

# CHANGE WITHOUT REFORM

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

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A former chief justice of the apex court and one of its judges, a retired high court chief justice, two non-judge dignitaries, and heads of national commissions for Scheduled Castes and Tribes, minorities, and women. This high-ranking eight-member group was assembled in September 1993 by the then Congress government to form a new parastatal entity to be known as the National Human Rights Commission (NHRC). A bill enabling the government to establish such a body had been moved in Parliament three months earlier but could not be passed due to the severe criticism of its flawed provisions within and outside the House. In view of the approaching 45th anniversary of the Universal Declaration of Human Rights, the government then hastened to constitute the proposed commission through an ordinance. Early in the next year, the ordinance issued for the purpose was transformed verbatim into the new commission's statutory charter.

In the coming years, the NHRC's functioning and performance earned censorious critiques. Jurist-judge V R Krishna Iyer called it "the biggest post office in India" (forwarding complaints to the government and its replies to complainants). Commenting on its first two official reports, noted lawyer Rajeev Dhavan said it had "assumed a stance far too grandiose not commensurate with its resources and internal will" and was "a mere showpiece to convince the world that the government is committed to human rights protection."

Former Chief Justice Ranganath Misra was appointed the NHRC's first chairman. Two days after he demitted office, I took over the chair of the National Minorities Commission and hence became an ex officio member of the NHRC. A month later, former Chief Justice M N Venkatachaliah joined as its next head. I worked with him for nearly three years, and also for some time with his successor, J S Verma. My friendly terms with the next two NHRC chiefs — Adarsh Anand and Rajendra Babu — allowed me to closely watch its working. Utterly disappointed, I kept stressing the need for a speedy overhaul of the commission's charter.

Venkatachaliah, as NHRC chief, had invited former Chief Justice Aziz Ahmadi to head a committee he had formed to review the commission's statute. Eminent jurist and human rights activist Rajinder Sachar was on the committee and its report bore the imprint of his ideas. In 2006, the government of the day had the NHRC law revised. However, it ignored the Ahmadi committee's focal submissions. The exercise failed to rid the commission of the infamy of being a toothless tiger.

The present government has now once again amended the NHRC charter. Cleared by Parliament, the Protection of Human Rights (Amendment) Bill 2019, which makes sweeping changes of far-reaching consequences to the composition of the commission, will soon be in force. Under the amended law, the government's choice for the NHRC chair will not be limited to former chief justices of the apex court — it can now hand it over to any of the Court's retired judges. The impact of this change cannot be predicted with certainty — only time will tell whether the wide extension of the government's options in selecting the NHRC chief is a change for the better or worse.

Under the initial NHRC law, its two non-judge members had to be “persons having knowledge of or experience in matters relating to human rights”. The number of such members has now been raised to three including a woman member, but the imprecise provision of keeping the coveted positions open to any person of the government’s unguided choice remains unchanged. Former governments filled them with its retired officers, and the present dispensation once chose to appoint a ruling party office-bearer — though on being challenged in the court he wisely declined the offer. International human rights jurisprudence is a fast-growing legal discipline and there is no dearth of eminent scholars specialising in it, but successive governments have never considered any such specialist — nor any known human rights activist — for membership of the commission.

To the list of national commissions whose heads are NHRC’s ex officio members have now been added two more commissions — those for the backward classes and protection of child rights — along with the chief commissioner for persons with disabilities. The commission will thus have more adjunct than full-timer members. Instead, of the heads of its sister-bodies engaged in class-specific work, it would have been more fruitful to associate with NHRC representatives of a few leading NGOs, promoting human rights in general.

With a view to ensuring the independence of the commission, its Act prohibits further government employment for its chair and members. Nevertheless, greener pastures technically not covered by the phraseology of the ban have always been waiting for them. The practice was started with the first commission itself, when two of its sitting members were given gubernatorial positions overnight, and continues till date. The new amendment bill does not disturb the related provision of the Act.

The NHRC’s main function is to inquire into complaints of “violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant”. But it cannot execute its decisions based on its findings. For that, this high-profile body has to depend either on the central or state government or on the judicial hierarchy in the country — from the top court down to magistrates. The statutory provisions to this effect are not touched by the new amendments.

The situation of human rights in the country remains as bad, if not worse, as it was at the time of establishment of the NHRC and before. Is there really no way to make it a truly effective watchdog, powerful enough to crack the whip on the spate of human rights violations in the society?

Unfortunately, the 2006 amendments in the commission’s law introduced by the previous government had not addressed this pressing need of the time. The 2019 changes made by the present dispensation too leave a great deal to be desired. By all counts, the NHRC is yet to be assigned its rightful role in the affairs of the country and the society.

***(The writer is former chairman of National Minorities Commission and member, Law Commission of India)***

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