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HUMAN RIGHTS PROTECTION AT STATE LEVEL: A Critique of the Functioning of SHRCs in India

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Notes and Comments

HUMAN RIGHTS PROTECTION AT STATE LEVEL: A Critique of the Functioning of SHRCs in India

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[Abstract: *In the present research paper, the authors' main enquiry focuses on analysing the functioning of 'State Human Rights Commissions' (hereinafter 'SHRCs'). The authors primarily look into the constitution of the SHRC in the state, which is a statutory mandate under the Protection of Human Rights Act, 1993 (hereinafter 'Act'). It was observed on several occasions that numerous states have defaulted in constituting the SHRC till today, even after the issuance of directions from the Apex court and respective high courts.*

The State Commission is constitutionally and statutorily bound to protect human rights and to provide information about its work to the general public. As a redressal body for human rights violations, which are of paramount significance for human beings' natural inalienable rights, public exposure must be made more frequent. It must have easy and all-time access to the individual sitting at the last corner of society. The SHRCs are statutorily entrusted with the function of spreading human rights literacy and of promoting awareness about the safeguards available for the protection of human rights through publications, media, seminars and other available means. Ultimately, this will benefit the general public because victims will be able to approach the SHRCs without any inconvenience, and their issues will be resolved in a time-bound manner with an effective legal remedy, which shall prove to be one of the significant steps in achieving equitable 'access to justice'. In addition to this, authors will also put forward recommendations that will probably help the SHRCs to promote and protect human rights more effectively and fulfil the other objectives entrusted to them.]

I

Statutory Framework on Human Right Protection

The protection of human rights of the individuals should be the primary concern for a democratic state. With passage of time, the scope of human rights has broadened

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through various customs, legislations (national laws and international treaties), and court rulings. The Indian Supreme Court observed:[1]

> Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. Such rights are to be made available as a matter of right. The Constitution and legislations of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to the rule of law put into force mechanisms for their enforcement and protection.

To ensure the human rights of the individuals, India has made several efforts since independence. The modern genesis of human rights protection by nations was initiated back in 1948 by the United Nations.[2] In December 1948, the UN General Assembly adopted the UDHR, a significant step towards formulating and recognising human rights. The UDHR was a non-binding legal instrument and the United Nations had no machinery for its enforcement. The deficiency in relation to enforcement was removed by adopting (i) The Covenant on Civil and Political Rights;[3] and (ii) The Covenant on Economic, Social, and Cultural Rights in December 1965.[4] The first covenant formulated legally enforceable civil and political rights of the individual, and the second mandated the State signatories to promulgate legislation for realising the rights enshrined therein. These Covenants came into force in March and January of 1976 after the requisite number of member States ratified them. Many of the States ratified the Covenants subsequently at the end of 1981.[5] These Covenants thus become legally binding on the ratifying States, including India.

In India, the history of the statutory protection of human rights is traced back to the Protection of Human Rights Ordinance, 1993 to provide for the constitution of a National Human Rights Commission (hereinafter referred to as NHRC) and State Human Rights Commission (SHRC) at central and state level respectively, and Human Rights Courts for better protection of human rights for matters connected therewith. The Ordinance was subsequently replaced with enactment of The Protection of Human Rights Act, 1993[6] promulgated in 1993 with an objective to provide for the constitution of national human rights commission, state human rights commissions[7] in a hierarchical manner at national and state level for protection of human rights and any other matter connected thereto.[8] The Act also

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1 *Ram Deo Chauhan* v. *Bani Kanta Das*, (2010) 14 SCC 209 (India), p. 223.
2 G.A. Res. 217A, UDHR, Dec. 10 1948.
3 G.A. Res. 2200A(XXI), ICCPR, Dec. 16 1966.
4 G.A. Res. 2200A (XXI), ICESCR, Dec. 16 1966.
5 *D.K. Basu* v. *State of W.B. (2015) 8 SCC 744 page 757.*
6 The Protection of Human Rights Act, 1993 (Act No. 10 of 1994).
7 The Protection of Human Rights Act, 1993, Ss. 3 and 21.
8 Preamble, The Protection of Human Rights Act, 1993.

lays down provisions for the constitution of 'Human Rights Courts' for the speedy trials of offences involving human rights violations.[9]

Chapter 4 of the Protection of Human Rights Act, 1993, deals with the constitution and other related provisions of State Human Rights Commissions.[10] The SHRC is statutorily bound to prepare and submit the annual report about its functioning to the state government as a part of its statutory obligations.[11] The state government will put forth the same annual report before the state legislature for discussion.[12] There are various statutory functions entrusted with the SHRCs, such as enquiring, intervening, reviewing, and making recommendations in cases of human rights violations.[13] Further, the SHRCs are empowered to take assistance from the investigative agencies of the central government or any state Government with the concurrence of the central government or the state government.[14] Moreover, the Commissions are empowered to make inquiries into the complaints of violations of human rights and initiate the prosecution proceedings before the appropriate court if, during the inquiry, any case is made out.[15]

Research Problem and Scope of the Study

In this paper, the authors primarily focus on enquiring various research questions related to the functioning of the SHRCs in different state jurisdictions. For the protection of human rights, the smooth and active functioning of the SHRC is very important. This study delves into the various questions related to SHRCs, such as their website updates, website accessibility in terms of language (other than English), the quality and data made accessible for public observation, number of vacant positions and government schemes advertised on the SHRCs websites, activism, research and literary activities of SHRCs. The study further inquires about the allocation and expenditure of funds and recent trends related to it, as well as the number of cases registered, disposed-off cases, and cases where the SHRCs took *suo-motu* cognisance.

