

# Promoting cooperative governance in India

## The case of protection and promotion of human rights

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### ABSTRACT

*The responsibility for the enforcement of the human rights laws in India lies on the shoulders of a number of executive and judicial authorities located at various levels of governments in the country. Indeed, the whole gamut of the human rights laws need to be put into practice both by the individuals on the one hand and the governmental agencies on the other. However, given the federal structure of governance in the country, the responsibility for the protection and promotion of human rights has been dovetailed into the various agencies functioning at the central, state and the local levels. But in the routine politico-administrative set up of the country, the judiciary has been assigned the task of hearing the complaints of the violation of human rights and providing relief to the people through judicial pronouncements. In this respect, while Article 32 of the Constitution of India empowers the Supreme Court, the high courts draw their authority from Article 226 of the Indian Constitution. Thus, while at the apex of the administrative structure an exclusive Human Rights Cell has been set up in the Union Ministry of Home Affairs in 1993 to coordinate and implement the policies and programmes on human rights. The Supreme Court stands at the apex of the judicial system of the country for protecting the human rights of the people from violations on the part of both the individuals as well as the state agencies. In 1993, with the creation of the National Human Rights Commission at the Centre and the State Human Rights Commissions in various states, the governance of human rights in India gained a new dimension in which cooperative governance become sine quo non for protection and promotion of the human rights in the country. This article analyses the promotion of cooperative governance in India drawing on the case of protection and promotion of human rights.*

## INTRODUCTION

The concept of human rights is closely connected with the protection of individuals from the exercise of arbitrary power by the state in certain areas of their lives. It is also directed towards the creation of societal conditions by the state in which individuals are to develop their fullest potential. The state is under an obligation to its citizens to direct its policies and programmes for the promotion of democracy, good governance, development, rule of law, and a culture of human rights. The responsibility for the enforcement of human rights laws in India lies on the shoulders of a number of executive and judicial authorities located at various levels of governments in the country. Indeed, the whole gamut of the human rights laws need to be put into practice both by the individuals on one hand and the government agencies on the other. However, given the federal structure of governance in the country, the responsibility for the protection and promotion of human rights has been distributed among the various agencies functioning at the central, state and the local levels. In the federal constitutional arrangement, powers are distributed between the Union and the different states under three lists – Union List, State List and Concurrent List. The subjects under the Union list fall under the absolute jurisdiction of the Centre while those under the State list are under the jurisdiction of the states. While subjects under the concurrent list come under the jurisdiction of both the centre and the states, the powers of the centre overrides the states. Here, it is pertinent to mention that law and order is a state subject. Therefore, a concerted and cooperative effort by both the centre and the states are essential to promote human rights.

In the routine politico-administrative set up of the country, the judiciary has been assigned the task of hearing the complaints of violation of human rights and providing relief to the people through judicial pronouncements. In this respect, Article 32 of the Constitution of India empowers the Supreme Court and the high courts draw their authority from Article 226 of the Constitution. At the apex of the administrative structure, an exclusive Human Rights Cell has been set up in the Union Ministry of Home Affairs in 1993 to coordinate and implement the policies and programmes on human rights and the Supreme Court stands at the apex of the judicial system of the country for protecting human rights of the people from violations by both individuals and state agencies as well. The enactment of the Protection of Human Rights Act, 1993 lead to the creation of the National Human Rights Commission at the Centre and the State Human Rights Commission in various states, the governance of human rights in India gained a new dimension in which cooperative governance become *sine-quo non* for protection and promotion of the human rights in the country. This article analyses the promotion of cooperative governance in India drawing on the laws and institutions for the protection and promotion of human rights in the country.

