



## State Human Rights Commission

**T**he 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 level<sup>1</sup>. Accordingly, twenty five states have constituted the State Human Rights Commissions through Official Gazette Notifications<sup>2</sup>.

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.

### COMPOSITION OF THE COMMISSION

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members<sup>3</sup>. The chairperson should be a retired Chief Justice 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 five years or until they attain the age of 70 years, whichever is earlier<sup>4</sup>. 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 chairman 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 recommendations<sup>5</sup>.

## **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.

## **NOTES AND REFERENCES**

1. This Act was amended in 2006.

2. These are (in 2016): Assam, Andhra Pradesh, Telangana (combined for Andhra Pradesh and Telangana), Bihar, Chhattisgarh, Gujarat, Goa, Himachal Pradesh, Jammu and Kashmir, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Jharkhand, Sikkim, Uttarakhand, Haryana and Tripura.
3. The 2006 Amendment reduced the number of members of State Human Rights Commission from five to three and also changed the eligibility condition for appointment of member of the Commission.
4. A member is eligible for re-appointment for another term of five years subject to the age limit of 70 years.
5. Before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.