

## HUMAN RIGHTS

# Amendments to the Protection of Human Rights Act, 1993: Trampling on rights

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Henri Tiphagne of AiNNI. Photo: S. KRISHNAMOORTHY

**A**ctivists accuse the government of undermining the autonomy of human rights commissions by amending crucial sections of the Protection of Human Rights Act, 1993.

HUMAN rights activists and members of civil society have accused the Union government of “compromising” the autonomy of the nation’s rights bodies, namely the National Human Rights Commission (NHRC) and State HRCs, by amending certain sections in the Protection of Human Rights Act, 1993.

They said that the amendments, passed in both Houses of Parliament “in haste” amid stiff opposition, would alter the basic composition and working module of the NHRC and SHRCs in contravention of the United Nations’ Paris Principles on human rights.

“It will disturb the core values and principles for which the NHRC was created,” said Henri Tiphagne, national working secretary of the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI).

Amendments to the Protection of Human Rights Act, 1993, have been pending for long. In 2005, the government introduced a Bill on amendments to Section 3(2)(a) and Section 21(2)(a) of the Act, which deal with the tenures and eligibility criteria of chairpersons of the NHRC and SHRCs.

It suggested that the Centre could consider a retired judge of the Supreme Court, who had served a minimum of three years, for the post of NHRC chairperson instead of retaining the existing practice of appointing a retired Chief Justice of India (CJI) as mandated by the Act. However, the then Parliamentary Standing Committee on Home Affairs with Sushma Swaraj in the chair rejected it. A new Bill was tabled again in Parliament in 2018, but it was allowed to lapse. Then, on July 8, Minister of State for Home Affairs G. Kishan Reddy introduced the latest Bill, the Protection of Human Rights (Amendment) Bill, 2018, with certain sweeping modifications. It was tabled and passed in the Lok Sabha on July 19.

The Rajya Sabha passed it on July 22 by voice vote amid strong protests from opposition benches, who demanded a detailed discussion and insisted that the same be referred to the standing committee for critical evaluation.

The amended Act says specifically that if a retired CJI is not available, the option is to appoint a former Supreme Court judge as NHRC chairperson.

Opposition members criticised these amendments, saying that they would encourage the government to appoint its own “yes men” as chairpersons in rights forums. Congress MP Shashi Tharoor, during debates on the Bill in the Lok Sabha, said that there were several gaps in it.

When the Bill was moved in the Rajya Sabha, opposition MPs accused the government of tinkering with the Act to suit its needs. They said that the Bill was not in conformity with the Paris Principles. But Home Minister Amit Shah, replying in the Rajya Sabha, said that the chairperson was not appointed by the Prime Minister on recommendations from the Home Minister. “There is a committee which includes the Prime Minister and Opposition leaders of both the Houses. The House should trust the wisdom of such a committee,” he said.

AiNNI, which coordinates rights work with all rights commissions at the national and State levels, whose chairpersons were “deemed members” of the NHRC and the SHRCs, is of the view that the latest set of amendments to the 1993 Act are in “violation of the international covenant on human rights”.

Henri Tiphagne said that no consultations were held with the stakeholders prior to the tabling of the Bill in both Houses of Parliament. “Neither non-governmental organisations nor members of civil society were consulted,” he said. He also said that it was not clear whether the amendments were discussed by the Ministry of Home Affairs with the members of the NHRC and SHRCs.

## Other amendments

Apart from the amendment on the NHRC chairperson, the Bill also amended Section 3(2)(d) of the Act, increasing the number of members of the commission from two to three, of whom one will be a woman.

Yet another amendment, to Section 3(3), says that the “deemed memberships” would be extended to chairpersons of the National Commission for Backward Classes, the National Commission of Protection of Child Rights and the Commission for the Rights of Persons with Disabilities, apart from existing chairpersons from other commissions.

Similarly, the composition of SHRCs too could change. The amendment to Section 21(2)(a) makes any retired judge of the respective High Court eligible for the post of SHRC chairperson, as against the provision of appointing former High Court Chief Justices.

The tenure of the chairperson and members of the NHRC as per the amended sections of 6(1) and 6(2) stand reduced to three years from five.

However, the amendment allows the government to reappoint them for a further period under Sections 6(1) and Sections 6(2) respectively. The same would be applicable to the chairpersons and members of State commissions too.

Activists said that the tenure of NHRC and SHRC chairpersons and members should not be reduced as the three-year tenure was inadequate to even understand how the system functioned.

By the time a chairperson or a member understands the working system of the NHRC or an SHRC and can initiate necessary actions to implement the provisions of the Act, their tenure would be nearing completion. This will lead to a decrease in efficiency in the functioning of the NHRC and SHRCs, with new members coming in at frequent intervals, they said.

