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Awakening Toppers

Political Science & International Relations Crash Course

Lecture - 7

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Examine the role of PRIs and Urban Local bodies in deepening of democracy in India. [20]

- As per **George Mathew**, Local self-governments have opened the flood gates of democracy that nobody can close it. The 73rd and 74th amendments constitutionally backed the PRIs and ULBs mandated by articles **243G** and **243W**, respectively, as frameworks of self-governance bringing to life Gandhian DPSPs.
- **According to Jitendra Rath and Sameet Panda** argue that there were two basic ideas behind introducing such a system.
 - First, it would decentralise the democratic set up by widening political representation of different social groups, especially women.
 - Second, it would enable the building of efficient local institutions that could plan, execute, and monitor their communities' development through a participatory approach.

There are a number of ways in which PRIs and ULBs have led to deepening of democracy:

- **Decentralising Democracy:** 73rd and 74th amendment acts contained certain provisions such as creation of gram sabhas, holding regular elections etc that have taken democracy to the grassroots, allowing for greater participation by people. Richard Mahapatra argues that these village Assemblies are a replay of India's ancient village governance systems, envisaged by Gandhi as the focus of his Ramrajya.
- **Greater Deliberation:** Grassroots democracy have allowed for greater deliberation and as Arendt would argue- 'acting in concert'. The Gram Sabhas under 73rd amendment and the ward committees, District planning Committee and Metropolitan planning Committees under 74th amendment created seek to secure public participation in developmental works and policies. *Vijayendra Rao and Paromita sanyal's analysis shows how poor people use the gram sabha as a space to discuss routine problems, access public goods and even challenge local inequalities.*
- **Greater participation of vulnerable communities:** Through reservation, the local governments have allowed representation of vulnerable groups like women, scheduled castes and scheduled tribes. A 2004 study by *Esther Duflo and Raghavendra Chattopadhyay in West Bengal and Rajasthan found that villages with women panchayat presidents had significantly more investments in drinking water facilities. A report by Planning Commission also points to socio-economic improvement of marginalized through enhanced participation in decision making at the local level.*

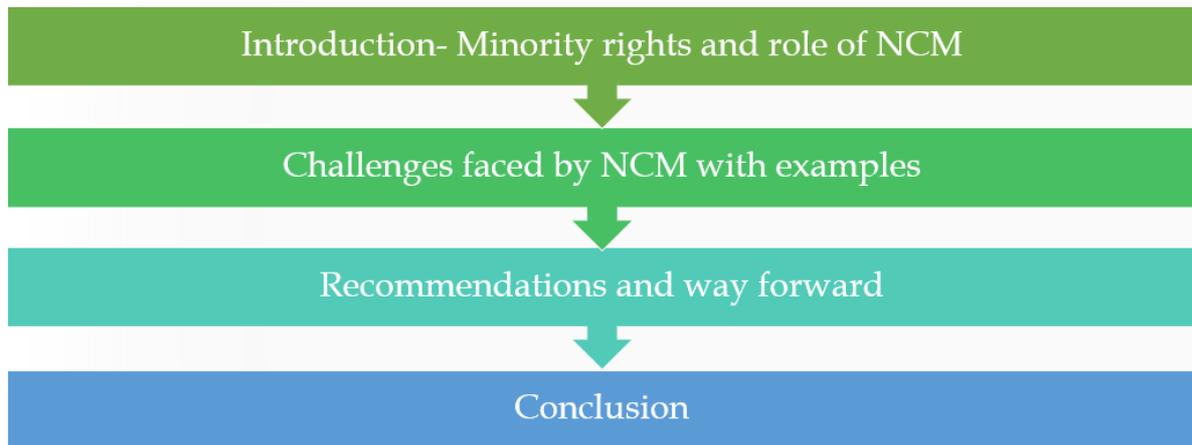
- **Increased outreach and impact of policies:** Bottom up approach in developmental policies has a much greater work allowing for targeted application as well as constant monitoring. The onslaught of the Covid19 pandemic further highlight the need to devolve such responsibilities to local governments- **Dutt and Fischer** point to 3 reasons why local governments respond better- 1) *closely connected to public and better able to navigate context-specific local conditions (Manor)*; 2) *local authorities are themselves embedded within the societies*; 3) *local government is often perceived as more legitimate than other external actors for carrying out different kinds of state regulatory functions*.
- **Strengthen political parties and keep a check on democracy:** Local body elections serve as a means to both strengthen political parties' organisational structures and in enabling them to stay closely connected with the voters. Prof. Narendra Subramanian, argues that by allowing diverse people from varied backgrounds to compete for local positions, parties allow for 'organisational pluralism'. Similarly thriving elected local bodies can also keep bureaucratic corruption and hassles in check.