It has been observed a number of times that the victims were in fear after the incident and refrained from going against the state authorities' human rights violations, which are already powerful. Sometimes, the victims have the means to access justice due to their financial and social positions. In such situations, it is the duty of the SHRCs to trace out such cases of human rights violations and take cognisance on its own. In annual reports, the SHRC is statutorily required to

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[9] S. 30, The Protection of Human Rights Act, 1993.
[10] Ss. 21-29, The Protection of Human Rights Act, 1993.
[11] S. 28(1), The Protection of Human Rights Act, 1993.
[12] S. 28(2), The Protection of Human Rights Act, 1993.
[13] S. 12, The Protection of Human Rights Act, 1993.
[14] S. 14, The Protection of Human Rights Act, 1993.
[15] Ss. 17 and 18, The Protection of Human Rights Act, 1993.

describe its functioning throughout the previous year. The researcher will focus on analysing the annual report and data made available on the official websites of various SHRCs throughout the country. The researcher will also check the activeness of the SHRCs in the dissemination of information in the public domain, as it is a statutory duty and citizens' right to information.

II

D.K. Basu v. *State of West Bengal* (2015): A revelation of the plight and the discourse

The Facts

In 2015, a writ filed before the Apex court, mentions one of the prayers that specific directions should be issued to the states for the constitution of SHRCs. The *amicus* (Dr Abhishek Manu Singhvi) submitted that in the States of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura, and Nagaland, the SHRC had not been set up even after two decades of enactment of the Protection of Human Rights Act, 1993.[16] The *amicus curiae* further submitted that Mizoram, Meghalaya, Tripura, and Nagaland are all disturbed States with problems of insurgency, foreign immigration, tribal warfare, and ethnic violence, which are rampant in these States making it necessary to have a proper authority to look into such violations and grant redress wherever required.[17] Despite the opportunity given to the states, they have failed to set up SHRCs and have not come forward to offer any justification for their omission to do so.

Arguments by States

Some of the defaulting states argued that the statute mentions: *A State Government may constitute a body to be known as Human Rights Commission,*[18] clearly suggests that the State Government may or may not choose to constitute such a body. In the absence of any mandatory statutory requirement under the Act, the constitution of a SHRCs be ordered by this Court in the present proceedings.[19] The court found no merit in the arguments forwarded by the defaulting States. There are many reasons why the Protection of Human Rights Act of 1993 symbolises the culmination of a

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[16] *D.K. Basu* v. *State of W.B.,* (2015) 8 SCC 744.

[17] *Id.,* p. 744.

[18] S. 21, The Protection of Human Rights Act, 1993.

[19] *Supra,* note 16, p. 744.

long-drawn struggle and crusade for the protection of human rights in this country as much as elsewhere in the world.[20]

Interpretation of 'may' under Section 21 of the Act

While interpreting Section 21, the court has taken the assistance of relevant precedents, the statement of objects, and reasons, along with various provisions of the Protection of Human Rights Act, 1993. Firstly, the Court referred to the statement of objects and reasons of the Act[21] and mentioned that India is a party to the ICCPR and ICESCR adopted by the United Nations General Assembly. The statement of objects and reasons also referred to the wide-ranging discussions that were held at various fora such as the Chief Ministers Conference on Human Rights, seminars organised in various parts of the country and the meetings with leaders of various political parties, which culminated in the formulation of the Protection of Human Rights Act, 1993. *The court stressed that the significance of human rights and the need for their protection and enforcement is thus beyond the pale of any debate.* In this backdrop, the court examined the language of Section 21 of the Act. It is true that a plain reading of the provisions may give the impression that the setting up of an SHRC is at the discretion of the State governments, but a closer and more careful analysis of the provisions contained in the Act dispel that impression.[22] A plain reading of Section 21 would show that Parliament used the word 'may' in Section 21 (1) while providing for setting up a SHRC. In contrast, Parliament has used the word *'shall'* in Section 3 (1) while providing for the constitution of a NHRC.

