National Human Rights Commission: A Survey

Justice Sujata Manohar says that if we as a nation desire to maintain a premium position in the sphere of human rights, nationally and internationally, it has to be ensured that the independence, integrity and calibre of the NHRC is not compromised. Also, the public needs to be more vigilant and take an active interest in the functioning of the NHRC to make it more effective.

Respect for human rights is the hallmark of a civilised society. A civilised nation cannot ignore the violations of the human rights of its people. It must have effective systems for the prevention of such violations and for punishing the violators. The establishment of the National Human Rights Commission in 1993, under the Protection of Human Rights Act, 1993, becomes significant in this context. In that year, the U.N. General Assembly adopted the Paris Principles, which prescribed minimum standards for the operation of National Human Rights Institutions, the world over. The Indian Parliament enacted the Protection of Human Rights Act in the same year.

As a nascent democracy, India faces manifold challenges to its unity. The nation was born out of strife. It is multilingual, multireligious, multicultural, and riddled with societies fragmented by castes, creeds, or tribal affiliations. To create a strong and united nation, held together by inclusive democratic institutions, was a major challenge. The Constitution created Fundamental Rights for the people under Parts III and IV and prescribed Directive Principles of State Policy together, designed to create equality and equal protection of laws for all. This was done to ensure fundamental freedoms and civil liberties to secure social, economic and cultural rights and to provide fair treatment and justice to people in all aspects. Part III, which was made justiciable, cast the responsibility of enforcing these freedoms on the judiciary. An overloaded judicial system, a legacy of the past, rose to the occasion and gave memorable judgments, upholding Constitutional values and protecting individuals against violations of their freedom by the State. The Supreme Court allowed public interest litigation on behalf of the downtrodden. The new responsibility added a crushing case load on the overloaded Courts.

It was imperative to establish other concurrent systems for the protection of human rights. The 1993 Act states in its preamble that it was passed to provide for the constitution of a National Human Rights Commission (NHRC), State Human Rights Commissions in the states and Human Rights Courts for better protection of human rights. Creation of the NHRC was received with considerable skepticism. As Virendra Dayal, a member of the first NHRC puts it, “...a significant number—and among them many who were strongly committed to the promotion and protection of human rights—felt that the Statute was fatally flawed, that the Commission would be a “toothless tiger”, that it would function as a “post office” and that as a “sarkari” body it would, in the final analysis, invariably choose to provide the seal of good-housekeeping to government wrong-doing, rather than ensure the “better protection of human rights” in the country...” (Journal of the NHRC Vol. I, 2002, pg 40). However, in the very first decade of its existence, the NHRC succeeded in establishing its credibility, independence and effectiveness in promoting and protecting human rights.
Unfortunately, the entire edifice of Human Rights Commissions created under the Act was flawed. One should have expected the NHRC as an apex body, with State Human Rights Commissions under its supervisory jurisdiction. This would have ensured uniformity of policy and programmes, and consistency of decisions. This would have also enabled the NHRC to decentralise its complaints redressal mechanism. Instead, under the 1993 Act, each State Commission is a separate entity to be created by the State at its option, often without proper infrastructure, accommodation, or funding. It can only deal with matters in the State list and cannot decide matters already before another commission. NHRC, however, has wide powers and functions under Section 12 to enquire into violations of human rights or negligence in the prevention of such violation by a public servant. But it cannot enquire into any matter pending before a State Commission or any other commission. These provisions have, at times, been misused by the violators to “avoid” an inconvenient forum, by getting a “complaint” filed first before the forum of its preference.

This peculiar structure has also prevented a proper distribution of the work load of complaints between the NHRC and the State Commissions, resulting in the NHRC being flooded with a large number of complaints from all over the country to handle, for which it does not have adequate infrastructure. NHRC started with 486 complaints in the first six months of its existence (October 1993-March 1994). In 1994-95, the complaints rose to 6987. By 1999-2000 the number rose to 71,555. In 2005-06, the complaints received were 74,446. However, the total number of pending complaints in that year had risen to 1,23,992. The NHRC has tried to devise an efficient system of handling these complaints through digitisation. It also provides the complainant, information about the status of his complaint on the web. But the Commission’s legal department, headed by a District Judge, has sanctioned for the department a strength which is far below its requirements. This is a major handicap. It is necessary to activate the Human Rights Courts for a speedy disposal of complaints that have accumulated overtime. Nevertheless, the Commission has investigated and given relief in some major grievances. The recommendations of the Commission in respect of individual cases have always been accepted by the State, although it’s not mandatory to do so.

Under the Act, there is a complete absence of any kind of an integrated system for the protection of different varieties of human rights. We have instead, a plethora of commissions—Women’s Commission, both National and State-wise (which were established prior to the NHRC), Scheduled Caste Commission, Scheduled Tribes Commission, Minorities Commission, Children’s Commission and so on, at national and often at State levels as well. Instead, a well-knit structure should have provided for an apex human rights body, with different departments dealing with different categories of human rights, if found necessary. Strong and consistent policies, as well as effective programmes, could then have been generated nationwide. Instead, we have disorganised, and at times even inconsistent, programmes for the protection of different human rights. The 1993 Act makes the chair of some of the Commissions an ex-officio member of NHRC. This has not produced any notable joint action. It has only served to dilute the strength of NHRC and its independence. It is to the abiding credit of NHRC that despite these handicaps it has emerged as an independent and effective body.

