

THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION IN SAFEGUARDING HUMAN RIGHTS IN NEPAL

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ABSTRACT

Human rights are the basic liberties and freedoms to which all people are entitled, regardless of nationality, ethnicity, or religion. They represent the foundation of justice, equality, and human dignity. In Nepal, these rights are protected and promoted by the National Human Rights Commission (NHRC), an independent agency formed to defend people's rights. This study explores the NHRC's legal mission and powers, with a particular emphasis on its role in defending human rights across the country. The research intends to examine the NHRC's structure, evaluate its efficacy in promoting and defending human rights, and examine the constitutional provisions that regulate its establishment and administration. This research takes a historical, exploratory, and analytical approach, drawing on secondary data sources such as Nepal's constitutions, books, journals, and articles. It examines the history of the NHRC and assesses how successfully it has addressed human rights concerns in Nepal's complicated sociopolitical situation. The purpose of this research is to provide a more in-depth knowledge of the NHRC's effect and make recommendations for improving its role in human rights protection.

KEYWORDS

Human Rights, Constitution, NHRC, UDHR, Democracy.

INTRODUCTION

Human rights are essential rights that all people have, regardless of their nationality, race, gender, religion, or other status. These rights are universal, inalienable, and indivisible, being the foundation of human dignity and equality. They include civil, political, economic, social, and cultural rights such as the right to life, freedom of speech, and equality before the law, as well as the rights to education, health, and a decent standard of living. Human rights must be protected and promoted in order to build justice, peace, and social development. This is acknowledged internationally through different international frameworks such as the Universal Declaration of Human Rights (UDHR) and implemented by national and international agencies.

Human rights are ethical concepts that guide how states and non-state entities treat individuals and groups to provide a decent existence (Giri, 2022). National and international legal systems use these rules to hold duty-bearers responsible and offer remedies for victims of human rights violations. Human rights are essential rights and freedoms that all people have, regardless of nationality, race, religion, gender, or any other status. They are built on concepts of dignity, equality, and respect, and they serve as the foundation for justice and peace in countries all over the world. These rights, which are enshrined in international law in treaties such as the UDHR, include the right to life, freedom from discrimination, freedom of expression, access to education, and the right to a fair trial. Human rights are inalienable, which means they cannot be taken away, although they can be limited in some instances, such as during crises, in line with the law (Bhandari, 2015). Individuals and communities rely on their preservation and promotion to ensure freedom, equality, and justice.

Human rights commissions, such as Nepal's National Human Rights Commission (NHRC), play an important role in promoting, preserving, and enforcing basic rights on a national level. They were established as autonomous entities with the mission of investigating human rights breaches, making policy recommendations, and raising awareness of human rights norms. These commissions are critical instruments for keeping governments responsible, ensuring that human rights principles are followed, and resolving the concerns of persons whose rights have been violated (Tamata, 2017). Commissions such as the NHRC play an important role in advancing justice, equality, and human dignity by bridging the gap between international human rights frameworks such as the Universal Declaration of Human Rights (UDHR) and local legal systems.

The notion of natural rights guides the concept of human rights, which arose as a result of civilized societies. The notion of human rights as a basic right exceeds any state laws that fail to recognize the importance of people (Asrafuzzaman, 2020). Humans are inherently entitled to such rights as can be used to safeguard fundamental skills, traits, and qualities necessary to make human existence worthwhile. Human rights, as a collective manifestation of all people's common and fundamental rights, are seen as essential, natural, and inherent. Thus, human rights are seen as universal, indivisible, and inalienable. There is a widespread belief that no entity or agency of the state should violate these rights.

METHODOLOGY

This study relies on data collected from secondary sources, including various constitutions of Nepal, journals, articles, and books. The research is historical, exploratory, and analytical, focusing on the role of the National Human Rights Commission (NHRC) in protecting human rights in Nepal. By examining these sources, the study provides a detailed description and analysis of the NHRC's functions and challenges in promoting human rights within the country. The methodology emphasizes a comprehensive review of existing literature to better understand the NHRC's impact and effectiveness in addressing human rights issues in Nepal.