The argument forwarded by the defaulting States was that two different expressions were used in the Act, dealing with the subject of an analogous nature, which clearly indicates that the NHRC is mandatory while the SHRC is not. The court found that the argument is undoubtedly attractive but does not stand close scrutiny. The use of the word '*may'* is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The court held that the legal position on the subject is fairly well settled by the number of decisions of this court. The stated position is that using the word '*may*' does not always mean that the authority upon which the power is vested may or may not exercise that power. Whether or not the word '*may*' should be construed as mandatory and equivalent to the word '*shall*' would depend upon the *object and the purpose of the enactment* under which the said power is conferred, as also related provisions made in the enactment.[23]

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[20] *Supra,* note 16, p. 744.

[21] The Protection of Human Rights Act, 1993.

[22] *Supra,* note 16, p. 757.

[23] *Supra,* note 16, p. 758.

This Court has a long list of judgements starting with *Sardar Govindrao* v. *State of M.P.*[24] has followed the above line of reasoning and authoritatively held that using the words 'may' or 'shall' by themselves does not necessarily suggest that one is directory and the other mandatory. Still, the context in which the said expressions have been used, as also the scheme and the purpose underlying the legislation, will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same.[25]

The Supreme Court, in another case of *N. D. Jayal* v. *Union of India*[26] interpreted the provisions of the Environment (Protection) Act, 1986 to mean that the power conferred under the Act was not a power simpliciter but was a power coupled with duty. In *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat* (1997) 7 SCC 622, the Court held that the *scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory, or directory* and that even if that duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right. Numerous other pronouncements of this Court have similarly addressed and answered the issue.[27]

The Supreme Court held that it is unnecessary to refer to all such decisions where 'may' was interpreted differently from its literal interpretation. But it refers to the case of *Bachchan Devi* v. *Nagar Nigam, Gorakhpur*[28] where the court held that:

> …It is well settled that using the word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force.[29]

The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose, and effect. Depending upon the context, 'may' does not always mean may. *If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an*

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[24] AIR 1965 SC 1222.

[25] *Supra,* note 16, p. 760.

[26] (2004) 9 SCC 362.

[27] *Supra,* note 16, p. 761.

[28] (2008) 12 SCC 372, pp. 383-84, para 18.

[29] *Id.,* pp. 383-84, para 18.

obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of compulsion or obligation.[30] Where the statute was passed purely in the public interest, and the rights of private citizens have been considerably modified and curtailed, the power is conferred upon the statutory body by using the word 'may'. That power must be construed as a statutory duty. Where to interpret the word 'may' as a directory would render the very object of the Act as nugatory; the word 'may' must mean 'shall'.[31] The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent, and using the words 'may' and 'shall' is not decisive of its discretion or mandates. Using the words 'may' and 'shall' may help the courts ascertain the legislative intent without giving to either a controlling or a determining effect. The courts have to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute, which is of prime importance, and the actual words employed.[32]

The court examined the scheme of the legislation and the provisions of *Section 21* in the light of the above-mentioned principles, and the following broad features may be delineated:

- The Act is aimed at providing an efficacious and transparent mechanism for the prevention of violation of human rights at the national level as well as at the State level.
- That the NHRC is vested with the powers and functions set out in Chapter III. comprising Sections 12 to 16.[33] While in relation to SHRC, similar provisions of Sections 9, 10, 11, 12, 13, 14, 15, and 18 apply *mutatis mutandis* subject to certain modifications referred to in clauses (a) to (d) of the said provision. This implies that the powers exercisable by the SHRCs under the said provisions are *pari materia* with the powers exercisable by the NHRC.
- That while Section 3 does use the word 'shall' in relation to the constitution of an NHRC, the absence of a similar expression in Section 21 and the use of the word 'may' as observed by this Court in *Bachchan Devi case* (2008) 12 SCC 372 makes little difference as the scheme of the Act and the true intention underlying the legislation is to be determined by the Court depending upon whether the power was coupled with a duty to exercise the same or was conferment of power simpliciter.[34]

Moreover, the court held that, significantly, Section 12 is applicable to the SHRCs and also provides for not only inquiries into complaints of violation of human rights or abetment thereof and negligence in the prevention of such violation by a public

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[30] *Id.,* pp. 383-84, para 19.
[31] *Id.,* pp. 383-84, para 20.
[32] *Id.,* pp. 383-84, para 21.
[33] The Protection of Human Rights Act, 1993.
[34] *Id.,* note 4, p. 763.

servant but also matters enumerated in clauses (a) to (g). The provision enjoins upon the SHRCs the task of spreading human rights literacy among various sections of society and promoting awareness about the safeguards available for the protection of those rights through publications in the media, seminars and other available means and to encourage the efforts of non-governmental organisations and institutions working in the field of human rights; and to perform all such other functions as may be considered necessary for the promotion of human rights. All these functions are critical for promoting and protecting human rights at the State level. *The state governments cannot frustrate the objects underlying the legislation but plead that the legislative measure notwithstanding, they can, at their discretion, keep the setting up of the Commissions at bay. Any such contention will be destructive of the scheme of the Act and the promise the law contains for the protection of the rights of the people.*[35]

The court finally concluded that under section 21, it is a statutory obligation upon the states to constitute SHRCs.