Despite the well-thought through provisions, there are several problems in how Local -self governments function in practice and enable grassroots democracy:

- *State leadership and officials are unwilling to provide real power to local elected leaders. Institutional structures like the district planning boards, created to expedite decentralised planning, are either non-functional or do not give priority to PRIs.*
- *Limited efforts have been made to empower elected PRI representatives with their constitutional functions; the focus has mostly been on trainings on the schemes and programmes.*
- *The state and central government have also started creating parallel agencies and SPVs for implementing specific projects on education, health, and so on; that limits the role and powers of the PRIs.*
- **Mahi Pal** in the article, *Caste and Patriarchy in Panchayats* says that illiteracy is a major roadblock to awareness and participation. Prof. Jayal argues that husbands and family members act as real decision makers who generally discharge the work of the panchayat offices- the phenomena of 'sarpanchpati'.
- **Isher Judge Ahluwalia**, points to failure of state finance commissions in challenging political resistance at state level to devolve funds to ULBs.
- *PESA for fifth schedule areas has enjoyed limited success and despite reservations, social-economic reform for the marginalised has enjoyed limited success in local bodies, specifically PRIs.*
- **According to Jitendra Rath and Sameet Panda**, the time has come to move from political representation to power devolution. There is a need for the state political leadership to accept the importance of PRIs and ULBs, and devolve power to them as mandated in the Constitution of India.
- **The Mani Shankar Aiyar Committee** suggested the necessity of video conferencing for gram-sabha meetings to increase participation.

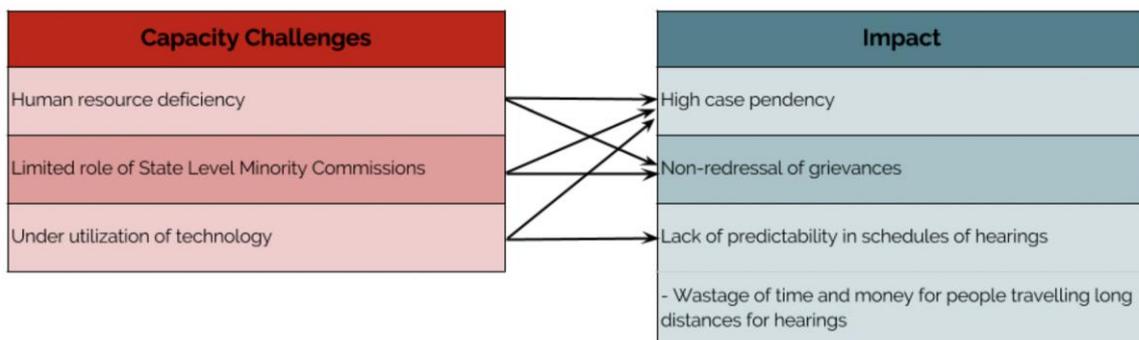
- The **Punchhi Commission** offered a slew of suggestions including creation of an oversight body like National Commission and state commission for Panchayats to act as a safeguard; creation of legislative councils in all state with change in their composition to resemble Rajya Sabha with members as representatives of local self-governments in the states and systematic capacity building of members of local self-government and effective devolution of functions to the states and to the local bodies.
- **NITI Aayog's India @75** underlines that Indian ULB's have huge scope to improve their financial autonomy and capacity to raise resources. Ultimately in a democracy, higher level of funding and greater transparency would need to be complemented by greater civic engagement and demand for accountability.
- **Isher Judge Ahluwalia** argues for the need to include the third tier in GST framework and ensuring cooperative federalism in India does not stop at state level.

The National Commission for Minorities beset by the number of challenges. What are these challenges and how can they be addressed? (15)



- **Will Kymlicka** suggests a framework through which the demands of national minorities and ethnic groups may be accommodated within a framework of democratic citizenship for multicultural societies such as India through provision of special rights and protections for these groups. Iris Marion Young regards these as group-specific or group-differentiated rights.
- In India, apart from various constitutional rights, there is National Commission for Minorities (NCM) established under the National Commission for Minorities Act, 1992 to provide social justice to various minorities in India. This is statutory body and is the watchdog for the protection and safeguards of the six communities i.e. Muslim, Sikh, Christians, Buddhist, Zoroastrian & Jains.
- Despite a lengthy period of existence and statutory backing, the NCM faces certain challenges which have led to the body being criticised as a toothless tiger.
- **Poor check and implementation: Asma Jahangir** while lauding India's legal system and constitutional provisions to safeguard minorities, as well as the country's commitment to secularism, in a UN study on 'Freedom of Religious Belief in India', points to the persistence of certain issues like poor state-level law enforcement and the increased attacks on minorities. The failure of NCM to push the government to protect minorities against such violence is a major problem.
- **Lack of concrete powers:** Despite a statutory status, NCM lacks the power to inquire, Suo moto, or on a representation presented to it by a member of any of the notified minority communities regarding any atrocities nor can it use the services of any investigation agency of the central government or any state government or intervene in any proceeding including related to violation of constitutional safeguards of the minorities pending before a court with the approval of such court.
- **Lack of consultation by Government:** Union and state governments are not required to consult the commission on problems concerning minorities' development, as they are in the case of NC of SC&STs.

