Chapter IV

West Bengal Human Rights Commission: Structure, Processes and Functions.

Introduction

It cannot be denied that structure, processes and functions of any organization is the reflection of the effectiveness of the said organization. If the structure of any organization is not coherent, it must affect the processes and functions of the said organization and at the same time the purposes will not be fulfilled for which that very organization stands for. This chapter deals with the structure, processes and functions of the West Bengal Human Rights Commission (WBHRC). This chapter will try to focus itself on two main things - the structure, processes and functions of the WBHRC according to the Protection of the Human Rights Act, 1993 and at the same time, its consequences.

Structure

Under Chapter V of The Human Rights Act, Section 21(1) provides that a State Government may constitute a Human Rights Commission according to the name of the concerned state. The Government of West Bengal constituted The West Bengal Human Rights Commission vide notification no. 42 HS/HRC dated 31.01.1995 to exercise the powers conferred upon and to perform the functions
assigned to the State Commission under Chapter V of the protection of Human Rights Act.

Section 21(2) of the Human Rights Act provides that the State Commission shall consist of:

(i) A chairperson who has been a Chief Justice of a High Court.
(ii) The State Commission shall consist of one Member who is, or has been, a Judge of a High Court and
(iii) One Member who is, or has been, a district judge in the concerned State and
(iv) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.²

The Protection of the Human Rights Act was amended in 2006. According to the Human Rights Amendment Act, 2006-No. 43 of 2006, The State Commission shall consist of three Members including Chairperson.³

West Bengal was the first State in Indian federation to establish a Human Rights Commission. The-then Chief Minister of West Bengal was very much interested to establish a State Commission to protect and promote human rights in society. In fact, the-then Chief Minister Jyoti Basu and the-then influential CPI(M) leader Shri Somnath Chatterjee took initiative to establish the West Bengal Human Rights Commission and they also were successful to convince ex-Chief Justice of Calcutta High Court Justice Chittotosh Mukhopadhyay to be
the first Chairperson of the Commission. After his full term of 5 years, ex-Chief Justice of Calcutta High Court Justice Mukul Gopal Mukhopadhyay had taken charge of the Chairperson of the Commission and after his retirement from this post, ex-Chief justice of Calcutta High Court Shyamal Kumar Sen was the Chairperson of the Commission. Justice Shyamal Kumar Sen was the last Chairperson of the Commission. He retired on 31st December, 2008. After his retirement, one of the members of the Commission, Shri Narayan Chandra Sil had been working as the acting Chairperson of the Commission.

In a meeting of the Selection Committee presided over Chief Minister Shri Buddhadev Bhattacharya on October 1, 2010, selected two Names of two existing members of the Commission - Ex Justice Shri Narayan Chandra Sil who is also acting Chairperson of the Commission And Shri Sourindra Nath Roy. 4

Section 21(3) of the Human Rights Act provides that there shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission or it may delegate to him. According to the Section 27(1) of the Human Rights Act, the State Government shall make available to the Commission—
(a) An officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and
(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may
be necessary for the efficient performance of the functions of the State Commission.\(^5\)

Section 27(2) of the Human Rights Act provides that the West Bengal Human Rights Commission may appoint such other administrative, technical and scientific staff as it may consider necessary according to the rules as may be made by the State Government in this behalf.\(^6\)

**Process**

Section 22 of the State Human Rights Act describes the appointment of the Chairperson and other Members of State Commission. Section 21(1) of the said Act provides that the Chairperson and other Members shall be appointed by the Governor by warrant under his hand and seal.

According to Section 21(1) of the Human Rights Act, there shall be a Committee for the appointment of the Chairperson and other Members of the West Bengal Human Rights Commission. This Section provides that every appointment shall be made after obtaining the Recommendation of this Committee.\(^7\)

Section 22(1) also provides the formation of this Selection Committee. The Committee consists of the following Members—

(a) The Chief Minister of West Bengal who is the ex-officio Chairperson of this Committee;
(b) Hon'ble Speaker of the Legislative Assembly of West Bengal who is the ex-officio Member of this Committee;

(c) Minister-in-charge of the Department of Home of West Bengal who is also the ex-officio Member of this Committee;

(d) Leader of the Opposition in the Legislative Assembly of West Bengal is also the ex-officio Member of this Selection Committee.

Above Section provides that no sitting Judge of High Court or the sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of West Bengal. No appointment of the Chairperson or any Member of the West Bengal Human Rights Commission shall be invalid merely by reason of any vacancy in the Selection Committee.