The court issued specific guidelines in this matter, such as the States of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura, and Nagaland shall, within a period of six months from the date of judgment, set up the State Human Rights Commissions for their respective territories with or without resort to the provisions of Section 21 (6) of the Protection of Human Rights Act, 1993.[36] All vacancies for the post of Chairperson or the Member of SHRC, wherever they exist at present, shall be filled up by the State Governments concerned within a period of three months from today.[37] Vacancies occurring against the post of Chairperson or the Members of SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs.[38]

III

Current Status of Human Rights Violations in India

The cases of human rights violations in the country, as registered by the National Human Rights Commission (NHRC), have already increased by around 37%

[35] *Supra,* note 16, p. 763, para 19.
[36] *Supra,* note 16, para 38.1.
[37] *Supra,* note 16, at page 771, para 38.1.
[38] *Supra,* note 16, p 771, para 38.1.

between 2020-2021 and 2021-2022.[39] The state governments in Uttar Pradesh,[40] Assam,[41] and Madhya Pradesh[42] are taking coercive actions against the accused persons without following the procedure laid down by law. 40% of the total cases of human rights violations are from the most populous State of Uttar Pradesh only.[43]

On a number of occasions, the state authorities, including police, act arbitrarily against the accused individuals and insist on instant delivery of justice through encounters and bulldozing the residential and commercial properties even before the matter reaches to the courts. The cases of human rights violations are on the steep rise due to excessive and arbitrary use of state power, which is observed similarly in other states. The situation demands more activeness of the NHRC and SHRCs to work for the effective implementation of statutory mandates entrusted to them. In such situations, the role and functioning of the SHRCs become extremely important for securing the basic human rights of the citizens guaranteed under the Constitution and other statutory enactments.

Collection and Analysis of Data

To inquire about the research questions enumerated above, the authors collected data by visiting the official websites of NHRC and SHRCs. The data collected is summarised below and interpreted under various heads to analyse the functioning of SHRCs in India.

Website Links, Last Available Annual Report and Case Status Reports

The state-wise data regarding the State Human Rights Commissions (SHRC) is presented, detailing their website links, the last available annual report year, and the status of their case reports.

- Andhra Pradesh: No website was found for the SHRC, and even on the NHRC website, no link to the SHRC was provided. No annual report or case status report could be located.

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[39] Government of India, Ministry of Home Affairs, Rajya Sabha, Unstarred question no. 3088, *available at*: https://pqars.nic.in/annex/256/AU3088.pdf (last visited 10 Jun. 2023).

[40] Special Correspondent, *U.P. tops list in human rights violation cases 3rd year in row: MHA*, THE HINDU (Dec. 08 2021) *available at*: https://www.thehindu.com/news/national/other-states/up-tops-list-in-human-rights-violation-cases-3rd-year-in-row-mha/article37904825.ece (last visited on 22 Nov. 2022).

[41] The Meghalayan Bureau, *Assam in 3rd position with deaths in police encounters*, THE MEGHALAYAN (Jul. 31 2022) *available at*: https://themeghalayan.com/assam-in-3rd-position-with-deaths-in-police-encounters/ (last visited 22 Nov. 2022).

[42] Anando Bhakto, *Tribals at the receiving end in Madhya Pradesh*, THE FRONTLINE (Jul 24, 2022) *available at*: https://frontline.thehindu.com/the-nation/human-rights/tribals-at-the-receiving-end-in-madhya-pradesh/article65666370.ece (last visited 22 Nov. 2022).

[43] *Supra note* 8.

- Assam: The SHRC website is http://www.ahrc.gov.in/, but no annual or case status report is available. Information about cases on the website is only available up to 2008.
- Bihar: The SHRC website is http://bhrc.bihar.gov.in/ Case status report is available; it was last updated in 2020. No annual report was found.
- Chhattisgarh: The SHRC website is https://hrc.cg.gov.in/, No annual report and case status report is available.
- Goa: The SHRC website is https://goahumanrightscommission.goa.gov.in/, last update to case status was made in 2021. No annual report or current case status report is available.
- Gujarat: The SHRC website is https://gshrc.gujarat.gov.in/ . The last annual report available is for 2019-20, case status report was updated until April 2022.
- Haryana: The SHRC website is https://hhrc.gov.in/ . No annual report is available, the case status report has been updated until October 2022.
- Himachal Pradesh: The SHRC website is https://hphrc.hp.gov.in/ . No annual report is found, budget allocation details are available, but 91% of budget expenditure has been allocated to salaries. Case status report is available.
- Jharkhand: No website was found for the SHRC, no annual or case status reports are available.
- Karnataka: The SHRC website is https://kshrc.karnataka.gov.in/english . An annual report for 2020-2021 is available, with a case status report.
- Kerala: The SHRC website is https://www.kshrc.kerala.gov.in No annual or case status reports are available
- Madhya Pradesh: The SHRC website is http://hrc.mp.gov.in/Default.aspx. No annual or case status reports are available.
- Maharashtra: The SHRC website is https://www.mshrc.gov.in/. An annual report for 2020-2021 is available, but no details of post vacant and funds expenditure, no case status report is available, and the last update on the website was made in August 2011.
- Manipur and Meghalaya: No website was found for the SHRC, and no annual or case status reports are available.
- Odisha: The SHRC website is https://ohrc.nic.in/. The last annual report is for 2015-2016, and the case status report is available.
- Punjab: The SHRC website is http://www.pshrc.net /; the last annual report available is for 2003-2004. A case status report is available.
- Rajasthan: The SHRC website is https://rshrc.rajasthan.gov.in/. An annual report for 2022-2023 and a case status report are available.
- Sikkim: The SHRC website is http://sshrc.nic.in/. An annual report for 2021-2022 is available, but there is no case status report.

