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THE NATIONAL HUMAN RIGHTS COMMISSION

~ *Tushar Shahi*

ABSTRACT

The given article talks about the National Human Rights Commission. The article traces the history, role, important pronouncements and critically compares the National Human Rights Commission to the corresponding Canadian counterpart. A comparison between the Paris Principles and the governing principles of the NHRC has also been drawn. The article goes on to describe the composition as well as the functions and powers of the NHRC. The aim of the article is to trace the historical development of the concept of human rights and how that led to the establishment of the NHRC in India. Furthermore, the article also aims to elaborate the statutory protections and powers bestowed upon the said commission for the enforcement of the human rights in India.

INTRODUCTION

“The rights of every man are diminished when the rights of one man are threatened.”

-John F. Kennedy

Human rights are the rights that every person is born with. A right that is bestowed to every person not by any law or statutory provision but by his mere existence is something that can be said to be his human rights. The violation of such rights is not just a mere violation but an injury and insult to the very existence of that person.

This article deals with the National Human Rights Commission in India, its composition, functions and powers, judicial developments relating to the human rights and analyses its effectiveness in relation to the Paris Principles and NHRIs of other countries.

HISTORY

The Magna Carta (1215), The French Declaration of the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) predate the contemporary human rights

documents. However, upon translation it was found that many of these documents excluded women, people of colour, and members of certain social, religious, economic, and political groups.

The idea of Human Rights emerged after World War II. The selective extermination of the Jews, Sinti and Romani, homosexuals, and persons with disabilities by the hands of the Nazis horrified the world. The infamous Nuremberg Trials took place and the war criminals of the defeated countries were punished for committing “crimes against peace” and “crimes against humanity”.

The governments then committed themselves to establishing the United Nations, with the primary goal of strengthening international peace and preventing conflict. Franklin Delano Roosevelt, the 32nd US President, captured the essence of the emerging human rights principle. In the 1941 State of the Union address, he spoke of a world founded on four essential freedoms— freedom of speech and religion, and freedom of want and fear.

The UN established a commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the charter.¹

On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members through unanimous voting, though, 8 nations chose to abstain. It claimed that all rights are interdependent and indivisible.² Its Preamble asserted that:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

Out of the 193 nations in the UN, most of them have incorporated these values in their constitution. Although, the declaration is not legally binding document, the UDHR has achieved the status of customary international law because it is regarded as “a common standard of achievement for all people and all nations”.

With the objective of further bolstering the UDHR the UN drafted two treaties — the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant

¹ University of Minnesota Human Rights Center, A Short History of Human Rights, HUMAN RIGHTS HERE AND NOW (last visited June 17, 2026), <https://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm>.

² *Id.*

on Economic, Social and Cultural Rights (ICESCR). They along with the UDHR constitute what we commonly call the International Bill of Human Rights.

In addition to the covenants, the UN also adopted 20 principal treaties. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect vulnerable populations, such as refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination Against Women 1979), and children (Convention on the Rights of Child, 1989).³

THE ESTABLISHMENT OF NHRC IN INDIA

The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. It is established under the statutory framework of the Protection of Human Rights Act (PHRA), 1993 further amended by the Protection of Human Rights (Amendment) Act, 2019.⁴

Section 2(1)(d) of the PHR Act, 1993 defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.⁵

It is in conformity with the Paris Principles, adopted at the first international workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations by its Resolutions 48/134 of 20 December, 1993.⁶

The establishment of NHRC serves to bolster India's commitment towards the enforcement of human rights and to ensure that no violation of human rights goes unaddressed. One of its purposes is to spread human rights literacy and also encourage any organisation in doing the same.⁷

COMPOSITION OF THE NHRC

The composition of the Commission is defined as follows:

- (a) a chairperson who has been a Chief Justice of India or a Judge of the Supreme Court;
- (b) One Member who is, or has been, a Judge of the Supreme Court;

³ *Id.*

⁴ National Human Rights Commission, About the Organisation (last visited June 17, 2026), <https://nhrc.nic.in/about-the-organisation>.

⁵ *Id.*

⁶ *Id.*

⁷ National Human Rights Commission, Vision & Mission (last visited June 17, 2026), <https://nhrc.nic.in/vision-&-mission>.