According to the said Act, the Selection Committee for the appointment of the Chairperson and other Members of the West Bengal Human Rights Commission consists of the following Members:

(i) Chief Minister of West Bengal Shri Buddhadev Bhattacharya. He is the ex-officio member of the Committee;

(ii) Hon'ble Speaker of the Legislative Assembly Shri Hasim Abdul Halim. He is also the ex-officio member of the Committee;

(iii) Hon'ble Home Minister of the Left Front Government in West Bengal, Shri Buddhadev Bhattacharya is the ex-officio member of the Committee;

(iv) Partha Chattopadhyay, the Leader of the Opposition in Legislative Assembly
in West Bengal is also the ex-officio member of the Committee.\footnote{9}

Section 23 of the Human Rights Act describes the removal of the Chairperson or any Member of the West Bengal Human Rights Commission. The Chairperson or any other Member of West Bengal Human Rights Commission shall only be removed from his office by order of the President of India on the ground of proved misbehavior or incapacity after the inquiry made by the Supreme Court of India. Following are the cases on which the President by order removes the Chairperson or any other Member of the Commission—

(a) insolvency; or
(b) engaging in any paid employment outside the duties of his office; or
(c) unfit to continue in office by reason of infirmity of mind or body; or
(d) unsound mind and stands so declared by a competent court; or
(e) imprisonment for an offence which in the opinion of the President involves moral turpitude.\footnote{10}

Section 24 of the Human Rights Act describes the term of office of the Chairperson and any other Member of the West Bengal Human Rights Commission. According to Section 24(1) of this Act, the Chairperson of the Commission shall hold office for a term of 5 years from the date on which he enters upon his office or until he attains the age of 70 years whichever is earlier. Section 24(2) provides that a Member of the Commission shall hold office for a
term of 5 years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of 5 years. No Member shall hold office after he has attained the age of 70 years. According to Section 24(3) of the Human Rights Act, the Chairperson or any Member of the Commission shall be ineligible for further employment under the Government of a State or under the Government of India.\textsuperscript{11}

Section 26 of the Human Rights Act provides that the salaries and allowances payable to, and other terms and conditions of service of the Members shall be such as may be prescribed by the State Government of West Bengal.\textsuperscript{14} According to this Section, neither the salary and allowances nor the other terms and conditions of service of a Member of the Commission shall be varied to his disadvantage after his appointment. Section 27(3) of the Human Rights Act provides that the salaries, allowances and conditions of service of the officers and other staff of the West Bengal Human Rights Commission shall be such as may be prescribed by the State Government of West Bengal.\textsuperscript{12}

Section 25(1) of the Human Rights Act provides that in the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor of West Bengal, by notification, may authorize one of the Members of the Commission to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. Section 25(2) also provides that when the Chairperson of the Commission is unable to discharge his
functions owing to absence on leave or otherwise, such one of the Members of the Commission as the Governor of West Bengal may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson of the Commission resumes his duties. 13

**Functions**

Section 12 of the Protection of Human Rights Act, 1993 lays down the scope and the range of the functions assigned to the State Commission. According to this Act, the West Bengal Human Rights Commission shall perform all or any of the following functions, namely -

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, under intimation to the State Government of West Bengal, any jail or any other institution under the control of State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the Inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution of India or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
(f) undertake and promote research in the field of human rights;

(g) spread human rights literacy 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;

(h) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

(i) such other functions as it may consider necessary for the promotion of human rights.¹⁴

The West Bengal Human Rights Commission while inquiring into the complaints of violation of human rights may call for information or repost from the West Bengal Government or any other authority or organization subordinate thereto. The Commission, should it consider if necessary, may suo motu initiate an enquiry. The Commission may take any of the following steps upon the completion of an inquiry held under the Protection of Human Rights Act, namely -

(i) Where the inquiry discloses the Commission of violation of human rights or negligence in the prevention of violation of human rights, by a public servant, it may recommend to the State Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
(ii) Approach the Supreme Court of India or the High Court or West Bengal concerned for such directions, orders or writs as that court may deem necessary;

(iii) recommend to the State Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(iv) provide a copy of the inquiry report to the petitioner or his representative;

(v) The Commission shall send a copy of its inquiry report together with its recommendations to the State Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(vi) The Commission shall publish its inquiry report together with its comments of the State Government or authority, if any, and the action take or proposed to be taken by the concerned Government or authority on the recommendations of the West Bengal Human Rights Commission.15
The West Bengal Human Rights Commission, while inquiring into the complaints under the Protection of Human Rights Act, have all the powers of Civil Court trying a suit under the code of civil procedure, 1908, and in particular in respect of the following matters, namely -

(i) summoning and enforcing the attendance of witnesses and examining them on oath;

(ii) discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisition any public record of copy from any court or office;

(v) issuing Commissions for the examination of witnesses or documents;

(vi) any other matters which may be prescribed.