- Tamil Nadu: The SHRC website is https://shrc.tn.gov.in/, no annual or case status reports are available.
- Telangana: No website was found for the SHRC, no annual or case status reports are available.
- The SHRC website is https://thrc.tripura.gov.in/. no annual report is available; a case status report is available.
- Uttar Pradesh: The SHRC website is http://uphrc.up.nic.in/. No annual report is available, and no case status report is available.
- Uttarakhand: No website was found for the SHRC, but (the link provided on the NHRC website opens on a website of the UKHRC Article writing tool. http://www.ukhrc.net/) no annual case status reports are available.
- West Bengal: The SHRC website is http://wbhrc.nic.in/. No annual report is available; case status report is available.

It is to be noted that the SHRCs have been constituted in 25 states, but in Arunachal Pradesh, Nagaland, and Mizoram, the status of SHRC constitution cannot be ascertained until June 14, 2023.

Accessibility of Websites, Availability of Online Complaint Registration Portals, and Government Policy Advertisement on Websites

Website Accessible in Language (other than English)

In the states of Andhra Pradesh, Jharkhand, Manipur, Meghalaya, Telangana, and Uttarakhand, there are no websites for the SHRCs and in the state of Punjab website is not functional.

Other states like Assam, Chhattisgarh, Haryana, Himachal Pradesh, Goa, Gujarat, Odisha, Sikkim, Tripura and West Bengal have websites, but the same are not accessible in languages other than English.

The states that have websites and are accessible in other languages along with in English include Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh, having accessibility in Hindi language, Tamil Nadu in Tamil Language, Maharashtra in Marathi, Kerala in Malayalam, Karnataka in Kannada are available.

Online Portal for Registration of Complaint/ HRC Network Link

Regarding online complaint registration, Bihar, Chhattisgarh, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Tripura and Uttar Pradesh have online portals for registration of complaint, while Assam, Goa, Gujarat, Himachal Pradesh, Rajasthan, Sikkim, Tamil Nadu, and West Bengal do not have any online complaint portals.

Govt. Policies Advertisement on SHRC Websites

In terms of government policy advertisement on SHRC websites, only states like Chhattisgarh, Goa, Haryana, Rajasthan, and Tripura, Uttar Pradesh actively advertise policies.

IV

Citizen's Right to Know and Availability of Information on SHRCs Portals

The Right to information is a universally recognised human right. The Universal Declaration of Human Rights (UDHR) recognises the right to know as a human right.[44] The European Convention on Human Rights also recognises an individual's right to access information.[45] Every citizen has a fundamental right to information under the Constitution of India.[46] The Apex Court holds that the right to information was harnessed as a tool for promoting development, strengthening the democratic Government and effective delivery of socio-economic services.[47] The people of the country have a right to know every public act, everything done in a public way by public functionaries and the right to get information in democracy is recognised all throughout, and it is a natural right flowing from the concept of democracy.[48] In another case, the Supreme Court, wherein it was observed that people at large have a right to know in order to be able to take part in participatory development in industrial life and democracy. The right to know is a basic right to live in this age on our land under Article 21 of our Constitution.[49]

The researchers observed that almost all the SHRCs have shown reluctance to share essential information about their functioning with the public. So, out of 28 States, only 25 have constituted the SHRC. Out of 25 SHRCs, 28% (total 7) of SHRCs have no official websites even today, when we are living in the era of Digital India. There

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[44] G.A. Res. 217A, UDHR, Dec 10, 1948, Article 19 – *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

[45] Council of Europe, European Convention on Human Rights, Nov 4, 1950, Article 10 – *Freedom of expression- Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

[46] The Constitution of India, 1950 Article 19(1)(a).

[47] *Namit Sharma* v. *Union of India,* (2013) 1 SCC 745.

[48] *Union of India* v. *Assn. for Democratic Reforms,* (2002) 5 SCC 294.