- (c) One Member who is, or has been, the Chief Justice of a High Court:
- (d) Three Members (out of which at least one shall be a woman) to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.⁸

This is the main composition of the NHRC. However, in an extended view the Chairperson of the National Commission for Backward Classes, the National Commission for Minorities, the National Commission for Protection of Child Rights, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes, the National Commission for Women and the Chief Commissioner for Persons with Disabilities shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12.⁹

There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and [shall, subject to control of the Chairperson, exercise all administrative and financial powers (except judicial functions and the power to make regulations under section 40B)].¹⁰

FUNCTIONS AND POWERS

The Commission has the power to inquire, *suo motu*, or upon a petition being filed by a person or anyone on his behalf look into the complaint of (i) violation of human rights, and (ii) negligence in the prevention of such violation by a public servant.¹¹

The Commission can also intervene in any proceeding involving any allegation of the violation of the human right pending before a court with the approval of such court.¹² The Commission not only looks after the human rights of civilians but also that of prisoners, detainees and that of those undergoing reformatory treatment.¹³

The Commission can review the safeguards provided by the Constitution for the protection of human rights and also recommend measures for the better enforcement of the same.¹⁴ It can also review any factors that may inhibit the enjoyment of the human right and recommend appropriate remedies. Furthermore, the Commission is also empowered to study treaties and

⁸ The Protection of Human Rights Act, 1993, § 3(2) (India).

⁹ *Id.* § 12(b)–(j).

¹⁰ National Human Rights Commission, Composition of the Commission (last visited June 17, 2026), https://nhrc.nic.in/about-us/composition_of_commission.

¹¹ The Protection of Human Rights Act, 1993, § 12(a) (India).

¹² *Id.* § 12(b).

¹³ *Id.* § 12(c).

¹⁴ *Id.* § 12(d).

other international instruments on human rights and issue recommendations for their effective implementation.¹⁵

POWERS RELATING TO INQUIRY AND INVESTIGATION

The Commission enjoys all powers of a civil court under the Code of Civil Procedure, 1908. It shall be deemed to be a court when any offence is described under section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860).¹⁶ Every proceeding shall be deemed to be a judicial proceeding within the meaning of Section 193¹⁷ and 228¹⁸, and for the purpose of 196¹⁹ of the IPC, and the commission shall be deemed to be a civil court for all purposes under section 195 and chapter XXVI of CPC.²⁰

Furthermore, the Commission can ask any person to furnish case-related evidence and that person is bound by section 176²¹ and 177²² of the IPC.²³ The Commission, or any other Gazetted officer specially authorised by the Commission, may enter any building and may seize any such evidence as may be beneficial for the case as per the Section 100 of the CPC.²⁴

The Commission has been granted the power to utilise the services of any officer or investigation agency of the Central Government or any State Government.²⁵ The officers or agency whose services are utilised shall investigate into any matter pertaining to the injury and submit a report thereon to the Commission within the period specified by the Commission.²⁶

After recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973 (2 of 1974), the Commission may forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.²⁷

JUDICIAL DEVELOPMENTS

¹⁵ *Id.* § 12(e).

¹⁶ *Id.* § 13(5).

¹⁷ Indian Penal Code, 1860, §§ 175, 178–180, 228 (India) [hereinafter IPC].

¹⁸ *Id.* § 228.

¹⁹ *Id.* § 196.

²⁰ Code of Criminal Procedure, 1973, § 195 (India).

²¹ IPC, *supra* note 17, § 176.

²² IPC, *supra* note 17, § 177.

²³ The Protection of Human Rights Act, 1993, § 13(2) (India).

²⁴ *Id.* § 13(3).

²⁵ *Id.* § 14(1).

²⁶ *Id.* § 14(4).

²⁷ *Id.* § 13(4).

*University of Kerala v. Council, Principals' Colleges, Kerala and Ors.*²⁸ was a landmark case on the issue of 'Anti-ragging'. The court emphasized strict adherence to anti-ragging guidelines, including the formation of monitoring committees and squads, and suggested including ragging-related topics in the curriculum.

The case of *Dr. Balram Singh v. Union of India and Ors.*²⁹ is a landmark case on 'increasing in compensation in sewer death cases.' The Supreme Court of India issued comprehensive directions to eradicate manual sewer cleaning and ensure accountability, rehabilitation, and compensation for sewer workers and victims. The Union Government was directed to frame binding policies and guidelines for all statutory bodies, corporations, railways, cantonments, and controlled agencies to eliminate manual entry into sewers, including in all outsourced or contractual work.

