Working of National Human Rights Protection Mechanism in India
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Abstract:

Human rights are those inevitable rights of human beings without which a person cannot live a full-fledged life. This phenomenon has been recognized by enlightened world Statesmen and took initiatives to ensure these basic rights of human being and they agreed upon setting organisations for this purpose. These organizational mechanisms are governmental as well as non-governmental in nature. Human Rights protection mechanism in India has made significant progress in holding the government accountable specially its activism in many cases, suo moto cognisance, prison reforms, child labour and prostitution, mental health etc. Its success in complaints redressal mechanism is affected by legal formalism and disposal of cases 'in limini' procedure, lack of transparency and its failure to have regional offices in south India and northeast. The performance of the commission has a few purple patches in an otherwise dismal landscape of apathy to human rights norms at societal level. This paper is an attempt to briefly explain working of Human Rights mechanisms in India and its success and failure.

Keywords: Human rights, Commission, Reforms, Development, NHRC.

Human Rights:

A Brief Introduction:- Human rights are "rights and freedoms to which all humans are entitled." Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human.[1] Human rights are thus conceived in a Universalist and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within international law. However, there is no consensus as to the precise nature of what in particular should or should not be regarded as a human right in any of the preceding senses, and the abstract concept of human rights has been a subject of intense philosophical debate and criticism.

Several theoretical approaches have been advanced to explain how and why human rights become part of social expectations. One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (associated

with Hume). Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls) – a social contract. The two theories that dominate contemporary human rights discussion are the interest theory and the will theory. Interest theory argues that the principal function of human rights is to protect and promote certain essential human interests, while will theory attempts to establish the validity of human rights based on the unique human capacity for freedom.[2] Philosophers who have criticized the concept of human rights include Jeremy Bentham, Edmund Burke, Friedrich Nietzsche and Karl Marx. A recent critique Blattberg argues that rights talk, being abstract, is counterproductive since it demotivates people from upholding the values that rights are meant to assert.[3]

Human Rights in Sustainable Development and Good Governance: - Many experts in the field have argued that respect for and enforcement of human rights is a *precondition* for sustainable development and good governance. This implies that without acknowledging and acting to defend the rights of people, sustainable development and good governance are *not possible*. It was actually at the historic UN Stockholm Conference on Environment and Development in 1972 that the notion of sustainable development was born, and the interconnections between environmental and developmental issues were finally brought together under one concept. Again in 1992, the Rio Earth Summit brought the international community together to address global sustainable development challenges including issues such as climate change, health and the environment, biodiversity protection, and poverty alleviation.[7]

However, thirty years after the first conference, more people are living in poverty, diseases such as HIV/AIDS have paralyzed the social and economic fabric of particular countries, and disparity between the rich and the poor is increasing gradually over time. Furthermore, the environmental, the economic, and socio-cultural pillars of sustainable development and good governance continue to be addressed separately.

Human rights and development in perspective :- The relationship between development and human rights has a long history, both in concept and in practice. It is important to recall that the story goes way back to the end of the Second World War, the most atrocious and destructive conflict humanity had ever experienced. Therefore, the architecture of the United Nations, by its very Charter, is built on three main pillars: peace and security, development, and human rights. Conceptually, these three pillars were linked, interrelated and interdependent, so much so, that there could be no peace and security without development, no development without human rights and no human rights without peace and security. This trilogy was and remains the conceptual underpinning and basic mandate of the United Nations.