India has been one of the oldest civilizations in the world having a chequered history of the existence of some sort of human right precepts and values to secure a dignified and contented life for the people. At a certain point of time in its history a rupture occurred in this rich tradition resulting in the deprivation of human rights of few sections of people in the society. The sense of appreciation for the ideals and values of human rights as the primary foundation stone for the modern and democratic life for the people remained intact amongst the national leaders of the country. As a result, even during the course of the freedom struggle, the national leadership never failed to emphasise the bestowing of



basic human rights on all the people of the country irrespective of any distinction in the form of fundamental rights once the country becomes independent. Hence, in the post-independence era, the Constitution of India became the chief instrument for the national leaders to redeem their pledge of securing the basic human rights for the people through the provisions like the fundamental rights and the directive principles of state policy, along with the others. Moreover, stipulations were also made with the futuristic vision to enable the government to enact law for the constitution of certain bodies and institutions for the purpose of protecting and promoting human rights in the country.

## **SITUATING COOPERATIVE GOVERNANCE THROUGH HUMAN RIGHTS LAWS**

The perspective for cooperative governance in the protection and promotion of human rights in India has been sought to be contextualised through the body of comprehensive human rights laws. Conceptually, human rights laws in almost all parts of the world are relatively a recent phenomenon. Given the philosophical roots of the human rights could be traced back to the sixteenth century social contract theory. This theory evolved the idea of natural rights of the people as being ordained by birth without any positivist intervention on that count. The initial take on human right considered it to be a notion existing even in the absence of any positivist law being framed on the subject. However, with the growing complexity of life on the one hand, and varying understanding of the concept of human rights by various countries and people on the other, sometimes even to the detriment of the notion of human rights itself, arguments were advanced for the clear-cut stipulations of the idea of human rights through the means of constitutional and statutory provisions. Following the lead given by the United Nations mandated Universal Declaration of Human Rights, 1948, various countries in the world have strived to make elaborate provisions for the enjoyment of human rights by their people through the Constitution and other statutory enactments.

The inauguration of a liberal democratic political system in the country after independence ensured that India becomes one of the foremost countries in the world to have an elaborate system of human rights laws. The body of human rights laws in the country could be conveniently categorised into two segments: constitutional and statutory laws. The constitutional laws pertaining to the human rights are spelt out in varying measures in the chapters and provisions dealing with the preamble to the constitution, the fundamental rights, and the directive principles of state policy (Basu 1994:34). The statutory laws on human rights are provided for in the form of various enactments to ensure the social and economic justice to the marginalised sections of the society like women, children, persons with disability and other socially and economically weaker sections of society. Important among such enactments include the *Protection of Human Rights Act, 1993*, *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* and the *National Commission for Women Act*. Apart from these, the corpus of human rights laws in India also consist of the numerous international covenants, conventions, treaties signed, ratified and acceded to by the government of India. Such international legal documents not only include the general documents like the Universal Declaration of Human Rights but

also various target-specific legal frameworks aimed at protecting the human rights of the specified groups of people like women, children, disabled, minorities, children and refugees.

## Human Rights Provisions in the Constitution

The Constitution of India embodies the cherished ideals and aspirations of the founding fathers of modern India whose most concise articulation is found in the Preamble to the Constitution. Indeed, each and every word of the Preamble connotes one of the loftiest precepts which underline the nature and substance of the polity and its duties towards the people of the country. Hence, the first part of the Preamble viz., “we the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic” enunciates the principal characteristics of the nature of the Indian polity. Similarly, the second part of it i.e., “to secure to all citizens: justice, social, economic and political; liberty of thoughts, expression, belief, faith and worship: equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and the integrity of the nation...” professes the basic ingredients which go to constitute the essence of the body of human rights of the Indian people. Combined the two parts, the Preamble, in a sense, represents the soul of the Constitution and full and substantive retention of the ideals enunciated in it becomes the first condition for the Constitution of India to remain in force with the visions cherished by the national leaders of the country.