[49] *Reliance Petrochemicals Ltd.* v. *Indian Express Newspapers,* AIR 1989 SC 190.

are cases where the SHRC websites are present, but they have not been updated for a considerably long period. There are only 3 SHRCs, *i.e.*, Rajasthan, Haryana, and Gujarat, which update their annual reports on websites on a regular basis.[50] Several SHRCs were updated in or before 2014, which shows the clear intent of the SHRC to block access to information to the general public.[51]

From the analysis on Website Links, Last Available Annual Report and Case Status Reports, the authors observed that the SHRCs blocked vital information and failed to implement the statutory provisions in true spirit and letter. It becomes very important to access the authorities in case of violation of their human rights. This also affects the right to access justice because, due to a lack of awareness and accessibility to approach proper forums, the citizens cannot register complaints against any form of human rights violations.

Table

S.No.	*Total States*	*Total SHRCs*	*Total SHRCs with website*	*SHRCs with no website or non-functional website*	*Total SHRCs with Annual Reports (Year 2020-21)*
1.	28	25	18	7	4

The major statutory loophole is that there is no prescribed time limit for submission of annual reports by the SHRC to submit the annual reports.[52] The annual reports are only made available to the central and state governments. Further, the SHRCs are not statutorily bound to make the annual reports publicly available, which is another transparency issue connected with SHRCs. Information blockage is one of the major issues in the functional transparency as well as the accountability of the SHRCs.

Online Reporting Mechanism

In the present digital era, when the whole globe goes online, the SHRCs should develop mechanisms for registering online complaints. But during the present study, it was observed that in 14 states out of 25 SHRCs, 40% of SHRCs do not have any kind of online system or are not connected with the Human Rights Network[53] which leads to the main hurdle in access to justice for a common citizen in cases of human rights violation.

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[50] *Id.*

[51] *Id.*

[52] *Id.*, note 6, Ss. 20 and 28.

[53] Human Rights Commissions Network, *available at*: https://hrcnet.nic.in/HRCNet/public/Home.aspx (last visited 10 Jun. 2023). It is an integrated portal of NHRC and SHRCs facilitates the registration of complaints of human rights violations.

Staff Strength and Budget Allocation and Expenditure

The SHRC is statuary bound to submit annual reports, but most of the time, those reports are not uploaded on their official websites, and the general public has no access to such reports. The authors observed that only 16% of the total 25 SHRCs (28 states) had uploaded their annual reports for the year 2020-21. Other states failed to upload their reports on official websites and hide them from the public, which is, again, a violation of human rights. Even the SHRCs, whose annual reports are available, the essential details about its functioning were not mentioned therein. Therefore, the overall story can be summarised as the SHRCs failed poorly to comply with their statutory duties and it is noteworthy that there is no statutory mechanism to enforce the observance of such duties by SHRC.

The Karnataka SHRC annual reports mentioned that out of the 111 posts sanctioned to the Commission, 31 officers/staff are working on deputation while 56 officers/staff are working on a contract basis, and the remaining 24 posts are vacant on 31st March 2021.[54] The above data shows that SHRCs lack staff strength as most employees work on a contract basis, and a large chunk of the budget allocated is also spent on employees' salaries. The Sikkim SHRC allotted a budget of 2.55 crores during the financial year 2021-22, of which 54 lakhs Rs. were surrendered to the government.[55] In the whole year, they have not organised a single awareness programme despite having funds. The reports mention that due to COVID, the awareness programme was not organised, but the SHRC may have opted for online programmes.[56] Further, it is rarely observed that SHRCs allocate a substantial amount of funds to spread awareness and research about human rights and remedies sought in case of violations.

Pendency of Cases

In our country, the pendency of the cases is not a new issue that results in delaying justice to the individuals who are already victims. In a present study, the authors found that 64% of SHRC websites show no data related to the registration, disposal of cases and *suo-motu* cases. As such, vital information is not made available to the public. Even in cases where some SHRCs have provided information about the cases, the data mentioned is so vague that no analysis can be drawn from such data.

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[54] The Karnataka State Human Rights Commission, 14TH ANNUAL REPORT 2020-21, p. 24, *available at*: https://kshrc.karnataka.gov.in/storage/pdf-files/Budget%202019.pdf (last visited 20 Nov. 2022).

[55] The Sikkim State Human Rights Commission, ANNUAL REPORT 2020-21, Annexure III, p. 45, *available at*: https://sshrc.nic.in/annualreports.html (last visited 10 Jun. 2023).

[56] *Id*.

Accessibility of the SHRC Website

The researchers also analysed the SHRC websites' content on accessibility for non-English users. It is observed that 68% of the SHRC websites only have content in English, and the rest, 32%, have content in one language other than English. Looking at the diversity of languages in India, the SHRC websites must have content in vernacular languages, at least those mentioned in Schedule VIII of the Indian Constitution.

Promotion of Government Schemes

During the analysis of content available on the SHRC websites, it was observed that 24% of SHRC websites have content related to the promotion of other government welfare and other schemes.[57] The SHRCs, being a judicial body, should not mention the promotion of government schemes as it is presumed to be governmental interference. The government has multiple platforms to promote its welfare schemes.