Objectives of the study

- To review the legal mandate and powers of the National Human Rights Commission (NHRC) of Nepal.
- To analyze the effectiveness of the NHRC in promoting and protecting human rights.
- To analyze the constitutional provisions relating to the formation and operation of the NHRC

DISCUSSION AND FINDINGS

Historical development of Human Rights

Human rights have evolved across time, beginning with ancient civilizations and progressing through various eras of political, philosophical, and legal development. Early human rights conceptions may be traced back to ancient Greece and Rome, when thinkers such as Plato and Aristotle discussed natural rights, justice, and the role of people in society (Ishay, 2004). However, these rights were frequently restricted to certain classes, such as citizens or free males, and excluded many others, including slaves and women. In modern human society, the notion of human resources has grown gradually. It, like human civilization, has evolved gradually. The Magna Carta, or Charter of British Civil Rights, is credited with the first development of human rights. In 1215 AD, King John of Britain and the people reached a formal agreement on the sharing of power (Kori, 2018). The accord spoke to the rights of the people. The same pact, known as the Magna Carta, is said to be the first written human rights instrument. The Magna Carta explicitly declared that parliament had the authority to enact laws, that the monarch could not levy taxes without parliament's agreement, and that there should be an independent judiciary and the supremacy of law.

Following a protracted fight between the monarch and the British people, a document known as the 'Bill of rights' was released in 1689 to define and limit the king's privileges. This is said to be the earliest social contract between the king and the people. In 1776 AD, the United States of America released the "Declaration of American Independence," which included the core concepts of the British 'Bill of Rights' (Ishay, 2008). Similarly, in accordance with the belief that every human being has the right to freedom and self-determination, the French Revolution was completed in 1779, and the basic concept of human rights was developed based on the Declaration of the Rights of Man and Citizen, which was eventually passed by the French National Assembly in 1789.

The League of states was initially created on January 10, 1920, in response to fears that human rights would be jeopardized as a result of rising hatred and rivalry among states, despite substantial international efforts to advance human rights in the eighteenth century. It incorporated nondiscrimination policies, regardless of race, religion, language, or gender (Donnelly & Whelan, 2020). However, all previous efforts to attain human rights and peace were proven worthless in the aftermath of World Wars I and II, which lasted from 1914 to 1918 and 1939 to 1945, respectively. Every human being is accountable for and must assure equitable participation in the peaceful development of human civilization.

Everyone is responsible for respecting and honoring one other's rights. In recognition of the need for a worldwide organization to lead the entire community in embracing and preserving the basic ideals of brotherhood, peace, and cohabitation in the aftermath of two catastrophic world wars, the United Nations (UN) was established on October 24, 1945 (Norman & Zaidi, 2008). This was followed by a systematic and coordinated campaign to promote peace and human rights. The UN established the Human Rights Commission shortly after its formation, in the early phase of 1946, to provide more extensive and clear provisions for promoting human

rights. The International Bill of Human Rights was written in 1947 by the Commission in conformity with the spirit of the UN Charter (Hewlett, 1979). The text was accepted by the UN General Assembly on December 10, 1948, as the Universal Declaration of Human Rights (UDHR).

The UDHR, which embodies the explicit idea and definition of HR, consists of 31 articles. Although this Declaration lacks direct legal standing, it has been acknowledged as an international legal framework. There are specific provisions for pursuing civil, political, economic, social, and cultural rights. In some ways, this Declaration may be viewed as the 'Gita' of human rights because it provides a foundation for all of the UN's human rights instruments (Hunt, 2007). The key human rights mechanisms are: International Resolutions on Civil and Political Rights 1976, Economic, Social, and Cultural Rights 1976, and associated optional protocols; Convention on the Elimination of All Forms of Discrimination against Women 1979; and International Convention Against Torture 1984. The Nepalese government has already signed up to around one and a half dozen human rights mechanisms, including the key human rights mechanisms listed above. Although Nepal is regarded a pioneer in South Asia in terms of human rights processes, it is facing rising problems and criticism for human rights breaches.

THE CONSTITUTION OF NEPAL AND HUMAN RIGHTS

Nepal's path to constitutionalism and democracy has been long and difficult. Nepal has numerous constitutions before the present one, the first of which was established in 1948. However, the previous constitution did not guarantee genuine democratic government or a strong human rights framework (Pathak, 2005). The people's movements of 1990 and 2006 impacted the political transition that culminated in the current constitution. The 1990 People's Movement (Jana Andolan) resulted in the formation of a constitutional monarchy and parliamentary system, which were codified in Nepal's Constitution of 1990. However, ongoing political instability, along with a decade-long civil war (1996-2006) between the government and Maoist rebels, encouraged calls for a more inclusive and democratic governmental structure.