In practice, the interrelationship between peace and security, development, and human rights has not always been evident over the years. In fact, during the long period of the cold

war, these three basic pillars of the United Nations architecture grew and evolved quite separately from one another without much interaction among them. As a consequence, during that period there were somehow three separate systems and communities at work within the United Nations, i.e. the United Nations collective security system, the United Nations development system and the United Nations human rights system. It is recalled that up to the late 1980s, there was little or no connectivity and linkages as far as these three systems were concerned. They were operating within the strict confines of their mandate, having their own separate constituencies both at the level of United Nations member States as well as at the level of the United Nations Secretariat. Those were the years when the United Nations Security Council was not dealing with development issues or human rights considerations, when the United Nations Development Programme (UNDP) was focusing almost exclusively on economic development issues without integrating human rights into its programme analysis and planning, and when the then United Nations Centre for Human Rights spent most of its energy and resources on the promotion of the major United Nations human rights covenants, in priority over the United Nations Covenant on Civil and Political Rights, and this much in isolation from peace and security considerations and from the United Nations development community.[8]

NHRC India was the first National Human Rights Institution to be established in the South Asian Region. It has not been totally uncontroversial but it has taken tough and independent stands on several occasions. Despite its weak foundation, the NHRC India is effective and demonstrates that human rights protection does not have to rely entirely on courts and gradually how National Human Rights Commission has become locus of human rights awareness at national level. Very few studies have looked at the NHRC India from evaluative angle. This article aims to do evaluative study of the impact of the NHRC on the above-mentioned parameters. This will help in assessing its impact vis-à-vis its mandate.

Human Rights Protection in India: - Background record suggests that the Indian government was not serious about establishing a Commission on human rights. It set up the existing commission to improve the country's reputation and as an answer to the critics**.** It is very important to find out whether government was seeking merely to appease an international audience or whether the NHRC has had an independent impact. Here is an attempt to see that how far Indian state before establishing NHRC had the political and social discourse on the establishment of NHRC within the nation. This is important, as it is only through this process that one can evolve and determine the particular shape, characteristics, functions and priorities that such commission should have.

Until the early 1990s, the Indian Government displayed scant regard for local human rights and civil liberties organisations. Their reports, appeals and petitions on human rights abuses, particularly in view of anti-insurgency operations in Kashmir, Punjab and northeast states, met with deafening silence. The scathing reports of Amnesty International and Asia Watch had sharpened the international visibility of these human rights abuses.[20] The Indian government, however, could not continue to ignore the criticism of the international human rights community, which reported to the world the increasing incidence of human rights

violations in the country and accused the government of condoning the abuses by providing impunity to security forces and virtually condoning human rights excesses. Important precedents already existed for doing so. India's parliament had created two related commissions in 1990(a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women), as well as a National Commission for Minorities in 1992. The State of Madhya Pradesh itself had created a State Human Rights Commission in 1992.[21]

In 1991 and 1992, as international groups levelled criticisms on the basis of earlier fact-finding missions and international economic donors referred explicitly to deteriorating human rights conditions, the Indian Government began to debate the creation of a national commission, as did major political parties in their bid for Parliamentary elections. In 1991, during the period of campaigning for the general election to Parliament, the creation of a NHRC was included in the manifestos of both major political parties of India, Congress (I) Party and the *Bhartiya Janata Party* (BJP).[22]

After winning the election, the Congress (I) party, under the leadership of the then Prime Minister Mr. PV Narasimha Rao, waited almost a year to begin discussions on setting up a commission. Speaking on 16 March 1992, the then Indian Home Minister Mr. S.B Chavan told the *Rajya Sabha* that the purpose of the proposed Human Rights Commission was to "counter the false and politically motivated propaganda by foreign and Indian civil rights agencies."[23] But here it is important to be reminded that this statement of Mr. Chavan is not true as for Indian government domestic critique did not matter. It is only when international groups started criticising the government, it took this initiative. Mr. Chavan further added that whether the body would be totally government sponsored or placed in the voluntary sector had yet to be decided. On 24th April 1992, Mr. V. N. Gadgil, the official spokesperson of Congress (I) stated that his party would call for a national consensus on the role and powers of proposed Indian NHRC. The commission's findings, according to Gadgil would act as "correctives to the biased and one-sided reports of the NGOs "and would also be "an effective answer to politically motivated international criticism."[24]