Notable Work of the NHRC
The NHRC has strengthened its hands by appointing Core Groups of experts on selected subjects, whose members are some of the most eminent people working in that field. It has appointed special rapporteurs and special representatives of exceptional calibre to assist the Commission. The stature of the Commission, its chairman and its members, have attracted dedicated persons who have volunteered to work for the Commission in an honorary capacity. As a result, the Commission has produced some outstanding reports after holding consultations with those working in the field, in different States of the country. These include its report on public health and human rights dealing with nutrition, access to health care and tobacco control. The report
emerged from a major conference, held after regional consultations, in April 2001. Its report, emerging from national consultation on HIV/AIDS and human rights, was also of a very high calibre. The recommendations made in these two areas have been pursued with the Government at the highest level.

In 2001, the Commission appointed one of its members to serve as its focal point on the human rights of women, including matters relating to trafficking and HIV/AIDS. As a result, the Commission initiated a major research project on trafficking in India, with assistance from the Institute of Social Sciences, Delhi. The report, first of its kind in the world, has received international acclaim.

The Commission also appointed special rapporteurs to deal with the practice of bonded labour, prevalent in many States in the country, despite legislation to the contrary. This has resulted in the enforcement of the Supreme Court directions for the rescue and rehabilitation of bonded labour. In the process, the Commission also undertook the task of educating local administrators on issues relating to bonded labour and their responsibilities in that regard.

The Commission has interpreted its mandate widely. Under the 1993 Act, human rights are defined very narrowly, as those guaranteed by the Constitution or those embodied in the International Covenants and as being enforceable by the Courts in India. Though ‘International Covenants’ are defined narrowly, to cover only the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Vishakha Judgment of the Supreme Court has held that any International Convention not inconsistent with the fundamental rights and in harmony with their spirit must be read into the Constitutional provisions to enlarge the meaning and content thereof. It has observed that regard must be had to international conventions and norms for construing domestic law when there is a void in domestic laws (Vishakha vs. State of Rajasthan 1997 6 SCC 241). This has greatly strengthened the hands of the Commission.

Social, Economic and Cultural Rights
The Commission has handled a wide range of human rights issues in the field of social, economic and cultural rights. The task of enforcing Vishakha guidelines for prevention of sexual harassment of women at the work place fell on the Commission. It succeeded in getting Complaint Committees established in a large number of government departments and public sector undertakings and in persuading the Government to treat such harassment as a misconduct. The Commission was entrusted by the Supreme Court with supervision of over 3 institutions for the mentally challenged—at Ranchi, Agra and Gwalior, as also with supervision over Protective Homes for Women. Under such supervision, in which the Commission involved all officers connected with these institutions and experts, it brought about substantial improvements through its reports to the concerned States. Similarly, members of the Commission systematically inspected homes for widows at Vrindavan. Through the Commission’s intervention, the State was required to make some effective improvements in the condition of widows, such as providing regular health care, securing pension from the concerned State Governments or ensuring receipt of the full amount of pension through providing facilities, which enable widows to withdraw their pension from the bank without the help of middle men.

Police, Custodial Deaths, Encounters and Jails
One of the major concerns of the Commission has been the functioning of the police, preventing custodial violence, torture, custodial deaths or fake encounters, and improving conditions in jails. A substantial number of complaints received by the Commission relate to the functioning of the police. For example, the complaints from the underprivileged, including women, disclosed a disturbing trend of the police not registering FIRs in respect of crimes against women such as dowry related crimes or crimes against dalits and other under-privileged people. Apart from
getting such crimes registered and investigated, the Commission has also undertaken a major programme to sensitise the police on human rights issues.

The Commission endorsed the recommendation of the Police Reforms Commission, regarding insulating the police from political and other extraneous influences. It made detailed submissions to the Supreme Court in this regard. It is a pity that the government has not taken any serious action in this vital area. In respect of custodial deaths, the Commission has issued guidelines instructing all Chief Secretaries to ensure that all cases of custodial deaths are reported to it within 24 hours of occurrence, that all post mortem examinations of deaths in custody be videographed, and has requested the Chief Ministers to adopt a model autopsy form, prepared by the Commission. In the first 10 years, the Commission received reports of 5500 cases of custodial deaths which have been investigated or reviewed by its own Investigation Division, and appropriate orders have been passed, when required.