- **Capacity related challenges:** The first set of institutional challenges for NCM are related to its capacity to perform its functions. There are three major sets of capacity related challenges for NCM:
 - Human resource deficiency for example during Covid19 the NCM stayed vacant till the government was pulled up by the Delhi High Court;
 - limited role of state level minority commissions of which only a few have been constituted and even those are understaffed and mostly dysfunctional. and,
 - under utilization of technology.
 - All of this severely impacts the capacity of NCM in the following manner:

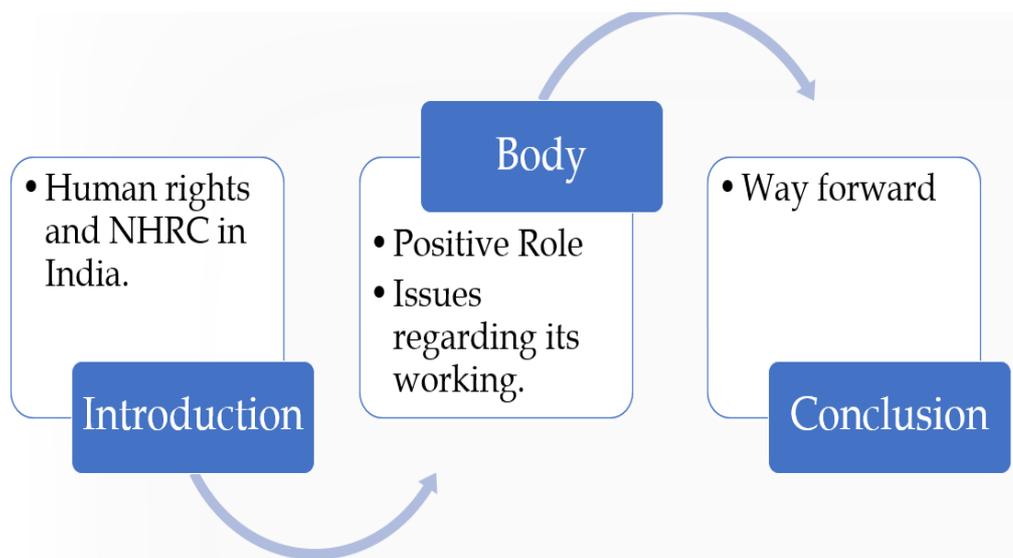


- **Partisan appointments:** The members of the NCM are nominated and therefore often toe the line of the government. Further the lack of constitutional status to body hinders the autonomy of the body as well as the people manning its offices.
- **No reports tabled:** Section 13 of the NCM Act mandates that the annual report, “together with the memorandum of action taken on the recommendations contained therein”, as well as the reasons for non-acceptance of the recommendations be tabled before Parliament annually. Sources said these reports have not been tabled in Parliament since 2010. Further, its recommendations are routinely rejected or simply filed away and forgotten.
- **Financial Planning & Expenditure Related Challenges:** Whether due to financial constraints or political will, the non-allocation of funds for research on minority related issues obstructs the achievement of the mandate of the Commission. Further, in the absence of any research activities, data points from previous annual reports of the Commission keep repeating in the subsequent ones and often the analysis is limited.
- The Commission’s failure to act against increasing incidents of violence against Muslims and Christians has severely eroded its legitimacy as a watchdog of minority rights in the country. Following are recommendations to strengthen the NCM:
- **Regular staff assessment**-At regular intervals, conducting a staffing needs assessment may be useful solution to address the problem of vacant position at leadership level.



- **Adoption of satisfaction survey**-NCM should develop a stakeholder satisfaction survey for parties to anonymously feedback regarding how their appeal was processed, irrespective of the decision .
- **Use of technology**-Technological upgrades including investment in more sophisticated information management system could help reduce the pendency rates of cases in the commission such as e-hearing.
- **Increased capacity building**: The strengthening of the state commission and setting up new state level commission, where there do not yet exist, can help in reducing and increasing hearing's effectiveness of the commission. NCM could fulfil its duties assigned in its mandate if the greater legal and constructional authority is extended to the commission. **M.H.Beg**, recommended that "minorities commission should be replaced with or merged into a national Integration-cum-Human Rights commission.
- **Douglas Dion** argues that democracies in multicultural societies may be based on "majority rule and minority rights" principle which suggests that even governments elected by a popular majority are obliged to protect minority rights. The National Commission for Minorities in India is critical in ensuring the promise of India's salad bowl society and ensure its status as a diverse democracy in the world.