Providing some sort of detailed description and providing justification for the ideals enumerated in the Preamble, chapter III of the Constitution contains the provisions regarding the fundamental rights of the people. Categorized into six distinct groups of rights, the right to equality (Articles 14–18), right to freedom (Articles 19–22), right against exploitation (Articles 23–24), right to freedom of religion (Articles 25–28), educational and cultural rights (Articles 29–30) and right to constitutional remedies (Article 32) probably cover the widest possible spectrum of the civil and political fundamental rights provided for in the constitution of any country. Acting as the bulwark against the infringement of individual rights by the individuals or the state, these fundamental rights happen to be the core of the body of constitutional human rights laws in the country.

In order to assign a seemingly balanced perspective to the body of human rights in India, the constitution makers made elaborate provisions for certain positive claims of the people on the resources and priorities of the state through the provision of the directive principles of state policy. This appears to be a plausible realisation on the part of the fathers of the Constitution as the essentially negative provisions in the form of the fundamental rights would not have served the purpose of securing a dignified and contented life for the people without adequate provisions for the social and economic rights for them. Moreover, in a country like India, marked by social hierarchies and discrimination along with economic inequalities, the social and economic directives contained in Part IV of the Constitution may turn out to be the bedrock of the body of human rights in the country. Indeed, the value of the directive principles becomes fundamental in any conceptualisation of the body of human rights laws in India owing to their utility in providing for the basic minimum needs of the people in terms of adequate means of livelihood (Article 39(a)), protection of the health and strength of the workers (Article 39(d)), free and compulsory education for the children (Article 45), enhancing the level of nutrition, the standard of living and improving



the public health (Article 47) etc. It goes without saying that the common masses would be able to have some measure of the realisation of the fundamental rights only in case their basic livelihood requirements are fulfilled beforehand. Hence, in the final analysis, it stands out that the framework of human rights as given in the Constitution of India demonstrates the best possible amalgamation of both negative as well as the positive rights of the people whose holistic and integrated articulation appears in the Preamble to the Constitution.

## Statutory Human Rights Laws

Statutory laws refer to the laws enacted by the legislature. In India, despite the existence of the elaborate provisions in the Constitution to secure the basic human rights for the people, the need was felt by the State from time to time to enact certain laws to ensure not only socio-economic justice, but also to address the particular issues in the enjoyment of the human rights by the marginalised, weaker and vulnerable sections of the society. Such body of laws, called the statutory human rights laws, aims at making specific protective and promotive provisions for human rights of, sometimes general but normally for a particular group of people. The most important statutory law to empower the general masses with the basic human rights happens to be the *Protection of the Human Rights Act, 1993* under which the provision for the Constitution of a National Human Rights Commission has also been made. The other statutory laws are mainly particularistic in nature as their application is confined to the target group for which the law has been enacted.

Amongst the specific statutory human rights laws, one set of laws deal with the stipulation, protection and promotion of the human rights of particular groups of people while the other set of laws provide for the establishment of a particular statutory body to take care of issues resulting in the protection and promotion of the human rights of the specific groups. The best example of the first set of laws is the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* which defines the human rights of the disabled persons in order to provide equal opportunities to them and ensure their full participation in the various activities of life. The second set of statutory laws consist of the numerous enactments like The National Commission for Minorities, 1986, The *National Commission for Women Act, 1990*, The *National Commission for the Backward Classes Act, 1993* and The *National Commission for the Safai Karmcharis Act, 1995* with the specific purpose of setting up national commission to ensure the enjoyment of human rights by these groups of people.

## Human Rights Laws in International Covenants

It is interesting to note that the initial pursuits for the evolution of the paradigm of human rights and its universalisation in the world were made at the international level through the mechanism of the United Nations. Hence, most of the countries who owe their allegiance to the UN, more or less, also sign and ratify the international covenants and treaties originating under the auspices of the UN. Representatives from diverse cultures endorsed the Charter of UDHR and two other international covenants—International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966 which came into effect in 1976 with the consent and approval of the United Nations.

In this regard, the track record of India has been found to be excellent as India has not only signed and ratified most, if not all, of the UN mandated covenants and treaties on human rights, but also pioneered several such covenants and treaties as active participants in the formulation and drafting of these documents. The signing and ratification of the international covenants and treaties have made it incumbent upon the government of India to modify its laws and institutions in consonance with the requirements of the international documents for the protection and promotion of human rights at both domestic and international levels.

