{vii}. The NHRC annual report 2007-2008: The National Human Rights Commission is keen that every State sets up a State Human Rights Commission. The commission recommends to all those States, which have not yet constituted their commissions to do so at the earliest^{viii}. The NHRC annual report 2008-2009: The National Human Rights Commission is keen that every State sets up a State Human Rights Commission. The Commission recommends to all those States which have not yet constituted their Commissions to do so at the earliest^{ix}.

A similar recommendation was made in the Annual Report for the year 2009-2010 of NHRC. It said: The National Human Rights Commission is keen that State Human Rights Commissions are set-up in all the States so that each and every citizen of the country has easy recourse to better protection of 'human rights' as well as for matters connected therewith or incidental thereto. The Commission earnestly recommends to all those States which have not yet constituted State Human Rights Commissions to follow suit at the earliest in the interest of better protection and promotion of human rights"^x.

Yet again, the same has been reiterated in the Annual Report for the year 2010-2011 of NHRC in the following words: Section 21 of the Protection of Human Rights Act, 1993 as amended in 2006, stipulates constitution of State Human Rights Commissions in all the States. The creation of a Human Rights Commission in all the States would definitely facilitate in 'better' protection and promotion of human rights. National Human Rights Commission is keen that State Human Rights Commissions are set up in every State of the country so that its inhabitants have easy access to better protection of human rights and justice. The Commission once again makes an earnest appeal to all those States which have not yet constituted State Human Rights Commissions to take action at the earliest in the interest of better protection and promotion of human rights^{xi}.

It is a matter of regret that despite the repeated directions of the National Human Rights Commission to set up the State Commissions strongly with a determined force, the States did not come forward to constitute the same. In the last week of June, 2015, Supreme Court of India delivered significant verdict to setting of State Human Rights Commission in the defaulting States with following points.

The Apex Court said that despite the opportunity granted for the purpose, the States that have failed to set-up Human Rights Commissions have not come forward to offer any justification for their omission to do so. All that was argued by some of the counsel appearing for the defaulting States is that the establishment of a Commission is not mandatory in terms of Section 21 of the Protection of Human Rights Act, 1993. It was urged that the use of words 'A State government may constitute a body to be known as the.. (Name of the State) Human Rights Commission' clearly suggests that the State Government may or may not choose to constitute such a body. In the absence of any mandatory requirement under the Act constitution of a State Human Rights Commission cannot, it was urged, be ordered by this Court in the present proceedings^{xii}. The defaulting States are not having interest to form the State Human Rights Commission in their States. Hence, they are making such type of argument in the court.

The provisions of Section 21 of the Act need to be examined. It is true that a plain reading of the provisions may give the impression that the setting-up of a State Human Rights Commission rests in the discretion of the State Government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression^{xiii}. It may be noted that it is the duty of defaulting State governments to understand the aims of the law makers.

A plain reading of the above would show that the Parliament has used the word 'may' in sub-Section 21(1) while providing for the setting-up of a State Human Rights Commission. In contrast the Parliament has used the word 'shall' in sub-Section 3(3) while providing for constitution of a National Commission. The argument on behalf of the defaulting States, therefore, was that the use of two different expressions which dealing with the subject of analogous nature is a clear indication that



while a National Human Rights Commission is mandatory a State Commission is not. That argument is no doubt attractive, but does not stand close scrutiny^{xiv}. The defaulting State governments have to note the aims of the law only, not negative interpretations.

The word 'may' has been often read as 'shall' or 'must' when there is something in the nature of the thing to be done which must compel such a reading. In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise^{xv}. The defaulting State governments have to read the Section 21 with the above context.

The Apex court directed that the States of Delhi, Arunachal Pradesh, Meghalaya, Mizoram, Tripura and Nagaland shall set up State Human Rights Commissions within a period of six months from date of the order for their respective territories^{xvi}.

During 1st October, 2011 to 30th September, 2012, a total number of 94,985 fresh cases were registered in the National Commission. Maximum (46187) cases were registered from Uttar Pradesh followed by Delhi (7988)^{xvii}. Delhi has reported the second highest number of human rights violation cases reported to National Human Rights Commission. Despite a large number of complaints alleging violation of human rights from the Delhi region, the Delhi government has not set-up a State Human Rights Commission so far.

Mizoram, Meghalaya, Tripura and Nagaland are all disturbed States with problems of insurgency, foreign immigration, tribal warfare and ethnic violence apart from custodial violence and deaths, which each one of these State makes it necessary to have a proper authority to look into such violations and grant redress wherever necessary. In view of the Supreme Court directions and also the fact that Delhi has the second highest number of human rights violations in the country, the Delhi State government has initiated the process for setting-up of the State Human Rights Commission.

Chief Minister Mr. Arvind Kejriwal informed the legislative Assembly. Replying to a discussion in the Assembly on the condition of women safety in the national capital, the Chief Minister told the members that the Supreme Court of India had expressed concern over the fact that there was no State Human Rights Commission in Delhi since last 22 years. The Home Department has initiated the proposal and already forwarded it to the Chief Minister's Office^{xviii}.

The State of Meghalaya is all set to have its own State Human Rights Commission. Meghalaya Chief Minister Dr. Mukul Sangma informed in the second week of August 2015, that "We have decided to constitute the Human Rights Commission after the proposal was examined and approved by the Cabinet. This will be in the best interest of the State and with the spirit of fulfilling the responsibilities and obligation of the State government,".