Unfortunately, the Commission has no power to investigate complaints against the armed forces. There is no reason why the armed forces, while discharging civilian duties, should not be within the preview of the Commission. The Commission has also a systematic programme of visiting jails in different parts of the country and reporting conditions which require rectification. The approach of the Commission, seeking cooperation of the State, even a reluctant State, and the persistence in getting the State to act, has resulted in many jail reforms, including the revision of old jail manuals; providing milk and food for the young children, who are in jail with their mothers; having properly equipped hospitals for jail inmates and so on. Mentally affected undertrials kept in jail for long periods have also been released.

The Commission has also been actively concerned with the rights of the disabled and the rights of the elderly. It established a Core Group on Disability and appointed a Special Rapporteur to assist the Commission in this area. The Special Rapporteur played an important role in the drafting of the UN Convention for the protection of the rights of the disabled.

Legislation
The Commission has examined proposed legislations that affect human rights. The opinions sent by the NHRC include those on the Child Marriage Restrain Act, Domestic Violence Act and Land Acquisition Act. In the latter, the Commission has recommended the inclusion of rehabilitation of the displaced as a condition precedent to dispossessing them of land. Its important opinions on the legislation on terrorist and disruptive activities resulted in the repeal of TADA.

Education
In the area of education on human rights, a notable effort of the Commission was that of working with the Ministry of Human Resource Development, the National Council for Educational Research and Training, and the National Council for Teacher Education, to prepare material for human rights education, at all levels of schooling. It worked with the University Grant Commission for the development of human rights courses at the university level and encouraged such courses in the training institutes for public servants, the police, para military forces and the army. It has produced a hand book for judicial officers. It has also supported the Non-Governmental Organisations (NGOs) in their education programmes.

NHRC and the Judiciary
The Commission has the power to intervene in any proceeding involving an allegation of violation of human rights, pending before a Court. Very few human rights commissions have this power. The synergy between the Courts and the Commission has produced some very effective interventions. The Commission has often been invited by the Court to assist, to investigate or to give reports to the Court. For example, the NHRC was asked by the Court to deal with the mass cremations in Punjab. At times, it has been entrusted by the Court, with the duty to implement its
orders. This synergy has helped the Courts in obtaining an independent view of the factual matrix in human rights cases and has enabled them to avail of an expert but independent view of remedial measures. At times, the Commission has moved the Court for redressal of gross violation of human rights. Its most famous and effective intervention has been in respect of cases connected with the Gujarat riots of 2002. It is important that the Commission should maintain its independence and integrity, for such reports to have any value. Some of the recent reports of its Investigation Division are a little disturbing.

Natural Calamities
The Commission had intervened to oversee proper distribution of relief material in the areas that were hit by a cyclone in Orissa in 1999-2000, and to provide aid to the victims of the catastrophic Gujarat earthquake of 2001.

It is clear that this range and quality of work is possible only if the members of the NHRC are men and women of stature and are independent thinkers, committed to the cause of protection of human rights. Appointments to the NHRC are made by a committee consisting of the Prime Minister as the Chairperson, the Speaker of Lok Sabha (House of Representatives), the Union Home Minister, the Leaders of Opposition in the Lok Sabha, the Rajya Sabha (Council of States) and the Deputy Chairman of the Rajya Sabha.

The Chairman of the NHRC should have been a Chief Justice of the Supreme Court of India, one of the members should have been a judge of the Supreme Court and the other one should have been the Chief Justice of a High Court. Two members have to be appointed from amongst persons having the knowledge or practical experience in matters relating to human rights. When all members of the Appointing Committee have been vigilant and committed to the protection of human rights, excellent appointments have been made. It is important that the high level Committee remains concerned about the protection of human rights. It is equally important that those working in the field of human rights, as well as the public, remain alert about the appointments made to the NHRC, so that the people continue to get the benefit of quality work from this institution. The public also needs to take more interest in the amendments proposed by the NHRC in the 1993 Act, to make its functioning more effective.

Despite being handicapped, the NHRC has done remarkable work. Mary Robinson, former United Nations High Commissioner for Human Rights, described the Indian NHRC as one of the best in the world, to be emulated by others. If we desire to maintain this premium position, nationally and internationally, those interested in the protection of human rights in the country must come together, to ensure that the independence, integrity and the calibre of the NHRC is not compromised.

Justice Sujata Manohar is a former judge of the Supreme Court of India and a former member of the National Human Rights Commission. She has the distinction of being the first lady judge of the Bombay High Court, and the first lady Chief Justice of the Bombay High Court and the Kerala High Court. She was appointed as judge of the Supreme Court of India in 1994 and retired from the Court in 1999. In 2000 she became a member of the National Human Rights Commission; her focal point of work was on trafficking, women’s issues, and HIV/AIDS. She is the Chairperson of the Committee on Feminism and International Law of the International Law Association. She is consultant to the U. N. (DAW) expert group on Trafficking, and was consultant to a UN expert group on women, peace, and security. She was on the consultation group of judges, formed in 2007 by the UN High Commissioner on Human Rights, for the enforcement of human rights through domestic courts. Justice Manohar was conferred with an Honorary D. Litt. from SDNT University, Bombay, and an Honorary Doctorate in Law from the University of East Anglia, UK.