The case of *Navtej Singh Johar & Ors. v. Union of India Through Secretary Ministry Of Law and Justice*³⁰ is yet another landmark case related to Section 377 of the Indian Penal Code, 1860. The Supreme Court declared that Section 377 is unconstitutional to some extent as it violates Articles 14, 15, 19 and 21 of the Indian Constitution and therefore overruled the judgement given in *Suresh Koushal and Ors. v. Naz Foundation and Ors.*³¹

CRITICAL ANALYSIS

Adherence to the Paris Principles.

The Paris Principles are a set of standards for National Human Rights Institutions (NHRIs) developed by the United Nations in 1993. The Paris Principles set out the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively.

These include a broad mandate, broad functions, independence from the government, pluralism, adequate powers, adequate resources, cooperative work and international engagement.

The NHRC in India is toothless when it comes to adequate powers. The NHRC acts only as an advisory body and has no binding powers. That is a major shortcoming in the sense that a

²⁸ *University of Kerala v. Council, Principals' Colleges, Kerala*, (2009) 7 SCC 726.

²⁹ *Dr. Balram Singh v. Union of India, W.P.(C) No. 324 of 2020 (Supreme Court of India, Oct. 20, 2023).*

³⁰ *Navtej Singh Johar & Ors. v. Union of India Through Secretary, Ministry of Law and Justice*, (2018) 10 SCC 1.

³¹ *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

commission whose whole purpose is ensuring the proper enforcement of human rights lacks the very authority to do so.

Secondly, the chairperson, and two other people —one who has been a Judge of the Supreme Court and one who has been a Judge of the High Court— are those who at some points held a judicial position. The appointment of these three is may not be inconsistent with the principle of independence from the government but sure raises some questions regarding governmental interventions.

Thirdly, three out of the four people in the Commission were holders of positions that are relatively similar and vary only in the jurisdictional and authoritative aspect. The core ideology of laying down the need for pluralism was to ensure the proper representation of a diverse section of society. These three appointments are the antithesis of that very principle.

Fourthly, regarding adequate resources, there are 41,044 ongoing cases as of 01.05.2026.³² 3,680 new cases were registered during May, 2026 and only 1,753 were resolved.³³ 53% of the cases of the month of May were unresolved.³⁴ This shows the inadequacy of resources with which the Commission suffers.

Lastly, the NHRC covers ICCPR and ICESCR but excludes private party violations.

So, when the adherence to the Paris Principles is observed we see that five major principles are not adequately complied with. Being the largest democracy and having, perhaps, the most diverse population out of any country in the world, the Indian Human Rights Commission fails to address the five most important principles laid down in 1993, even after 33 years of its establishment.

Comparison with Canada.

Canada has two bodies for the enforcement of human rights the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT). When we look at the composition in Canada, we see that there is a Chief Commissioner, up to 3 deputy Commissioners. For their appointment no judicial qualification is mandatory and it is a purely merit-based appointment focusing on diversity. In India, however, a mandatory judicial qualification is there for the appointment of three out of the four members of the Commission.

³² National Human Rights Commission, Home (last visited June 17, 2026), <https://nhrc.nic.in/>.

³³ *Id.*

³⁴ *Id.*

The NHRI of Canada enjoys a broader mandate as it has broad discrimination coverage and it also covers economic rights via CHRA grounds. It strongly adheres to the “independence from government” principle since the appointments there are for seven-year and are non-renewable.

Furthermore, the CHRT has binding authority that the NHRC lacks. NHRC also does not have the power to investigate armed forces violations.

CONCLUSION

The NHRC was set up with the objective of ensuring effective administration of human rights amongst the Indian masses. The Commission does work very effectively despite its limitations as is evident from the fact that it resolved 47% of the cases that came to it in the month of May. However, the Commission suffers, not from its inability to deal with or dispose of the matters that come to it, but rather from the statutory restriction embedded in the very statute from which it draws its powers. Despite the restriction it does have some extraordinary powers too such as the power to take *suo motu* cognizance of a matter. In its 33 years of existence, the NHRC has accomplished a lot and still continues to do so, but now the time has come when the NHRC's horizon should be expanded and it should be given binding authority.

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