

Needed: More Effective Human Rights Commissions in India

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The establishment of India's National Human Rights Commission in 1993 resulted from the culmination of a number of national and international factors. Internal conflicts in Punjab, Jammu & Kashmir and the North-Eastern states escalated in the 1980s and early 1990s and were dealt with by the government with a heavy hand. The media, civil society organisations and the general public increasingly expressed concern about police and security forces' actions in tackling insurgency and the culture of impunity within the government - basic human rights were being ignored in the name of national security. The international community also continued to remind the government to fulfil its international obligations to establish mechanisms for protecting human rights.

In this context, the Protection of Human Rights Act, 1993 was enacted, which enabled the establishment of the National Human Rights Commission in Delhi and 14 state human rights commissions around the country. The Act lays down a broad mandate for human rights commissions, which includes: inquiries into instances of human rights violations by public servants; research; supporting efforts to increase awareness about human rights; and inspecting police lock-ups, prisons and juvenile homes where people are interred. While human rights commissions have contributed greatly to human rights in India, it is debatable whether they can currently do more, considering the structural and practical limitations that are faced.

Structural limitations

The structural limitations largely relate to the Protection of Human Rights Act, 1993 and include:

Recommendations only: Commissions make recommendations to government, which include:

payment of compensation to the victim or to her/his family; disciplinary proceedings against delinquent officials; the registration of criminal cases against those responsible; instructions to take particular action to protect human rights and/or to refrain from actions that violate human rights.

However, they can only make recommendations, without the power to enforce decisions. This lack of authority to ensure compliance has unfortunate consequences:

- *Outright rejection of a recommendation:* Governments often ignore the recommendation completely or furnish a long bureaucratic discourse on how compliance with the recommendation is not in the public interest (read governmental interest).
- *Partial compliance:* An example of this is a failure to release the full amount of compensation. Another example is to take action on only one recommendation when there were actually dual recommendations, such as to pay compensation and take disciplinary action.
- *Delayed compliance:* While recommendations usually obligate governments to take action within 4-6 weeks, compliance is rare within the stipulated time and sometimes action is so delayed that it becomes meaningless.

Composition Criteria: The Act requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area. Regarding the other two members, the Act is vague, saying simply: "persons having knowledge and experience of human rights." Commissions therefore

sometimes become post-retirement destinations for judges, police officers and bureaucrats with political clout.

Time - bar: Under the Act, human rights commissions cannot investigate an event if the complaint was made more than one year after the incident. Therefore, a large number of genuine grievances go unaddressed.

Bar on violations by Armed Forces: State human rights commissions cannot call for information from the national government, which means that they are implicitly denied the power to investigate armed forces under national control. Even the powers of the National Human Rights Commission relating to violations of human rights by the armed forces have been restricted to simply seeking a report from the Government, (without being allowed to summons witnesses), and then issuing recommendations.

Practical limitations

Structural limitations apart, the work of human rights commissions is also being hampered by cultures that exist within governmental spheres. Some of the practical difficulties faced by human rights commissions include:

Non-filling of vacancies: Most human rights commissions are functioning with less than the prescribed five Members. This limits the capacity of commissions to deal promptly with complaints, especially as all are facing successive increases in the number of complaints.

Non-availability of funds: Scarcity of resources - or rather, resources not being used for human rights related functions - is another big problem. Large chunks of the budget of commissions go in office expenses and in maintaining their members¹, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programmes.

¹ Members of the National Human Rights Commission receive the same conditions as Supreme Court Judges. Conditions of state commission members are commensurate with that of High Court Judges.

²This followed a report prepared by a high level Advisory Committee headed by a former Chief Justice of India regarding amendments to the Protection of Human Rights Act.

Too many complaints: A common problem faced by most human rights commissions is that they are deluged with complaints. In the year 2000-2001, the National Human Rights Commission received over 70,000 complaints. State human rights commissions too, are finding it difficult to address the increasing number of complaints.

Bureaucratic style of functioning: As human rights commissions primarily draw their staff from government departments - either on deputation or reemployment after retirement - the internal atmosphere is usually just like any other government office. Strict hierarchies are maintained, which often makes it difficult for complainants to obtain documents or information about the status of their case. The presence of security guards, armies of peons and office attendants creates barriers for ordinary people to personally meet officials in regard to their complaint.

AREAS REQUIRING INTERVENTION ADVOCACY

There is an urgent need for civil society and defenders of human rights to immediately advocate for changes in the structure and functioning of human rights commissions to improve their functional efficiency as protectors and promoters of human rights. The National Human Rights Commission in fact submitted to the national Government in March 2000² a set of proposed amendments and has reiterated these in successive annual reports. Sadly, as yet no action has been taken to bring about this reform.

Suggested proposals

If human rights commissions are to truly protect and promote human rights in India, changes must be made to enable them to become more effective institutions. Some suggested proposals are:

More teeth: The effectiveness of human rights

commissions will be greatly enhanced if their decisions are immediately made enforceable by the government. This will save considerable time and energy as commissions will no longer need to either send reminders to government departments to implement the recommendations or alternatively to approach High Courts through a cumbersome judicial process to make the government take action.

Commissions must also have clear and well-defined powers to proceed against government departments furnishing false reports. This will assist in preventing the many instances where the departmental version of events is more often than not a white-wash, particularly in those cases where the police has been accused of violations.

Including armed forces in their ambit: A large number of human rights violations occur in areas where there is insurgency and internal conflict. Not allowing commissions to independently investigate complaints against the military and security forces only compounds the problems and furthers cultures of impunity. It is essential that commissions are able to summons witnesses and documents, rather than the present situation where the National Commission is restricted to seeking reports from the national Government.

Commissions' membership: As non-judicial member positions are increasingly being filled by ex-bureaucrats, credence is given to the contention that commissions are more an extension of the government, rather than independent agencies exercising oversight. If commissions are to play a meaningful role in society, they must include civil society human rights activists as members. Many activists have the knowledge and on-the-ground experience of contemporary trends in the human rights movement to be an asset to the Commission.

Independent recruitment of staff: Human rights commissions need to develop an independent cadre of staff with appropriate experience. The present arrangement of having to reply on those on

deputation from different government departments is not satisfactory as experience has shown that most have little knowledge and understanding of human rights issues. This problem can be rectified by employing specially recruited and qualified staff to help clear the heavy inflow of complaints.

Separate agency to investigate police-related complaints: Complaints regarding police excesses and misbehaviour take up most of the time of human rights commissions. It is perhaps time to think about an alternative agency, dedicated solely to civilian oversight of the police. Here we can learn from international experience: the UK, for instance, has an Independent Police Complaints Commission; South Africa has an Independent Complaints Directorate; and Brazil has Police Ombudsmen offices in some provinces to deal exclusively with police complaints.

While it may be an accepted fact that these proposals would help bring about qualitative improvement, the challenge lies in moving the government to accept these and other progressive ideas. Governments across the world are only too keen on maintaining the status quo. Governments often put in place inadequate accountability mechanisms as their presence helps to silence public demands, without overly diluting government power.

Civil society groups therefore need to mobilise people across the nation through targeted advocacy strategies. Reform initiatives can only bear fruit when ordinary citizens take an active interest in good governance and human rights.

For more information about the National Human Rights Commission of India, please visit their website: <http://nhrc.nic.in>

There are 18 national human rights institutions across the Commonwealth - their websites are listed on the links page of CHRI's website. ■