The landmark international document which India signed happens to be the Universal Declaration of Human Rights, 1948 which heralded the era of the universalisation of the hitherto seemingly parochial notion of human rights. Afterwards, India has become party to several conventions encompassing the ambit of a diverse set of subjects the important of which included: Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others (1953), Convention on the Nationality of the Married Women (1957), Convention on the Prevention and Punishment on the Crime of Genocide (1959), Convention on the Political Rights of the Women (1961), International Convention on Elimination of all Forms of Racial Discrimination (1968), Convention on the Rights of the Child, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1971), International Covenant on Suppression and Punishment of the Crime of Apartheid (1977), International Covenant on Economic, Social and Cultural Rights (1979), International Covenant on the Civil and Political Rights (1979), Convention on the Elimination of all Forms of Discrimination Against Women (1981) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997).

The significance of the comprehensive framework of human rights laws in India, both domestic as well as international, lies in setting a standard benchmark for both the government and the common people to enjoy and respect the enjoyment of the fundamental human rights of other sections of society. Even in the trouble prone areas of the country, specific instructions have been issued to the Armed Forces and the Para military forces to pay serious attention to the allegations or complaints of the violation of human rights and also to take strict and prompt action against anyone found guilty. The existence of the vast body of laws on human rights has no doubt to put India in the category of countries having significant legal framework for the protection and promotion of human rights. However, the real picture in terms of the implementation of such laws presents a somewhat disturbing picture as reports of the violation of human rights appear to be a common occurrence in the country.

## **ENFORCEMENT OF HUMAN RIGHTS LAWS IN INDIA**

The responsibility for the enforcement of the human rights laws in India lies on the shoulders of a number of executive and judicial authorities, including the Supreme Court of India. Indeed, the whole gamut of the human rights laws need to be put into practice both by the individuals on the one hand and the governmental agencies on the other. However, the department which has been found to be violating the human rights of the people more often than not happens to be the Police department in various states of the country. Hence, in the routine politico-administrative set up of the country, the judiciary has been assigned the task of hearing the



complaints of the violation of the human rights and providing relief to the people through judicial pronouncements. At the apex of the administrative structure, an exclusive Human Rights Cell has been set up in the Union Ministry of Home Affairs in 1993 to coordinate and implement the policies and programmes on human rights. The Supreme Court stands at the apex of the judicial system of the country for protecting the human rights of the people from violations on the part of both the individuals as well as the state agencies. The power of writ under Article 32 in the case of the Supreme Court and Article 226 in the case of the High Courts, and the concept of public interest litigation (PIL) promoted by an activist judiciary have also played an important role in the enforcement of human rights in India.

However, with the growing inability of the ordinary politico-administrative set up to protect and promote the cause of human rights along with the persuasions of the United Nations Covenants for the setting up of a national level body dedicated to the cause of protection and promotion of human rights, the government decided to set up the National Human Rights Commission to act as the nodal agency for the cause of human rights in the country. This Commission is designed to deal with the cases of the violations of human rights of the people irrespective of any discrimination in contrast to the role of the other statutory commissions like the National Commission for Women and the National Minorities Commission. which are entrusted with the responsibility dealing with the cases of the people falling within the rubric of the catchments of the Commissions. Thus, the setting up of the NHRC in 1993 heralded a new era in the field of the human rights governance by providing a focused attention on the cause of protection and promotion of human rights in the country. The Commission set a new benchmark in enjoyment of the human rights by the people.