The 2006 People's Movement (Jana Andolan II) constituted a watershed moment, culminating to the removal of the monarchy and the establishment of Nepal as a republic in 2008 (Langford and Jones, 2011). The Comprehensive Peace Agreement of 2006 and the subsequent interim constitution paved the way for the creation of a new constitution that would reflect the aspirations of a diverse and multi-ethnic society while addressing long-standing issues such as human rights, social justice, and political participation.

All members of the human family have intrinsic dignity, and their equal and inalienable rights serve as the foundation for freedom, justice, and peace. The conscience of mankind is being disturbed as a result of acts of brutality committed with complete disdain for human rights. People strive to the right to express themselves, as well as freedom from fear and scarcity (Parajuli, 2013). These sensitive ideas and concepts put into the UDHR spurred Nepalese people to conduct a protracted battle for democracy, human rights, and individual liberty, culminating in a profound political shift inside the nation in 1990 (Durbach, 2009). The conclusion was the adoption of the Constitution of the Kingdom of Nepal, 2047 (1990), which was praised as a highly excellent constitution with provisions.

The Constitution of the Kingdom of Nepal-2047', Nepal's fifth constitution, was HR friendly in terms of individual freedom, basic rights, and human rights. However, political parties and other forces failed to uphold the constitution. Meanwhile, the Maoist insurgency sparked a cycle of subsequent unrest and violence, resulting in political instability and, finally, the king's dictatorial reign (Khanal, 2006). To put a stop to this crisis, the seven political parties and the Maoists reached a 12-point agreement in New Delhi on November 22, 2005. As a result of the 2006 people's movement, the Interim Constitution of Nepal 2063 was promulgated in attempt to restore

peace and turn the country into a federal democratic republic (Meyer, 2012). In its preamble, the Interim Constitution pledges to uphold the laws and fundamental principles of human rights outlined in the Universal Declaration of Human Rights (UDHR). The Interim Constitution required the country to hold elections for the two Constituent Assemblies. Since the first Constituent Assembly failed to design a new constitution, the second Constituent Assembly, made up of people's representatives, was successful in promulgating the constitution on September 20, 2015. Nepal's new constitution was promulgated five years ago.

The Constitution of Nepal (2015) has a strong human rights framework based on international standards and intended to protect each individual's dignity, liberty, and equality (Giri, 2023). Part III specifically acknowledges basic rights, which include civil, political, economic, social, and cultural rights. Nepal's Constitution protects many fundamental rights, which serve as the foundation for the country's democratic and human rights framework. Article 18, the Right to Equality, ensures that all citizens are treated equally before the law and receive equal protection, prohibiting discrimination based on caste, ethnicity, gender, religion, or economic status, and includes special provisions for the protection and empowerment of marginalized groups. Article 17, the Right to Freedom, ensures people's freedoms of thought and speech, assembly, association, movement, domicile, and profession, laying the groundwork for democratic involvement in their nation. Article 20, the Right to Justice, guarantees a fair trial, legal counsel, and freedom from arbitrary imprisonment, demonstrating Nepal's commitment to due process and judicial impartiality.

In terms of social welfare, Articles 31 and 35 establish the right to free and compulsory basic education and access to quality healthcare, emphasizing the state's obligation to promote its citizens' well-being. Articles 38, 39, and 40 offer additional safeguards to women, children, and minorities, such as Dalits, ensuring their dignity, safety from violence, and access to chances for social development (Tripathi, 2015). Furthermore, Article 43 recognizes the right to social security for seniors, those with disabilities, and the economically poor, providing a safety net for vulnerable populations. Finally, Article 30 acknowledges environmental rights, ensuring that every person has the right to live in a clean and healthy environment, thereby including environmental justice into the country's human rights framework. Collectively, these clauses indicate Nepal's commitment to creating an equitable, inclusive, and just society.

