

56 State Human Rights Commission

The Protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights Commission but also a State Human Rights Commission at the state level¹. Accordingly, twenty six states have constituted the State Human Rights Commissions through Official Gazette Notifications².

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case.

The central government may confer upon the State Human Rights Commissions the functions relating to human rights being discharged by the union territories, except the union territory of Delhi. The functions relating to human rights in case of union territory of Delhi are to be dealt with by the National Human Rights Commission.

COMPOSITION OF THE COMMISSION

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members³. The chairperson should be a retired Chief Justice or a Judge of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.

The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government.

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

- (a) If he is adjudged an insolvent; or
- (b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) If he is unfit to continue in office by reason of infirmity of mind or body; or

- (d) If he is of unsound mind and stands so declared by a competent court; or
- (e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

The salaries, allowances and other conditions of service of the chairperson or a member are determined by the state government. But, they cannot be varied to his disadvantage after his appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS OF THE COMMISSION

The functions of the Commission are:

- (a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- (b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- (c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- (d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- (e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- (f) To undertake and promote research in the field of human rights.
- (g) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- (h) To encourage the efforts of non-governmental organizations (NGOs) working in the field of human rights.
- (i) To undertake such other functions as it may consider necessary for the promotion of human rights.

WORKING OF THE COMMISSION

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto.

The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- (a) it may recommend to the state government or authority to make payment of compensation or damages to the victim;
- (b) it may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- (c) it may recommend to the state government or authority for the grant of immediate interim relief to the victim;
- (d) it may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month.

The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations⁴.

HUMAN RIGHTS COURTS

The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights.

These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state.

For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor.

2019 AMENDMENT ACT

The various provisions or features of the Protection of Human Rights (Amendment) Act, 2019, are as follows:

1. It provided that a person who has been a judge of the Supreme Court is also made eligible to be appointed as Chairperson of the National Human Rights Commission (in addition to the person who has been the Chief Justice of India).
2. It increased the number of members of the National Human Rights Commission (who are to be appointed from amongst persons having knowledge or practical experience with respect to human rights) from two to three out of which at least one has to be a woman.
3. It made the chairpersons of the National Commission for BCs and the National Commission for Protection of Child Rights as well as the Chief Commissioner for Persons with Disabilities as the exofficio members of the National Human Rights Commission.
4. It reduced the term of the chairperson of members of the National Human Rights Commission as well as the State Human Rights Commission from five to three years. It also made them eligible for re-appointment.
5. It provided that a person who has been a judge of a High Court is also made eligible to be appointed as Chairperson of the State Human Rights Commission (in addition to the person who has been the Chief Justice of a High Court).
6. It provided that the central government may confer upon the State Human Rights Commissions the functions relating to human rights being discharged by the union territories, except the union territory of Delhi. The functions relating to human rights in case of union territory of Delhi are to be dealt with by the National Human Rights Commission.
7. It provided that the Secretary-General of the National Human Rights Commission shall exercise all administrative and financial powers (except judicial functions and the power to make regulations), subject to control of the chairperson.

-
8. It provided that the Secretary of the State Human Rights Commission shall exercise all administrative and financial powers of the Commission, subject to control of the chairperson.