## **NATIONAL HUMAN RIGHTS COMMISSION**

The setting up of the National Human Rights Commission (NHRC) as an autonomous body for the protection and promotion of human rights under the provisions of the *Protection of Human Rights Act, 1993* has met with only guarded welcome on the part of the human rights activists in the country. (Guha Roy 2003:394) They were not satisfied with the idea of the NHRC as they found it not as a *sui generis* institution in the country, but as some sort of a supplant from the institutions suggested by the Western countries. Yet another factor contributing to the formation of the NHRC seems to be the growing awareness amongst the people regarding their democratic and civil rights, coupled with the mounting pressures from the human rights organisations in the country to have a law and institutional mechanism for the protection of human rights. The NHRC was set up through the provisions of Chapter II of the *Protection of Human Rights Act, 1993* which mandated that “the Central government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon and to perform the functions assigned to it under the act.” (Mathew:2006, 16).

### **Structure of the NHRC**

The structure of the NHRC has been provided in a way slightly different from the pattern ordained for other statutory commissions in the country. Thus, as per the provisions of the



PHRA, 1993, the NHRC consists of a Chairperson and four other members with definite qualifications stipulated for each of them. Hence, while its Chairperson needs to be a former Chief Justice of India, two of its members need to be of judicial background – one a sitting or former judge of the Supreme Court and the other a sitting or former Chief Justice of a High Court. As per the Act, the other two full time members of the Commission should be “persons having knowledge of, or practical experience in, matters relating to human rights” Apart from that, the NHRC has to include the chairpersons of three other National Commissions, namely, the National Commission for Minorities, the National Commission for Women and the National Commission for Scheduled Castes and Scheduled Tribes, as its *ex-officio* members in order to provide for a focused and balanced perspective in the functioning of the NHRC in matters relating to the minorities, women and the SCs and STs. In addition to the membership of the Commission, the Act also made provisions for two statutory administrative offices in the Commission, viz., the Secretary-General and the Director- General (Investigations) to afford an adequate administrative support so that the functions of the Commission are carried out in an impartial and efficient manner. Thus, the structure of the NHRC appears to be provided for with the objective of ensuring its autonomy on the one hand and attributing administrative capability to its functioning on the other (Gopalaswamy 2000:13).

## Functions of the NHRC

Having been created as the apex body for the protection and promotion of the human rights in the country, the NHRC has been entrusted with the vast range of functions having a bearing on the enjoyment of the human rights by the people. The functions of the NHRC have been laid down under the provisions of the PHRA, 1993 (Malimath 2000:215). Thus, in terms of Section 12 of the Act, the main functions of the Commission include the following:

- to inquire *suo moto* or on petition presented to it by a victim or any other person on behalf of the victims, into complaints against the public servants regarding the violation of human rights, or abetment thereof, or negligence in the prevention of such violations;
- to have an interjection in a court of law, with the approval of the Court, where any issue of human rights violations are involved in the proceedings of a pending case;
- to conduct inspections to study the conditions of life of the inmates, and presenting its recommendations thereof, confined in any jail or any other institution meant for cure, reform or protection of such people under the control of a state government with the prior information to the concerned state government;
- to review the provisions in the Indian Constitution or any other law or provisions under such law regarding the protection of human rights and making recommendations for effective implementation of such laws and provisions of the Constitution;
- to examine the factors that curtails or circumscribes the enjoyment of human rights, including the acts such as terrorism and suggesting suitable remedial measures for them;
- to study the international treaties and other related covenants or documents pertaining to human rights and making suggestions for their effective implementation;
- to undertake research in the field of human rights in order to promote human rights in India;





- to promote awareness regarding the human rights in different sections of the society and disseminating awakening on the measures for the protection and promotion of human rights through the methods of publications, media, seminars and other available mediums;
- to encourage the endeavours of the non-governmental organisations and other such organisations which are involved in the field of human rights protection and promotion; and
- to perform such other functions as are deemed necessary for the promotion of the human rights.