The West Bengal Human Rights Commission or any other Officer, authorized in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that document relating to the subject matter of the enquiry may be found and may seize such documents or take extracts or copies there from subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable. The West Bengal State Human Rights Commission has its own investigating staff for investigation into complaints of human rights violations. Under the Protection of Human Rights Act, it is open to the Commission to utilize the services of any Officer or investigation agency of the Central Government or State Government of West Bengal. The language of the complaint is may be in Bengali, English or in any
language included in the 8th Schedule of the Constitution. The Commission accepts telegraphic complaints and complaints conveyed through fax. A complainant does not have to pay any fees, such as - stamp, court fee or any other charges to lodge complain to the West Bengal Human Rights Commission. A complainant, if desires, may engage a lawyer to represent his case and he/she also may write complaint on a piece of paper or post card and submit the same copy of complain to the West Bengal Human Rights Commission.16

There are some kinds of complaints which are not entertained by the West Bengal Human Rights Commission, such as -

(a) matters which happened more than one year before the making of the complaints;
(b) matters which are sub-judice or pending before any other Commission;
(c) matters which are vague, anonymous or pseudonymous;
(d) matters which are of frivolous nature;
(e) matters which pertain to service matter;
(f) matters relating personal disputes, such as - matrimonial dispute, dispute relating to property, dispute between landlords and tenants, etc.17
Comments

From the above discussion, it is clear that the West Bengal Human Rights Commission is not related to all the matters of violation of the human rights in the society. It receives and enquires only those cases where the violation of human rights is occurred by any public servant, that is, by the State Government, by any Government Organization or any Government Official, etc. Any violation of human rights relating to personal disputes, such as matrimonial dispute, property dispute, dispute between landlords and tenants, etc, do not come within the purview of the West Bengal Human Rights Commission. In this sense we can say that the area or the scope of the functioning of the West Bengal Human Rights Commission is narrow to protect the violation of all types of human rights all over the society. In a National Level Seminar on “Human Rights Education” on 5th September, 2009, existing acting Chairperson Justice Narayan Chandra Sil admitted the narrowness of the area of the functioning of The West Bengal Human Rights Commission according to The Protection of Human Rights Act, 1993 and he also said that the scope should be widened. 18

So far as selection of the Members of the West Bengal Human Rights Commission is concerned, it must be stated that the Selection Committee was not unanimous in selecting Shri Narayan Chandra Sil as acting Chairperson of the Commission. The Leader of the Opposition Shri Partha Chattopadhyay kept
away from the meeting held on 1 October 2010 of the Selection Committee claiming that the appointments should be deferred till a new Government takes charge. There may be a question whether the selection procedure was politically neutral without the consent of the opposition party. The law states that the leader of the opposition must be part of the panel that appoints the CIC and other ICs as well as the Human Rights Commission Members.

According to The Protection of Human Rights Amendment Act, 2006, the Commission should have three members including the Chairperson, but for more than three years, the State Commission has been functioning with just two members, including Chairperson. There may be a question why the Government of West Bengal could not find a retired judge as a Member of the Commission. From legal perspective, another important question raised by ex-Chief Justice of Calcutta High Court, ex-Governor of West Bengal, ex-Chairperson of the West Bengal Human Rights Commission Justice Shyamal Kumar Sen, whether a Member of the Commission may work as an ‘acting’ Chairperson in a ‘vacant’ post of the Chairperson of the Commission for a long period of more than three years where Section 12 (2) of the Protection of Human Rights Act also says that when the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members ‘shall discharge the functions of the Chairperson until the date of which the Chairperson resumes his duties.’ This Act does not ensure that the post of the Chairperson may be kept vacant for a long period and one senior Member may act as an ‘acting’ Chairperson instead of filling up the vacant post.
Notes & References


2. Ibid.


6. Ibid.

7. Ibid.

8. Ibid. Pp 17-18

9. Data collected from the existing structure of the West Bengal Government & the Opposition Party.


11. Ibid. p. 19

12. Ibid. p. 20

13. Ibid. Pp 19-20

14. Ibid. (Chapter III, Pp 8-9)

15. Ibid. (Chapter IV, Procedure, Pp 13-14)

16. Ibid.

17. Ibid.

18. Personal interview with Justice N. C. Sil in a Seminar at Sreegopal Banerjee College, Mogra.


20. Personal interview with Justice Shyamal Kumar Sen at his residence on 1st April, 2011.