Stating that the proposal is to protect and promote human right issues in the State, Dr. Sangma said, "The setting up of the State Human Rights Commission will go a long way in ensuring that the human rights of the people are protected in Meghalaya." He stressed that the initiative is also in compliance to the relevant laws passed by the Parliament including the Protection of the Human Rights Act, 1993 and the Protection of Human Rights Amendment Act 2006, which directed all State governments to constitute the State Commissions.

Dr. Sangma also expressed that earlier there were speculations that there may be a regional commission for human rights for the North East States as the setting up of the commission entails substantial amount of expenditure. But, Meghalaya Cabinet decided that it is important for the State government to not only protect but also promote human rights in the State. He also informed that the Meghalaya Human Rights Commission will be headed by a chairperson, who has been a Chief Justice of the High Court besides a member who will be a district judge in the State having minimum of seven years experience while one member will be appointed from amongst persons having legal experience in matters of human rights^{xix}.

The Tripura government is keen to constitute a Human Rights Commission, but paucity of suitable retired judges has become a stumbling block in forming the rights body, Chief Minister Manik Sarkar said. "We had initiated the process to constitute the State Human Rights Commission many years back but lack of suitable retired judges to head the body has become an obstacle to form the constitutional body," Sarkar said. He said: "According to the rule, a retired High Court Chief Justice or a retired Supreme Court judge must be the chairman of the State Human Rights Commission. For many years we are looking for such a retired judge but failed." A few years back, we proposed to share the authority of the Assam Human Rights Commission, but the Assam government did not respond positively, Sarkar said^{xx}.



There is no news from the States of Mizoram, Nagaland and Arunachal Pradesh on establishing the SHRCs after the apex court's direction.

It may be noted that due to the financial and other reasons, there was a proposal for joint State Commission of North-Eastern States. It was taken place in the National Human Rights Commission reports and North-Eastern State government's meetings. A few years back, there was a proposal to share the authority of the Assam Human Rights Commission. The States of Arunachal Pradesh, Meghalaya, Mizoram and Tripura have considered the founding of a joint State Human Rights Commission in the respective States.

Many States had its own law on right to information prior to the Right to Information Act, 2005, which is passed by the Parliament. The Right to Information Act repealed the State's right to information law and it fixed the date for the effect. Likewise, the power to the formation of State Human Rights Commission has to be taken up from the State government to Central government, if they have not established the same with in a some specific period. Likewise, the Protection of Human Rights Act has to be amended.

The National Human Rights Commission has taken effective initiations to constitute the State Human Rights Commission in each and every States. The Supreme Court of India Court's directed the defaulting State to constitute the same. But, a few States have not shown much interest to set up the same. In order to constitute the State Human Rights Commission in the non-actor States, it is essential to concentrate on the following measures.

1. The States of Arunachal Pradesh, Mizoram and Nagaland have to initiate necessary steps to establish the State Human Rights Commissions as per the Protection of Human Rights Act, 1993. Political will is essential for the same.
2. The States of Delhi, Meghalaya and Tripura have to speed up their decision to set up the State Human Rights Commissions.
3. The States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura have to consult to constitute a regional rights panel, in case of difficulty to set up individually.
4. National Human Rights Commission and Central government has to assist the States to create the new rights commissions.
5. If the non-performing States have not formed the SHRC, the Central government has to form the same by way of amendment in the law.
6. Establishing the State Human Rights Commissions in the States of Arunachal Pradesh, Delhi, Meghalaya, Mizoram, Nagaland and Tripura will give easy access to the justice for the victims of human rights violations.

It is studied that the State Human Rights Commission have to be founded in all the States, so that the humanity will survive in this country.

REFERENCE

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- ⁱⁱⁱ Annual Report, 2002-2003, NHRC, New Delhi, p.165.
- ^{iv} Annual Report, 2003-2004, NHRC, New Delhi, p.173.
- ^v Annual Report, 2004-2005, NHRC, New Delhi, p.183.
- ^{vi} Annual Report, 2005-2006, NHRC, New Delhi, p.203.
- ^{vii} Annual Report, 2006-2007, NHRC, New Delhi, p.179.
- ^{viii} Annual Report, 2007-2008, NHRC, New Delhi, p.141.
- ^{ix} Annual Report, 2008-2009, NHRC, New Delhi, p.119.
- ^x Annual Report, 2009-2010, NHRC, New Delhi, p.113.
- ^{xi} Annual Report, 2010-2011, NHRC, New Delhi, p.139.
- ^{xii} Judgement, Dilip K. Basu Versus State of West Bengal, Supreme Court of India, dated 24 July, 2015, p 10-11 .
- ^{xiii} *Ibid.*, p 14.
- ^{xiv} *Ibid.*, p 15-16.
- ^{xv} *Ibid.*, p 16-17.
- ^{xvi} *Ibid.*, p 50.
- ^{xvii} Curtain raiser- 20th Foundation Day, NHRC, New Delhi, 2012
- ^{xviii} Press release, Government of NCT of Delhi, 13, September, 2015.
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- ^{xx} <https://in.news.yahoo.com/lack-judges-stalling-formation-rights-panel-tripura-cm-113804224.html>.