

CONFERENCE OF NHRC AND SHRCs – 2015

Presidential Address by Justice Cyriac Joseph, Acting Chairperson, NHRC

1. I do not consider it appropriate or necessary on this occasion to give a discourse on `human rights'. The distinguished invitees and the participants in this Conference are persons having knowledge of and practical experience in matters relating to human rights. There is wide scope for explaining the expression "human rights". But, for the sake of clarity and articulation, one can refer to the definition of human rights in Section 2(1)(d) of the Protection of Human Rights Act, 1993 which reads as follows:-

"human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

2. The National Human Rights Commission and the State Human Rights Commissions have been constituted under the provisions of the Protection of Human Rights Act, for better protection of human

rights and for matters connected therewith or incidental thereto. It needs to be clarified that India's commitment to the protection and promotion of human rights did not start with the enactment of the Protection of Human Rights Act, 1993. When the Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 resolving to constitute India into a Sovereign, Democratic Republic, it was resolved to secure to all its citizens JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual. Thus, while securing JUSTICE, LIBERTY, EQUALITY and FRATERNITY mentioned in the Preamble of the Constitution, the dignity of the individual must be upheld. It could be said that respect for the dignity of the individual is the soul and spirit of human rights. The Preamble of the Constitution shows that protection of human rights is a Constitutional goal and a Constitutional value. The Constitution obliges the State to protect and promote human rights. The Constitution also casts a duty on the citizens to protect and promote human rights. It is only when the State discharges its

obligation and the citizens perform their duty, human rights are upheld and protected in our country.

3. The role of the National Human Rights Commission and the State Human Rights Commissions is to create awareness among the authorities and functionaries of the State as well as the citizens of the country about the need for protection and promotion of human rights and to motivate, persuade, encourage and empower the authorities and the citizens to protect human rights and thereby uphold a Constitutional value and realize a Constitutional goal. Since the National Human Rights Commission and the State Human Rights Commissions are working for the same goal and with the same spirit under the same statute and the Constitution, it is necessary that we share our experiences, motivate each other and achieve better cooperation and coordination in our activities. This Conference has been conceived and designed to cater to the above need.

4. Though the idea of human rights is a heritage of the past, the conceptualization and articulation of human rights in their present meaning took place in the final years of the Second World War. The

most significant feature of the new conceptualization was its universality which clearly reflects in the Charter of the United Nations and the Universal Declaration of Human Rights. The Universal Declaration of Human Rights was a statement of intent or principle and not a treaty or a legal agreement between countries or a binding legal document. However, it influenced the constitutions and legal systems of many countries including India. The Universal Declaration of Human Rights was followed by other Declarations which present in an elaborate form the human rights principles in respect of specific issues and aspects. There have also been many Covenants and Conventions which are elaborate statements of specific rights relating to specific aspects. These Covenants and Conventions are more important as the countries which are signatories to them have explicitly agreed to follow them.

5. I am happy that the Hon'ble Union Home Minister Shri Rajnath Singh-ji is present with us today to formally inaugurate this Conference of the National Human Rights Commission and the State Human Rights Commissions. Though the National Human Rights Commission and the State Human Rights Commissions are independent and autonomous statutory bodies and not Government

departments, they are institutions constituted and supported by the respective Governments. The National Human Rights Commission functions utilizing the sums of money paid to the Commission by way of grants by the Central Government under Section 32 of the Protection of Human Rights Act, 1993. Similarly a State Human Rights Commission functions utilizing the sums of money paid to the State Commission by way of grants by the State Government. The National Commission as well as the State Commissions are bound to maintain proper account and other relevant records and prepare an annual statements of accounts as stipulated in Sections 34 and 35 of the Protection of Human Rights Act. The accounts of the National Human Rights Commission and the State Human Rights Commissions are audited by the Comptroller and Auditor General of India. Thus the Protection of Human Rights Act does not permit any direct or indirect interference by the Government in the exercise of its powers by the National Human Rights Commission or the State Human Rights Commission. At the same time the quality and quantity of the activities of the Commissions will depend upon the attitude and support of the Government concerned. It is the Government which has to initiate the process of constituting the