NHRC on Protection and Promotion of Human Rights

The National Human Rights Commission (NHRC) was established as a statutory and independent organization in 2000 under the Human Rights Commission Act 1997 to provide an institutional framework for protecting and promoting human rights (Nowak, 2013). The Interim Constitution gives the Commission constitutional standing, with expanded duties to oversee the Comprehensive Peace Accord negotiated by the Nepalese government and the CPN-Maoist in November 2006, as well as the election of the constituent assembly in terms of human rights.

The National Human Rights Commission (NHRC) of Nepal holds responsibility for the preservation and promotion of human rights in the country, acting within a framework outlined by constitutional laws and international human rights norms. The NHRC was established under the Nepalese Constitution of 2015 and in line with the Paris Principles (Dhakal, 2024). Its goal is to investigate human rights breaches, offer preventative measures, and raise public and government understanding of human rights. Its independence and autonomy are critical to its efficacy, allowing the commission to operate free of undue interference from the government or other institutions.

One of the NHRC's key tasks is to examine assertions of human rights breaches such as torture, enforced disappearances, extrajudicial murders, and discrimination. This investigative function is critical in bringing justice to victims and holding those responsible accountable for wrongdoing. The NHRC conducts investigations and collects information, frequently in partnership with civil society organizations, to ensure a thorough

knowledge of Nepal's human rights environment (Parlevliet, 2006). The NHRC's conclusions aim not only to bring restitution to victims, but also to develop institutional improvements that will avoid future abuses.

The National Human Rights Commission may ensure unbiased monitoring of the National Human Rights Action Plan's execution. Its enabling Act mandates that it effectively enforce, safeguard, and promote the Human Rights guaranteed by the Constitution and other applicable laws. Government of Nepal can provide the Commission with necessary data and information for supervision and monitoring (Birgit & Kristine 2000). The Commission can investigate human rights breaches, as well as negligence in preventing them, by individuals, organizations, or authorities. The Nepalese government must visit, inspect, and observe any authority, jail, or organization under their control. They must also recommend steps to protect human rights and review safeguards for human rights enforcement in the Constitution and other laws to ensure effective implementation.

Furthermore, the NHRC is an important player in policy advocacy, collaborating with the government to influence the creation and implementation of human rights legislation and regulations. The NHRC makes evidence-based recommendations to reform legislative frameworks and practices by conducting research and producing findings on different human rights concerns (Adhikari, 2004). This collaborative approach is critical for ensuring that human rights issues are included into national development strategies and initiatives. The NHRC also oversees the implementation of international human rights treaties ratified by Nepal, holding the government responsible to its international duties.

The National Human Rights Commission (NHRC) has several roles and obligations to uphold human rights. However, it must focus on two things right now. The UN must protect and promote human rights while also holding accountable those who violated them during Maoist conflicts, Madhes movements, illegal detention, and killings by police (Guragain, Kafle, Adhikari & Mallik, 2024). The NHRC cannot take punitive action against human rights violations on its own. It has pressured the government to establish laws mandating the implementation of its suggestions. However, the constitution and the National Human Rights Commission Act do not grant the NHRC the jurisdiction to make the necessary recommendations. As a result, if the NHRC's recommendations are not implemented, impunity will persist.

Ultimately, The National Human Rights Commission is an important entity for protecting and promoting human rights. Its investigative, instructional, and advocacy responsibilities help to advance human rights norms in the country. However, in order to properly carry out its mandate, the NHRC must overcome problems such as resource restrictions, political interference, and the changing nature of human rights concerns. By increasing its capacity and encouraging partnership with many stakeholders, the NHRC may improve its efficacy in establishing a culture of human rights respect in Nepal. The future of human rights in Nepal is mainly dependent on the NHRC's capacity to negotiate these issues while remaining committed to justice, accountability, and the preservation of human dignity for all citizens.

Challenges in Implementation of Human Rights

Looking back, the Human Rights situation in Nepal is thought to have improved significantly following the political revolution of 1950-51, which ousted the century-old Rana government. However, subsequent political events proved to be significant hurdles to strengthening the country's human resources position (Awasth, Turin & Yadava, 2022). They included the royal coup against the democratically elected government in 1960, the 30-year authoritarian Panchayat rule, the King's dictatorial move on February 1, 2005, and the Maoist insurgency from 1996 to 2006. The restoration of democracy in the nation, which followed two political movements - the National People's Movement of 1990 and the People's Movement of 2006, produced a favorable setting for the country's human resource condition to develop. Further, Nepal's Constitution promulgated in 2015 could be regarded as a positive move towards safeguarding the values and norms of HR. One cannot, however, confidently

affirm that there are no more challenges to human rights in Nepal.