Compliant redressal and investigation is one of the major activities of NHRC. In fact, when compared to NHRC, no other national institution for human rights in the world has dealt with such a large number and wide range of complaints till date. The number of complaints received by it has increased from 496 during its first year of establishment in 1993–94 to 74 444 by 2005–06. At any given time the complaints under process is about 20 000 to 30 000. The complaints are on various issues like custodial death, torture, atrocities against women, scheduled castes and scheduled tribes, misuse of power by police, prison reforms as well as issues of food scarcity, rights of the child and minorities. The NHRC enquires and investigates the complaints and makes recommendations. The recommendations of the NHRC have enjoyed high reputation, prestige and authority and followed by the government and authorities.

## **State human rights commissions**

The state human rights commissions (SHRCs) have been stipulated by the PHRA, 1993 presumably in order to decentralise the structure and functioning of the mechanism for the protection and promotion of the human rights at the state level on the one hand, and streamline the working of the state level agencies with regard to their attitude towards the human rights of the people by having a body in the state itself to monitor their functioning on the other. The structure of the SHRCs has been laid down on the pattern of the structure of the NHRC with the only variation that the members of the SHRC are appointed by the Governor of the state. These bodies have also been given functions similar to the ones given to the NHRC on condition that their operational domain remains confined to the geographical limits of the state concerned. Thus, the SHRCs become a sort of miniature of the NHRC at the state level to cater to the needs of the protection and promotion of the human rights at the state level.

Despite the specific advice from the central government to all the states for the creation of the SHRCs, only 18 states have been able to constitute their human rights commissions so far. Moreover, what is more distressing is the fact that the defaulters in the formation of the SHRCs are those states whose records in the protection and promotion of the human rights have been most deplorable. For instance, the state of Uttar Pradesh which has the dubious distinction of being the state with the highest number of cases of human rights violations had desisted from setting up the SHRC till recently when it was impressed upon by the central government to set up a human rights commission in the state. It will be interesting to know the way the SHRCs function in order to meet the challenges entrusted to them. Though the NHRC has already set a bench mark for the human rights bodies in the country to attain

a distinct level of efficiency, impartiality and effectiveness in carrying out its function of protecting and promoting human rights in the country, how far the SHRCs go to emulate NHRC on this count remains to be seen.

## CONCLUSION AND SUGGESTIONS

The domain of protection and promotion of human rights provide one of the fine examples of cooperative governance in the country in which the central as well as the provincial government agencies cooperate with each other to bring out a desirable state of things. The institutional arrangement towards the protection and promotion of human rights in India got a new impetus with the establishment of the National Human Rights Commission as a statutory body. However, over the years, the functioning of the Commission has exposed the inherent weaknesses in the governmental agencies like the NHRC which are unable to attend to each and every incident of human rights violations in the country. For instance, while the Commission has been able to address the issues of human rights violations being perpetrated by the societal forces or individuals, it seems to have utterly failed to provide adequate solutions to the victims of the human rights violations being perpetuated by the state apparatus and the security agencies. The situation appears to be more dismal at the level of provinces where either the state human rights commission itself has not been set up, or if established, it is not bestowed with sufficient powers and administrative support system to enable it to work as the true custodian for the protection and promotion of human rights in the state. However, the establishment of the human rights commissions, both at the central as well as state levels may be seen as a beginning in the right direction. Yet the basic objective in setting up these commissions would only be served when at least two propitious conditions are met. *Firstly*, they are bestowed with sufficient powers and administrative support to take prompt and effective steps in case of the violation of human rights. *Secondly*, a sense of responsibility also needs to be developed amongst such bodies to see them not as part and parcel of the governmental machinery to serve the interests of governmental agencies. Rather, they must see themselves as the statutory bodies existing to serve the cause of the helpless citizens of the country whose human rights have been violated.

It is in this context that the Central and state governments need to function on a cooperative basis. The state governments should come forward to set up human rights commissions where there is none and strengthen those that have been set up. The state human rights commissions should be bestowed with more autonomy, staff and resources. There is a need to promote cooperation between the centre and states towards good governance on the one hand and between the NHRC and the SHRCs on the other. Synergetic cooperative governance between the centre and the states and coordination between the national and state human rights commissions could lead to greater respect for and promotion of human rights.

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