Commission and filling up the vacancies in the Commission from time to time. Unless the Government sanctions the necessary infrastructure and provide sufficient grants to the Commission it cannot function properly or efficiently. The effectiveness and usefulness of the Commission will depend on the response of the Government to the recommendations made by the Commission. Speaking for the National Human Rights Commission, I wish to state that, notwithstanding the statutorily guaranteed autonomy of the Commission and the absence for any scope for interference with the exercise of powers and functions of the Commission, the Central Government has been, by and large, taking a supportive and positive attitude to the Commission; be it in the matter of constitution of the Commission or payment of sufficient grants or providing necessary infrastructure or complying with the recommendations of the Commission. In the case of Shri Rajnath Singh-ji it should be said that, as Home Minister, he has been always supporting and encouraging the National Human Rights Commission. He is a Minister who has realized that the success of National Human Rights Commission is also the success of the Ministry of Home Affairs and the Government of India. He has also realized that the effective

functioning of the National Human Rights Commission will enhance the image of India as a nation governed by the Rule of Law. He has further realized that the reputation of National Human Rights Commission as an effective institution for protection of human rights will enhance the reputation of India as a great democratic country at the international level. Naturally the NHRC as an institution and I as its Acting Chairperson look up to Shri Rajnath Singh-ji for continued support, cooperation and guidance. The NHRC has 5 Members including the Chairperson. In the case of NHRC, Shri Rajnath Singh-ji can play a role similar to the role played by Sri Krishna in the case of Pancha Pandavas. We look upto him as a friend, philosopher and guide. We are grateful to him for the kind gesture to grace this occasion and inaugurate the Conference.

6. King Solomon is considered to be one of the wisest men. After Solomon became the king, God appeared to him in a dream. God said "Ask what you would like me to give you". Solomon replied, "You showed great kindness to your servant David, my father, when he lived his life before you in faithfulness and justice and integrity of heart; you have continued this great kindness to him by allowing a son of his to sit on his throne today. Now, Yahweh my God, you

have made your servant king in succession to David my father. But I am a very young man, unskilled in leadership. Your servant finds himself in the midst of this people of yours that you have chosen, a people so many its number cannot be counted or reckoned. **Give your servant a heart to understand how to discern between good and evil**, for who could govern this people of yours that is so great?"

It pleased God and God replied to Solomon "Since you have asked for this and not asked for long life for yourself or riches or the lives of your enemies, but have asked for a discerning judgement for yourself, here and now I do what you ask. **I give you a heart wise and shrewd as none before you has had and none will have after you. What you have not asked I shall give you too: such riches and glory as no other king ever had**".

7. Sir, if God appears to you in a dream and asks what you want, I am sure, being a wise man you will only ask for a heart to understand how to discern between good and evil. Hence, Sir, the best wish I can convey to you today is this. May God Almighty give you a heart wise and shrewd as none before you has had and none will have after you. May He also give you what you have not asked.

8. The National Human Rights Commission and the State Human Rights Commissions are not envisaged to be a substitute for judiciary but Human Rights Commissions are complementary to the courts and offer to the victims of violation of human rights an alternative forum for redressal of their grievances and for rehabilitation and monetary relief. The emphasis in a court of law is for penalizing the offender. As far as the Human Rights Commissions are concerned, the emphasis is on rehabilitation and monetary relief to the victims or their dependants without prejudice to the criminal proceedings against the offender. The court conducts trial after the offence is committed. The activities of the Human Rights Commissions include steps to create awareness and to prevent violation of human rights. It is also significant that the victim of violation of human rights or any other person can bring such violation to the notice of the Commission through any form of communication. There is no payment of any fees. The Complainant need not travel to the seat of the Commission and present himself or herself before the Commission. The Complainant need not engage any lawyer. Thus there is no financial burden on the victim / complainant. This is a great advantage for the poorer sections of the society.