On 30 August 1992, a Chief Ministers conference chaired by the prime minister was held in New Delhi to develop an approach for setting up the commission and to formally approve its formation. Reportedly, the meeting examined the possibility of placing constitutional civil liberties within the ambit of the Commission. The Conference formally approved the formation of NHRC. On 14th May 1993,the final day of the Budget Session of the Lok Sabha, the government of India introduced "The Human Rights Commission Bill, 1993"(Bill No.65 of 1993). Curiously, the Home Minister, Mr. Chavan, did not abide by the established routine that the bill first be referred to the Parliamentary Standing Committee for scrutiny. Instead, after introducing it in the Parliament, the Minister Chavan referred the bill to the Parliamentary Standing Committee of the Home ministry, where it soon faded. The President, under Article 123 of the Constitution promulgated the Protection of Human Rights Ordinance on 28th September 1993. Two months later; a fresh bill was submitted to Parliament. The Government of India was clearly in a hurry to establish the NHRC through

an ordinance without going through the normal Parliamentary procedures.[25] On 8th January 1994, after a relatively indifferent Parliamentary discussion, the "Protection of Human Rights Act, 1993" received assent from the President. The Act came into force with retrospective effect from 28th September 1993.[26]

Despite government's claim to the contrary both social activists and government opponents in India viewed the National Commission as internationally inspired. Prominent human Rights advocate and SAHRDC's Executive Director, Ravi Nair portrayed the government's motive in creating the commission as an effort "to circumvent international scrutiny by stating that they have adequate national institutions to investigate these charges."[27]

The government did not initiate broad –spectrum substantive public discussion, nor did it include major human rights non –governmental organisations in the limited number government–sponsored consultations and discussions on the commission. For example, the Government's "Background Note on Setting up a National Commission on Human Rights – Issues and Tentative framework," was not released to the public nor it was placed before Parliament. The lack of transparency and the attempt to shroud the proposal in a veil of secrecy did not augur well for consensus building, nor did it bode well for the resulting legislation, an inherently weak document.[28] This fact has prompted one scholar to comment that the government's deliberate refusal to vest the NHRC with adequate authority and resources has rendered it a toothless and inept institution, designed only to please US and western diplomats (who are supposed to be guardians of human rights) at UN assemblies. Government has tried its best to see that NHRC did not encroach on the state's absolute and arbitrary powers to curtail the rights of the citizens and remained at best a cosmetic exercise to meet the legal requirements of the then US –led 'new World order'. It is true that India has long sought institutional solutions to its human rights problems, but in the absence of international pressure, norms and cooperation, it is unlikely that India would have created a national human rights commission per se.

Conclusion: To a limited extent the NHRC has succeeded in sensitising the central and state governments regarding observance of international human rights norms. It seems to be evolving. Societal backdrop of South Asia is not conducive to practice of human rights. This region is marked by endemic poverty, illiteracy, societal fragmentation and insensitive authority structure. In this context the headway made by the NHRC, though limited is significant. Evaluative frameworks for judging effectiveness of the national institutions like NHRC are yet to be developed.

However, it is apparent that despite limitations the HR protection mechanism in India has made significant progress in holding the government accountable specially its activism in Gujarat cases, *suo moto* cognisance, prison reforms, child labour and prostitution, mental health etc. Its success in complaints redressal mechanism is affected by legal formalism and disposal of cases 'in *limini*' procedure, lack of transparency and its failure to have regional

offices in south India and northeast. The performance of the commission has a few purple patches in an otherwise dismal landscape of apathy to human rights norms at societal level. Surprisingly, the NHRC itself seems to be actually aware of what it calls its 'challenges'. After the establishment it is the period of consolidation for the commission where the commission has observed in its annual report 1998-1999 that how it has to deal with challenges of credibility, scale and expectation, variety, good governance and entrenched attitudes. Institutions like the NHRC are the only means, which theoretically at least, hold promise of affordable access to justice for the poor and the vulnerable which constitute at least one third of India's population. Hence in such social settings institutions like the NHRC fill an important void in a poor person's search for justice.

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