Activism, Research, and Literacy

The functions of state human rights commissions are not limited to keeping check and/or intervening in proceedings involving any allegation of violation of human rights[58]. They have an equally important function of utilising their machinery in Activism, Research and Literacy in the area of human rights.[59] The broad purview of this area includes visits to jails and other state institutions to study the living conditions of inmates and make recommendations thereon,[60] review the constitutional and statutory safeguards and make recommendations for their effective implementation,[61] review factors hindering the enjoyment of human rights and recommend remedial measures,[62] undertake and promote research in the field of human rights,[63] spread human rights literacy and promote awareness regarding available safeguards through various means,[64] encourage the work of institutions working in the field of human rights including NGOs[65] and perform any other function necessary for the promotion of human rights.[66] These functions of human rights commissions under Section 12 enable them to play their proactive roles not

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[57] *Id*.

[58] Section 12 (a) and (b) r/w Section 29, The Protection of Human Rights Act, 1993.

[59] Collective reading of Section 12(c) to 12(j) except clause (f), r/w Section 29, The Protection of Human Rights Act, 1993.

[60] S. 12(c), The Protection of Human Rights Act, 1993.

[61] S. 12(d), The Protection of Human Rights Act, 1993.

[62] S. 12(e), The Protection of Human Rights Act, 1993.

[63] S. 12(g), The Protection of Human Rights Act, 1993.

[64] S. 12(h), The Protection of Human Rights Act, 1993.

[65] S. 12(i), The Protection of Human Rights Act, 1993.

[66] S. 12(j), The Protection of Human Rights Act, 1993.

only to realise the statute's objectives but also to achieve constitutional goals of ensuring fundamental rights.[67] In the light of this interpretation, the Commissions have much to contribute in the area of Activism, Research and Literacy relating to human rights. For making an analysis of the aforementioned functions, authors have made a systematic classification by identifying three broad categories such as 'Activism', which covers functions under section 12 (c), (i), and (j) (though the functions under section 12 (j) are plenary in nature, still for the sake of systematic classification, it has been kept under this criteria), 'Research' under section 12 (d), (e), and (g) and Literacy under section 12 (h).

The authors struggled to find information about such an area from the official websites. SHRCs with unascertainable status and those having no websites are not included in the discussion below:

Activism: SHRCs engaging in activities relating to activism under Sections 12(c), (i), and (j) include Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, and Tripura.

Research: SHRCs conducting research under Sections 12(d), (e), and (g) are Karnataka, Maharashtra, Punjab, and Rajasthan.

Literacy: SHRCs focusing on literacy initiatives under Section 12(h) are Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, and West Bengal.

Under the criteria of 'Activism', all the activities being conducted by SHRCs may not find their specific mention in the relevant provision of the statute but can be construed to be covered under 'any other function necessary for the promotion of human rights' as provided under section 12 (j). Authors found seven SHRCs working in this area namely Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Rajasthan and Tripura. Gujarat SHRC has promulgated citizens' charter and have made their website following international accessibility standards which helps people like persons with disabilities to explore the website more effectively and Karnataka has also done the same. In addition thereto, Karnataka has come up with a mobile app and helpline number. Madhya Pradesh SHRC has been conducting jail inspections and public hearings (*Jan Sunwai*). They initiated *Aayog Mitra* Scheme in 2006 for appointing volunteers from civil society on non-payment basis to assist commission. Maharashtra SHRC has signed MoUs with prestigious institutions and paid visits to old age homes. Punjab commission has been paying visits to various institutions till 2017. Rajasthan SHRC is actively visiting places which are more

[67] *Beenu Rawat* v. *Union of India*, (2013) 16 SCC 430 (India), para 23: *Under that Act the definition of "Human Rights" is large enough to include rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution*.

vulnerable to human rights violations like camps, jails etc. They have initiated the Ayog *Apke Dwar* program. Tripura has provided a Toll-Free number to reach SHRC.

Under the criteria of 'Research', we found only three SHRCs seemingly working: Maharashtra, Punjab and Rajasthan. Notably, the Maharashtra Commission has a Memorandum of Understanding with the Tata Institute of Social Sciences and Maharashtra National Law University, Mumbai. They published a Fact-Finding Report on Promoting, Monitoring, and Upholding Human Rights for Marginalized Sections of Society in Maharashtra in collaboration with TISS in 2022 and 2023. They have also offered consultancy on Good Governance. In Punjab, HRC invites research proposals and has Guidelines for Research and Proposal Formats for Research and Seminars, etc., uploaded on a website; Rajasthan also has the same. Tamil Nadu published a Journal and Souvenir on the occasion of its silver jubilee.

