

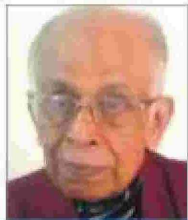


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New law may tighten govt's control over NHRC



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THE Protection of Human Rights (Amendment) Act recently passed by Parliament makes some changes in the Act which will not empower the National Human Rights Commission (NHRC) but may go to tighten the control of the government over it. The Protection of Human Rights (Amendment) Act (PHRA) created for the first time a high-powered commission to enquire into the instances of violation of human rights and abetment thereof in the country. It was to be headed by a former chief justice of the Supreme Court and was to have four other members comprising a judge of the Supreme Court, a chief justice of a High Court and two other eminent persons having knowledge or personal experience in matters related to human rights.

The setting up of the NHRC in 1993 was India's response to widespread criticisms and international outcry against violation of human rights by the security forces in Jammu and Kashmir and other insurgency-torn areas. During discussions in Parliament, the then Home Minister SB Chavan stated that the constitution of a powerful human rights commission would go a long way in blunting criticisms of interested countries maligning India in international fora and

effectively safeguarding human rights of the people of the country.

Unfortunately, the PHRA, which created the NHRC, handcuffed the commission, and stood in the way of its efficient and effective functioning. It created a weak and toothless commission. From the outset, the NHRC pressed for major amendments to the Act. In 1998, during the chairmanship of Justice Venkat-achaliah, it set up a committee under Justice AM Ahmadi, a former Chief Justice of India, to suggest an amendment with a view to enhancing the effective functioning of the commission. The committee, which comprised eminent lawyers and retired judges, held 15 sittings to work out possible amendments necessary to improve the NHRC functioning. It requested and received suggestions and recommendations from the chief justices of High Courts, chairpersons of various human rights commissions, as well as NGO groups, including some international NGOs. The committee, inter alia, recommended greater financial and administrative autonomy for the commission to strengthen its efficient functioning.

The committee proposed many amendments intended to remove the administrative and structural impediments standing in the way of the effective functioning of the NHRC. It recommended that the commission staff, who then came on deputation from various government departments, without any exposure or experience in human rights, should be selected and appointed by the commission. The commission should have the power to appoint its own staff. It recommended financial autonomy for the commission in keeping with its mandate and in con-



RIGHT WAY: NHRC was formed in 1993 after an outcry against violation of human rights.

Under the new amendments to the Act, the chairperson of the National Human Rights Commission need not be a retired chief justice of the Supreme Court. The government can appoint any judge, or retired judge of the apex court as the NHRC chief. This enlarges the scope for the government to pick and choose pliant chairpersons.

sonance with the Paris Principles.

The committee also pressed that the commission be empowered to enquire into violations of human rights by the armed forces. Section 19 of the PHRA does not permit the NHRC to probe into acts of human rights violations by the armed forces. The NHRC can only call for reports and send its recommendations to the government. As a large number of such complaints by armed forces personnel are received by the commission, this provision of the Act emasculates the commission. The existing military procedures, such as military trials, court-martials, etc, provide no justification of exempting the armed forces from the jurisdiction of the NHRC. This belittles the image of the commission as well as of the country in the international fora.

The Ahmadi committee also recommended that the chairman of the commission should be a member of the appointing committee so that his views on the selection of members

are taken into consideration. This was not accepted by the government. At present, the chairperson has no say in the appointment of the members in the NHRC. Again, the NHRC has not been given any powers to exercise control over the state human rights commissions (SHRCs). At times, they work at cross purposes. Under Section 36 of the PHRA, the NHRC cannot probe into any matter pending before an SHRC.

Now, under the new amendments, the chairman of the NHRC need not be a retired chief justice of the SC. The government can appoint any judge, or retired judge of the SC as chairperson. This enlarges the scope for the government to pick and choose pliant chairpersons. Further, the presence of a retired chief justice as chairperson added to the stature of the NHRC. Some retired chief justices of India functioned as outstanding chairpersons of the NHRC.

The new Act further provides that instead of two, the commission will now have three members, with "knowledge of and practical experience in matters relating to human rights." One of such members shall be a woman. Now, much depends upon the appropriate selection of upright and committed human rights activists of credibility and integrity, or eminent jurists and academics will invigorate the commission and improve its public image. But the purpose will be ill-served if the posts are filled with obliging and unsuitable persons. Experience does not inspire confidence. In the past, retired IAS, IPS and IFS officers have been appointed as members of the commission as persons with experience in the field of human rights. This has defeated the purpose behind this salutary provision.

The amendment now provides that the SHRCs can be headed by a judge and not necessarily by the chief justice of a High Court. This widens the field and scope of the choice of incumbents, but also enlarges the scope for selection of pliant chairpersons. Reduction of tenure of members to three years instead of five is a correct measure from the administrative and functional points of view. It is a fact that most of the SHRCs have now become dysfunctional and do not enjoy credibility. The NHRC's oversight over the SHRCs has become more urgent after the amendment of the PHRA which allowed the NHRC to transfer complaints to the SHRCs. The SHRCs, if they function properly, can provide decentralised grievance redress mechanisms and help the cause of human rights protection by working in tandem with the NHRC.

The government has claimed in the Parliament that the amendments are in consonance with Paris Principles and will further the cause of human rights. But for this, important structural amendments and not just tinkering and cosmetic changes are called for. The NHRC and SHRCs will not become vibrant institutions without such amendments. Further, if the government packs the commission with pliant and unsuitable members and chairpersons, the institution will suffer decline and loss of credibility.

Experience of human rights commissions in many parts of the world shows that hopes and aspirations raised by them often remain unfulfilled, and cause disappointment in the minds of people. Often, they produce a paradoxical effect. They remain too weak to prevent violation of human rights, but create, at the same time, an unprecedented demand for their protection.