

NEED OF THE HOUR-EFFECTIVE HUMAN RIGHTS ENFORCEMENT

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The media, various organizations of civil society and the general public is increasingly expressing concern about police and actions of security forces in tackling insurgency and the culture of impunity within the government system. Sometimes basic human rights are being ignored in the name of national security. The international community also tries to remind the government to fulfill its international obligations to establish mechanisms to curb human rights violation.

In relation to this, the Protection of Human Rights Act, 1993 led to the establishment of the National Human Rights Commission and 14 state human rights commissions throughout the country. The Act also lays down a broad mandate for human rights commissions, which includes: inquiries into cases of human rights violations by public servants; research; supporting efforts to increase awareness about human rights; and inspecting police lock-ups, prisons and juvenile centers where people are interred. Although human rights commissions have contributed greatly to the protection of human rights in India but now it is debatable whether these commissions can currently do more, considering the structural and practical limitations that they are facing.

Structural limitations

Structural limitations here largely relate to the Protection of Human Rights Act, 1993 and include:

Mere recommendations: Usually commissions make recommendations to government, which include: payment of compensation to the victim or to victim's 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 etc. but lack with the power to enforce decisions. This lack of authority to ensure compliance results in unfortunate consequences such as;

*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.

*Partial compliance: Failure to release the full amount of compensation is an example of this factor. Another example is to take action only on one recommendation when there were actually dual recommendations, such as to pay compensation and take disciplinary action.

*Delayed compliance: While recommendations usually expect governments to take action within 4-6 weeks or stipulated time but compliance is rarely made 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, stating simply: "persons having knowledge and experience of human rights." Commissions therefore sometimes become post-retirement destinations for judges, police officers and bureaucrats with political approach.

Limitation of time: The Act provides that human rights commissions cannot investigate an event if the complaint is made more than one year after the occurrence of incident. Therefore, a large number of genuine grievances go unaddressed. Lack of awareness on the parts of people regarding rights and ignorance to right approach can be claimed to be one of the main reasons for this delay.

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

The work of human rights commissions are 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 number of members. This limits the capacity of commissions to deal promptly with complaints, especially when there is an alarming increase in the number of complaints of human rights violation every year.

*Non-availability of funds: Scarcity of resources and funds is another big problem that limits the affectivity of enforcement of human rights laws. Large chunks of the budget of commissions go in office expenses and in maintaining their members, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programs.

*Too many complaints: A common problem faced by most human rights commissions is that they are heavily loaded with complaints. It is evident from the single example that National Human Rights Commission received over 70, 000 complaints in 2000-01. 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.

There is an urgent need for civil society and human rights protectors 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.

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:

The effectiveness of human rights commissions will be greatly enhanced if their decisions are enforced immediately 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 have clear-cut 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.

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 intensifies the problems and furthers cultures of impunity. It is essential that commissions are able to summon witnesses and documents, rather than the present situation where the National Commission is restricted to seeking reports from the national Government.

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.

Human rights commissions need to develop an independent cadre of staff with appropriate experience. The present arrangement of having to rely 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.

Complaints regarding police excesses and misbehavior 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.

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 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 mobilize people across the nation through targeted advocacy strategies. Reform initiatives can only bear fruit when ordinary citizens take an active interest in good governance.