Implementing human rights effectively presents numerous challenges, particularly in contexts like Nepal. A weak legal framework often hampers the protection of human rights, with insufficiently drafted or vague laws failing to provide adequate safeguards. Additionally, a general lack of awareness about human rights among the population, especially marginalized groups, can lead to violations going unreported and unchallenged (Rawski & Sharma, 2012). Political instability further complicates matters, as human rights considerations may be overshadowed by political agendas, resulting in abuses and insufficient enforcement of protections. Corruption within law enforcement and judicial systems can undermine accountability, leading to impunity for violators. Moreover, institutions tasked with protecting human rights, such as the National Human Rights Commission, frequently lack the necessary resources, funding, and training to fulfill their mandates effectively. Cultural norms and traditional practices may also conflict with human rights principles, particularly concerning gender equality and minority rights. Limited access to justice due to high costs, complex legal processes, and geographical barriers can prevent individuals from seeking redress for violations.

In recent years, human rights for migrant workers have arisen as a key HR problem in Nepal. Especially since the political change of 1990, when the Nepalese government opened up the international labor market for unemployed youth, the number of Nepalese citizens working in Malaysia and other destinations, including Gulf countries, has increased, and the HR issue involving migrant workers has emerged (Neupane, 2018). This situation is growing more serious by the day. Nepalese youngsters who enter the global labor market for work are still exploited by local brokers and staffing agencies back home. Similarly, while abroad, they encounter a slew of issues, including noncompliance by employers with the contract agreement, inadequate pay, labor enslavement, sexual exploitation of female workers, and so on. A competent and rational government reaction requires the effective mobilization of Nepalese diplomatic missions overseas. As a result, this situation, along with others encountered by migrant workers overseas, raises major concerns about human rights.

The Nepalese Constitution, Part 25, Articles 248 and 249, establishes the National Human Rights Commission (NHRC) to undertake study and investigations and to propose measures against those who violate human rights. Unfortunately, the Government of Nepal has consistently ignored the Commission's recommendations to investigate and take action against human rights breaches in compliance with the requirements of the Constitution. According to the NHRC, just 12% of the Commission's recommendations on human rights abuses have been implemented (Shrestha, 2022). The continuation of such conditions has posed a significant obstacle to Nepal's human rights preservation and promotion efforts. This shows a lack of sincerity on the side of the government about human rights concerns.

CONCLUSION

The National Human Rights Commission (NHRC) of Nepal is vital for promoting and protecting human rights, but it faces significant challenges in fulfilling its role. Established to uphold constitutional and international human rights standards, the NHRC aims to address abuses and deliver justice. However, its effectiveness is often undermined by limited resources, political interference, and a lack of authority to enforce its recommendations. Despite the recognition of fundamental rights in the constitution, implementing these rights in Nepal remains difficult. Issues like political instability, weak legal systems, and widespread corruption in law enforcement further complicate the situation. Additionally, cultural practices that conflict with human rights, especially regarding gender equality and minority rights, create significant barriers. The NHRC's inability to enforce its recommendations and the general lack of accountability within the government contribute to a culture of impunity for those who violate human rights. Moreover, emerging issues such as the rights of migrant workers

have raised new concerns. These workers, often facing exploitation both at home and abroad, are a vulnerable group whose rights are not adequately protected by the government or the NHRC. The lack of a strong governmental response to these challenges highlights the broader struggle for human rights in a complex sociopolitical environment. To enhance its effectiveness, the NHRC needs to strengthen its operational capacity, collaborate more closely with civil society, and advocate for reforms that give its recommendations greater legal power. By implementing these changes, raising public awareness, and pushing for greater government accountability, the NHRC can better fulfill its mission of protecting human dignity and rights in Nepal. Ultimately, while the NHRC is a key player in the country's human rights landscape, its impact will depend on overcoming institutional challenges to help create a fair and just society where rights are respected in practice, not just in theory.

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