Examine the objective and role of the National Human Right's Commission in India. (10)



According to Laski, rights are those conditions of social life without which no man can seek, in general, to himself at his best. Human rights are considered the foundational rights available to live as a human. Pursuant to the Paris Principles relating to the Status of National Human Rights Institutions (NHRIs) developed in 1991, National Human Rights Commission (NHRC) was established in 1993 as a statutory body and watchdog of human rights in the country.

The objective of NHRC is three fold:

- 1. Strengthen the institutional arrangement to address Human Rights in a focussed manner
- 2. Investigate allegations of excesses, independently of the government.
- 3. Complement and strengthen the efforts that have already been made in this direction.

The role of the NHRC is devised to safeguard human rights and their working in the country:

The institution has taken suo-moto cognisance of or intervened to protect flouting of human rights violations in the country- for e.g. taking steps to help Chakma refugees in 1998, its role in helping victims of Gujarat riots 2002, and in 2022 with regard to sexual harassment of a cyclist by SAI official was pulled up by the NHRC.

The NHRC examines the Indian constitution and all other current legislation, and recommend ways to bring them up to date with current human rights standards for e.g. in 2022 such study of the Constitution, legislation, schemes, policies, etc, vis-à-vis the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the National Human Rights Commission (NHRC) has concluded the rights of women remain restricted in all spheres of life in India, including social, economic and political..

The NHRC has also been at the forefront to conduct and promote research in the domain of human rights to further expand their domain. In June 2022, NHRC set up a core group on environment, climate change and human rights to look at making environment a human right.

Aiding the victims of human rights violations is another core task of the NHRC. According to Home Ministry NHRC has since 2010-2022, awarded a total monetary compensation of over 3.04 cr in 46 cases in police firing deaths and 21.45 cr in 334 cases relating to encounters deaths.

However there remain certain issues regarding its working and role

Structural limitations:

- A CHRI report points to these structural issues that limit the role of the NHRC such as the NHRC can only make recommendations without the power to enforce decisions.
- Similarly Model laws on asylum and refugees that were drafted by the National Human Rights Commission (NHRC) decades ago but not implemented by the government.
- Further, one year from the date of the incident, the commission is ineligible to investigate any problem. Colin Gonsalves also points to NHRC has a flawed process of verifying complaints.

Composition criteria

- The NHRC criteria for appointments is extremely vague requiring no strict proven experience with human rights upliftment. The appointment of Justice Mishra as NHRC chief led to a lot of uproar among human rights activists.
- Further, the NHRC faces infrastructure and staffing issues- Apart from the limited sanctioned strength, almost 50 per cent of the NHRC's staff is on deputation from other services.
- In 2017, NHRC admitted that despite a 1,455 per cent increase in complaints between 1995 and 2015, its staff strength had decreased by 16.94 per cent in the same period

Toothless Tiger:

- NHRC's own chairperson, former chief justice of India H.L. Dattu, himself has called the NHRC a "toothless tiger". *Soli Sorabjee former AGI called* NHRC as "teasing illusion while Colin Gosalves says the lack of autonomy of NHRC has made it a "lap dog, not watchdog."
- The NHRC also has no powers to investigate human rights violations involving the armed forces making it mute when it comes AFSPA issues with regard to Manipur and J&K.

Lack of Pluralism

- In February 2017, in a major embarrassment to India, the UN body GANHRI deferred NHRC's re-accreditation until November 2017. In its report, recommending deferment, GANHRI noted the Commission's failure in ensuring gender balance . and pluralism in its staff and lack of transparency in selecting its members among other reasons

Weakness of SHRCs:

- The NHRC is also the nodal body for the state human rights commissions and has the powers to refer some of its cases to the state bodies. A number of states have yet to form their SHRCs and remain woefully dysfunctional.

Way forward

- **Provide more powers:** If commission rulings are made enforceable by the government, their effectiveness will be considerably increased. Narrow down the definition of Armed Forces: Only the army, navy, and air force should be included in the definition. Furthermore, even under these situations, the Commission should be authorised to investigate accusations of human rights violations independently.
- **Commissions Composition:** Ex-bureaucrats should not be included in NHRCs; instead, civil society, human rights campaigners, and others should be included.
- **Amendment to the law:** Human rights breaches are frequently caused by law enforcement agents misusing the law. As a result, laws that are weak should be strengthened, while laws that are in violation of human rights should be changed or repealed.
- **Resource enhancement:** The Paris Principles requires that the human right commissions should have autonomy autonomy from government, independence guaranteed by a statue or Constitution pluralism, adequate resources in terms of money and manpower; and adequate powers of investigation.
- Apart from the above recommendations, maintaining autonomy of the institution, ensuring independent recruitment of staff and . a separate agency to look into human rights issues can help strengthen NHRC as well as the working of human rights in the country



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