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## Giving More Tooth To Human Rights Commissions

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This article is based on **“Giving Human Rights Commissions more teeth”** which was published in The Hindu on 20/03/2020. It talks about issues pertaining to Human Rights commissions.

In 1993, the UN General Assembly adopted the **Paris Principles on Human Rights**. This led to the constitution of national human rights institutions in almost every country. In this pursuit, the Indian Parliament enacted the **Protection of Human Rights Act, 1993 (PHR Act)**.

The Act created a **National Human Rights Commission (NHRC)**, and also, **Human Rights Commissions at the levels of the various States**. The National and State Human Rights Commissions are examples of **“fourth branch institutions”** (other three branches— the legislature, the executive, and the judiciary). However, the functioning of the Human Rights Commissions has come under scrutiny and criticism, on account of **lack of autonomy and political interference**.

Moreover, the Supreme Court called the NHRC as **“Toothless Tiger”**. This is because the recommendations tendered by the NHRC and other state bodies are not binding on the respective governments.

### Fourth Branch Institutions

- Democracy is sustained through the distribution of power between three “branches” — the legislature, the executive, and the judiciary, with each branch acting as a check and a balance upon the others.
- However, the complexity of governance and administration in the modern world has necessitated the existence of a set of independent bodies, which are charged with performing vital functions of oversight.
- These independent bodies are termed as fourth branch institutions.

- Some of these bodies are constitutional bodies, for example, the Election Commission and the Office of the Comptroller and Auditor General. While others have been established under law, for example, the Information Commission under the Right to Information Act, and Human Rights Commissions under the Protection of Human Rights Act.

## Issues Pertaining to NHRC

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- **Political Interference:** The selection committee tasked with appointing the chairperson and the members to the Commission is dominated by the representatives of the State itself.
  - It consists of the prime minister, home minister, Leaders of the Opposition in the Lok Sabha and Rajya Sabha, the Lok Sabha Speaker and the Deputy-Chairman of the Rajya Sabha. Thus, this creates a conflict of interest.
  - Further, the criteria to assess candidates is also not specified
- **Lack of Autonomy:** Police officials investigating for the NHRC are sent on deputation by their forces.
  - Their allegiance lies with their home cadre to which they return after their tenure at the Commission is over.
  - This conflict of interest restricts the scope of their work, as they often are charged with investigating abuse of power by law enforcement personnel.
- **Non-Binding Recommendations of NHRC: Section 18 of the Protection of Human Rights Act** empowers the Human Rights Commission to “**recommend**” to the concerned government to take appropriate actions.
- **Restricted Jurisdiction:** NHRC is not empowered to act when human rights violations through private parties take place.
  - Also, human rights commissions cannot investigate any human rights violation, if the complaint was made more than one year after the incident.
  - No cases of Human Rights violation can be investigated by NHRC in case the violation is reported against armed forces.

## Significance of Human Rights Commission

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- The PHR Act defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.
- In this context, the Human Rights Commissions aims to ensure the full realisation of the constitutional commitment to protecting human rights and act as protector for citizens against arbitrary state action.

## Way Forward

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- The first step in strengthening the Human rights framework in India, the recommendations of NHRC can be made binding. This can be done by:
  - **Creative Interpretation of Law:** The term “recommend” in section 18 of PHR Act should not be viewed in literal terms.
  - For example, the Supreme Court ( in order to maintain judicial independence) has held, that “**consultation**” with the Chief Justice for judicial appointments (as set out under the Article 124 of Indian Constitution) be read as “**concurrence**” of the Chief Justice (this is the basis for the collegium system).
- **Equal Footing As Another Quasi Judicial Bodies:** The Human Rights Commission has the powers of a civil court, and proceedings before it are deemed to be judicial proceedings.
 

This provides strong reasons for human rights commissions to be treated as **quasi-judicial**, and like other tribunals, their recommendations should be binding upon the state (unless challenged).
- **Independent Cadre:** Human rights commissions should be provided with their independent cadre of staff with appropriate experience, so that they can function autonomously.
- **Behavioral change:** There is a need for promotion of a culture of human rights. Human rights education can be made part of school curriculum.
- The Supreme Court, in the past, in order to uphold the spirit of the constitution has creatively interpreted the powers of various fourth branch institutions in cases of ambiguity.
 

For example, the Supreme Court laid down detailed guidelines to ensure the independence of the Central Bureau of Investigation; various judgments have endorsed and strengthened the powers of the Election Commission to compulsorily obtain relevant details of candidates, despite having no express power to do so.

### ***Drishti Mains Question***

Discuss the various issues faced by National and State Human Rights Commissions in India.