9. I cannot close my eyes to certain criticisms against the Human Rights Commissions.

(i) There are people who describe NHRC / SHRCs as a “toothless tiger or a “paper tiger”. Their complaint is that Human Rights Commission is only a recommendatory body and it has no power to enforce its recommendations as in the case of a court. They argue that unless the recommendations of the Commission are binding, the Commission cannot serve the purpose of protecting human rights. Though it is desirable to make the recommendations of the Commission binding, it has to be remembered that while enacting the Protection of Human Rights Act, 1993, the Parliament in its wisdom chose to make the Commission only a recommenatory body. It is also to be mentioned that the Human Rights Institutions in most of the countries are only recommendatory bodies.

(ii) There is strong criticism about the failure or refusal of several State Governments in constituting the State Human Rights Commission. It appears that some State Governments justified

their action in not constituting the State Human Rights Commission pointing that under Section 21 of the Protection of Human Rights Act, what is stated is that the State Government **may** constitute a body to be known as the State Human Rights Commission. That argument is no more available now in view of the judgment of the Hon'ble Supreme Court in Dilip K. Basu vs. State of West Bengal & Ors. [JT 2015 (7) SC]. In the judgment delivered on 24th July, 2015, the Hon'ble Supreme Court has clarified that the power of the State Governments under Section 21 to set up State Human Rights Commission is not a power simplicitor but a power coupled with the duty to exercise such power especially when it is not the case of any one of the defaulting States that there is no violation of human rights in their territorial limits. The Hon'ble Supreme Court has directed the State of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland to set up State Human Rights Commissions in their respective territories within a period of six months from the date of judgment.

- (ii) Another criticism is relating to the absence of Human Rights Commissions in Union Territories. In fact, the NHRC itself has recommended to the Central Government to suitably amend Section 21 to provide for Constitution of Human Rights Commission in Union Territories also.
- (iv) There is serious criticism that even in States where State Human Rights Commissions have been constituted, there is inordinate delay in filling up the vacancies of Chairperson and Members thereby making the Commission non-functional. The Hon'ble Supreme Court in the above-mentioned case has considered this problem also and has directed that all vacancies for the post of Chairperson or the Members of SHRC wherever they exist at present shall be filled up by the State Government concerned within a period of three months from the date of the judgment. It is also directed that vacancies occurring against the post of Chairperson or the Members of the State Human Rights Commission shall be filled up as expeditiously as possible but not later than three months from the date of such vacancy occurs.

- (v) Another criticism is about the non-constitution of the human rights courts as envisaged under Section 30 of the Protection of Human Rights Act. The Supreme Court has directed the State Governments to take appropriate action in terms of Section 30 of the Protection of Human Rights Act in regard to setting up / specifying human rights courts. It is also to be mentioned in this context that the National Human Rights Commission has already sent a proposal to the Central Government for amending Sections 30 and 31 of the Protection of Human Rights Act regarding establishment and jurisdiction of the Human Rights Court and the procedure to be followed.
- (vi) Another criticism against the National Human Rights Commission is that the special procedure under Section 19 of the Protection of Human Rights Act relating to complaints of violation of human rights by members of the armed forces has made the Commission powerless and the procedure totally

meaningless. This criticism deserves the serious attention of the Commission and the Parliament.

(vii) The State Human Rights Commissions have real grievances about lack of infrastructure for the effective functioning of the Commissions. The attention of the State Governments is urgently required in this matter.

(viii) Yet another criticism is about the absence of a representative of the civil society as a Member of the Human Rights Commissions, particularly the National Human Rights Commission. It is a matter for the consideration of the Committee constituted for making the recommendations for appointment of Chairperson and Members. I need only observe that the provisions of Section and Section 21 of the Protection of Human Rights Act do not stand in the way of appointing a representative of the civil society as a Member of the National Human Rights Commission or the State Human Rights Commissions.

(ix) There is also criticism that the awareness programmes and training programmes conducted by the National Human Rights Commission are not targeting members of the legislature to make the laws and the bureaucrats who implement the laws. I believe that there is merit in the criticism and awareness programmes and training programmes should be conducted for law makers and bureaucrats also.