According to rough estimates, an average of one lakh cases are referred to the NHRC every year.

The activists also said that the increase in the representation of women in the NHRC would only be ceremonial. “In the 25 years of the NHRC, only three women have served as members and none as chairperson. If the government is concerned about unequal representation of women in the NHRC and SHRCs, it should amend the Act to the effect that at least half of the total strength of the NHRC and SHRCs must be women. Only then can equality and plurality be ensured,” Henri Tiphagne said.

The amendments also aim to change the working profile of the secretary general of the NHRC. The amended Section 3(4) permits the secretary general (chief executive officer) of the Office of the NHRC to exercise all administrative and financial powers other than judicial functions but “subject to the control of the NHRC chairperson”, thus bringing the officer under the control of the chairperson instead of a full commission, which originally used to delegate powers to the secretary general. The appointment of heads of various commissions who are “deemed members” in the NHRC and SHRCs are political.

AiNNI said that this would influence the free and fair functioning of these panels.

To substantiate its claims, AiNNI noted that for the 2011–15 period, the Statutory Commission meetings of the NHRC and chairpersons of various commissions who are “deemed members” were few and far between.

They met once in 2011 (July 14), twice in 2012 (February 7 and December 7), never in 2013 and once each in 2014 (February 4) and in 2015 (February 3). In the meeting held on February 7, 2012, chairpersons of the National Commission for Women (NCW), the National Commission for Schedule Castes and the National Commission for Scheduled Tribes (NCST) were absent while in the meeting held on December 7, 2012, all chairpersons were absent.

Again, on February 4, 2014, the chairpersons of all commissions were absent. In the meeting held on February 3, 2015, the chairpersons of the NCW and the NCST did not attend.

“Only five Statutory Commission meetings were held between 2011 and 2015, which recorded heavy absenteeism. The minutes of these meetings suggest that the ‘deemed members’ continue to show apathy in the core business of the NHRC’s functions,” Henry Tiphagne said.

That the practice of appointing “deemed members” in the NHRC and SHRCs was ceremonial and ineffective was not far from the truth. Instead of appointing such chairpersons of the commissions mechanically, activists said, Section 3(2)(d) of the Act should be amended to increase the number of members in the NHRC in order to ensure representation from diverse communities on the basis of language, region, religion, caste, tribe, ethnicity and gender.

Similar amendments must be made in Section 21(2)(c) pertaining to SHRCs, AiNNI said.

AiNNI also said that the existing provisions on the eligibility criteria of chairpersons of the NHRC and SHRCs should be retained to prevent the government from taking control of the commissions.

According to AiNNI, the amendment on appointments would encourage unhealthy competition among members of the judiciary. The total number of members of the NHRC should be increased by at least five times and they should be drawn from different sections of civil society, it said.

AiNNI also sought a re-evaluation of the powers and functions of “deemed members” and the formation of an independent appointment committee with members having no political affiliation. Such an independent committee would ensure justice to the victims of atrocities, it said.

AiNNI said that on April 12, 2017, the U.N. High Commissioner for Human Rights had dispatched a letter to the then Union Minister of External Affairs, expressing concern over the working module of the NHRC. In the letter, the High Commissioner had stated that “establishing an open, transparent and merit-based selection process for the members of the governing body of the NHRC by giving equal representation to all sections of the society” was necessary.

The High Commissioner urged the government to appoint an advisory council to the governing body of the NHRC comprising non-government organisations, civil society actors and independent experts, with no voting rights.

The letter urged the establishment of three additional offices for the NHRC in the eastern, western and southern parts of India, besides instituting a toll-free national helpline for grave violations of human rights. The NHRC should be empowered to cover all relevant cases involving rights violations of all paramilitary forces and the Army, including in Jammu and Kashmir, the letter said.

(In addition to these recommendations, AiNNI said Section 30 of the Act pertaining to the establishment of Human Rights Courts and Section 31 for appointing Special Public Prosecutors for these courts should be evaluated.)

As per the provisions, courts and special prosecutors had been appointed in several States. But these courts, the High Commissioner pointed out, had remained on paper all these years in the absence of any notification of offences.

However, none of these recommendations was taken into account by the government while formulating amendments to the Act.

“It was passed in haste. It is of utmost importance for us to protect human rights institutions without any compromises. It is still not too late. These amendments, before getting effected into an Act, can be put under critical legislative review. If rights commissions are to play a meaningful role in society, they must include civil society and human rights activists as members,” Henri Tiphagne said.

<https://frontline.thehindu.com/the-nation/article29068754.ece>