

Human Rights Bill

August 8, 2019

Source: *The Hindu*

Manifest pedagogy:As parliament is in session, the work done during the session becomes important. There are a plethora of Bill's being passed – Human Rights Bill, UAPA bill ,Surrogacy bill etc. The provisions of all these Bills become important. Most Bills are being passed without discussion. So questions regarding increased productivity of the bill without an informed discussion may be explored by aspirants

In news:The Protection of Human Rights(Amendment) bill, 2019 has been passed by both Houses of Parliament

Static dimensions:

- National Human Rights Commission(NHRC)
- Protection of Human Rights Act, 1993

Current dimensions:

- Provisions under the amendment bill
- Criticisms of the bill
- Possible impact of new amendments

Content:

The Protection of Human Rights (Amendment) Bill, 2019 amends the Protection of Human Rights Act, 1993. The Act provides for a National Human Rights Commission (NHRC), State Human Rights Commissions (SHRC), as well as Human Rights Courts

NHRC:

- The National Human Rights Commission (NHRC) of India is a Statutory public body constituted by the Protection of Human Rights Act, 1993.
- It is responsible for the protection and promotion of

human rights, defined by the Act as “Rights Relating To Life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants”

Section 3 of the Act lays down that the Commission shall consist of:

- A Chairperson
- One Member who is, or has been, a Judge of the Supreme Court of India
- One Member who is, or has been, the Chief Justice of a High Court
- Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights
- In addition, the Chairpersons of four National Commissions of (1. Minorities 2. SC 3. ST 4. Women) serve as ex officio members.

The Chairperson and the members of the Commission are appointed by the President of India, on the recommendations of a Committee consisting of:

- The Prime Minister (chairperson)
- The Home Minister
- The Leader of the Opposition in the Lok Sabha
- The Leader of the Opposition in the Rajya Sabha
- The Speaker of the Lok Sabha
- The Deputy Chairman of the Rajya Sabha

The president can remove the chairman or any member from the office under certain circumstances.

Powers and Functions

- Proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation by a public servant.

- by leave of the court, to intervene in court proceedings relating to human rights.
- make recommendations about granting relief to the victims and their families.
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- to study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- undertake and promote research in the field of human rights.
- engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- encourage the efforts of NGOs and institutions working in the field of human rights.
- requisitioning any public record or copy thereof from any court or office.

Limitations of the Commission

- NHRC can only make recommendations, without the power to enforce decisions. This lack of authority to ensure compliance can lead to outright rejection of its decision.
- It is often viewed as a post-retirement destinations for judges, police officers and bureaucrats with political clout.
- Bureaucratic functioning, inadequacy of funds also hamper the working of the commission.

- Under the Protection of Human Rights Act, 1993, human rights commissions cannot investigate an event if the complaint was made more than one year after the incident. Therefore, a large number of genuine grievances go unaddressed.

Provisions under the amendment bill:

1. Composition of NHRC: Under the Act, the chairperson of the NHRC is a person who has been a Chief Justice of the Supreme Court. The Bill amends this to provide that a person who has been Chief Justice of the Supreme Court, or a Judge of the Supreme Court will be the chairperson of the NHRC.
2. The Act provides for two persons having knowledge of human rights to be appointed as members of the NHRC. The Bill amends this to allow three members to be appointed, of which at least one will be a woman.
3. Under the Act, chairpersons of various commissions such as the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women are members of the NHRC. The Bill provides for including the chairpersons of the National Commission for Backward Classes, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities as members of the NHRC.
4. Chairperson of SHRC: Under the Act, the chairperson of the SHRC is a person who has been a Chief Justice of the High Court. The Bill amends this to provide that a person who has been Chief Justice or Judge of the High Court will be chairperson of the SHRC.
5. Term of office: The Act states that the chairperson and members of the NHRC and SHRC will hold office for five years or till the age of seventy years, whichever is earlier. The Bill reduces the term of office to three years or till the age of seventy years, whichever is

earlier.

6. Act does not allow for the reappointment of members of the NHRC and SHRCs. The Bill makes the chairman and members eligible for re-appointment.
7. Powers of Secretary-General: The Act provides for a Secretary-General of the NHRC and a Secretary of a SHRC, who exercise powers as may be delegated to them. The Bill amends this and allows the Secretary-General and Secretary to exercise all administrative and financial powers (except judicial functions), subject to the respective chairperson's control.
8. Union Territories: The Bill provides that the central government may confer on a SHRC human rights functions being discharged by Union Territories. Functions relating to human rights in the case of Delhi will be dealt with by the NHRC.

Criticisms of the bill:Opposition criticised the bill stating that the legislation will ensure that only the government's nominees are appointed to the NHRC. 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. However the provision of keeping the coveted positions open to any person of the government's unguided choice remains unchanged.

International human rights jurisprudence is a fast-growing legal discipline and there is no scarcity 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 along with the chief commissioner for persons with disabilities. The commission will thus have more adjunct than full-time members. 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 ensure the independence of the commission, the Act prohibits further government employment for its chair and members. But this practice was broken 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" but it cannot execute its decisions based on its findings. For that, this high-profile body has to depend on either the central or state government or on the judicial hierarchy in the country from the top court down to magistrates. The new amendments does not touch these statutory provisions.

Under the amended law, the government's choice for the NHRC chair will not be limited to former chief justices of the apex court but it can now hand it over to any of the Court's retired judges. 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