Under the criteria of 'Literacy', the authors found the following: Statute and functions-related information is available everywhere. Assam SHRC has important links and FAQs on its website. Bihar SHRC offers internships and has uploaded awareness material produced by NHRC, NHRC guidelines on various issues, and important decisions with issue-wise classification on the website. In Chhattisgarh, SHRC has uploaded internship project reports on various issues of human rights and outdated magazines published in 2011 and 2012; the latest internship was offered in June 2021. In Goa, only important cases are available on the website. Gujarat SHRC has made FAQs and useful links available on the website. They have conducted different student visits, awareness programs, training programs, workshops, TV speeches and internships, the reports and records of which are available on websites as awareness material. Haryana has magazines published in 2015 and 2016, material regarding police functioning uploaded in 2016 and also the news regarding Programs conducted till 2016. The material is considerably outdated. Surprisingly, no content relating to any of the criteria mentioned above was found on the Himachal Pradesh HRC website. Karnataka has only uploaded important links, and Kerala uploaded bulletins, publications (last uploaded in 2014) and important links, along with offering internship programs. Madhya Pradesh SHRC conducted a workshop in 2022 and is conducting internship programs within set intervals. TV speeches are available on websites. SHRC in Maharashtra has been conducting internship programs and awareness programs. They have a list of Institutions imparting human rights education, important links, NHRC Guidelines, classification of human rights issues and literacy material uploaded on its website. Odisha has nothing but FAQs published. In Punjab, cartoon sketches spreading awareness, FAQs, speeches and literacy material are available on websites. Rajasthan has taken a lead where they have not only taken steps regarding public awareness, training and sensitization but also have published a good amount of resource material on its website, organizing various competitions like debates etc. along with offering internships. As per the information available on Sikkim's portal,

they conducted awareness programs in 2018 and 2017 and also celebrated Human Rights Day in 2020. Selected speeches with FAQs are available on the website. The Tamil Nadu SHRC website contains links and FAQs. They conducted several competitions to commemorate the Silver Jubilee. Tripura SHRC publishes a description of rights under the Know Your Rights tab, a newsletter, and literature on its website. It also offers periodical internships. Uttar Pradesh provides links, important cases (updated till 2014) and offers internships. SHRC in West Bengal published special reports (till 2015), newsletters (till 2005), news (till 2017) and links on its website. It also offers internships.

From the observations as aforementioned, it is identified that the SHRCs are lagging much behind in the area of 'Activism'. Except for a few, the Authors neither found many SHRCs making regular visits to the areas or institutions vulnerable to human rights violations nor found them collaborating with local civil society organisations. It is also found that the wide scope provided under section 12 (j) is not being utilized. Though, some of the SHRCs are coming up with new initiatives a lot is left to be done to realize the goals of the statute. The area of 'Research' is lagging far behind as the authors could not find activities relating to sections 12 (d) and (e). However, the Maharashtra Commission is working with good institutions to conduct research. Punjab and Rajasthan have provisions for inviting research proposals, but no productive outcomes have been found on the websites. It is also identified that though all the SHRCs have made some or the other literacy material available on their websites, most of the SHRCs are constraining their functions on 'Literacy' to providing internships, publishing old awareness material, FAQs, links and reports of their programs on their websites. Few have conducted constructive exercises in the form of seminars, workshops, debates or the activities of nature.

However, the possibility of activities that are not uploaded on websites but conducted in reality cannot be denied.

VII

Conclusion and Suggestions

The authors in the first part of the paper cover the brief background of enacting the Protection of Human Rights Act, 1993 and the constitution and functions of the State Human Rights Commissions provided under the Act. In the second part, the authors visited the websites of the SHRC constituted by different state governments. The main focus is on the functioning of these commissions, and to check their functioning, we focus on inter-alia availability of information to the public about its working affairs, the budget allocation, staff strength, budget expenditure, the pendency of cases, and *suo-motu* cognizance.

The authors seek to put forward some workable suggestions for better functioning of the SHRCs to assist them in achieving their constitutional and statutory objectives. The Protection of Human Rights Act, 1993 should be amended in order to create statutory obligations on SHRCs for ensuring necessary flow of information to the general public and for making the information publicly accessible. This will not only ensure more awareness and literacy but also create more transparency towards working of the SHRCs. The easy access to important information may enable the victims of human rights violations to approach the authorities without any hurdles. It is significant for commissions to utilize the Information and Communication Technology Tools in disseminating such information. Regular updating of websites, dedicated social media accounts and use of electronic media can play a considerably important role in this area.

In the area of Activism, Research, and Literacy, the much-needed proactive approach of the SHRCs is missing. This is the domain where there is a huge gap and the commissions have wide scope to play their roles. There is a large scope for SHRCs to collaborate with local NGOs and other institutions and the said collaborations can be utilized for producing various productive results in the area of protection and promotion of human rights. A provision like section 12 (j) which provides wide space to commissions, must be truly utilized with a proactive approach. This is the area where the SHRCs have to look for innovative approaches to reach to the people keeping in mind the changing dimensions of rights, violations and growth in technology. Collaborations with institutions, NGOs and other stakeholder organizations, active and continuing research, review the existing framework and recommending the productive measures are seriously lacking.