

National Human Rights Commission of India

Dysfunctional and Ineffectual

**Submission to the honourable members of the Sub-Committee on Accreditation (SCA)
of the Global Alliance of National Human Rights Institutions (GANHRI)
for their consideration
10 July 2017**

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INTRODUCTION

The South Asia Human Rights Documentation Centre (SAHRDC) has prepared this report for the consideration of the Global Alliance of National Human Rights Institutions (GANHRI) which will assess the accreditation application of the National Human Rights Commission (NHRC) of India in November 2017. This report highlights key issues relating to the functioning of the NHRC, which, it is hoped, will help GANHRI arrive at a reasoned conclusion. It includes inputs from a number of NGOs: in particular, the, All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNNI) and Peoples Watch-Tamilnadu. Others making important contributions included; Civil Liberties Monitoring Committee, Hyderabad; Human Rights Alert, Manipur; and the Coimbatore Human Rights Forum. A full list of organisations endorsing this report is in Annexure 1.

An earlier report of SAHRDC, titled, “Judgement Reserved-The Case of the National Human Rights Commission in India was published in September 2001. It is with regret that SAHRDC notes that an overwhelming number of the constructive suggestions made therein and discussed with the then leadership of the NHRC were not implemented. This in the main due to the unhelpful attitude of the Ministry of Home Affairs, Government of India. A copy of the earlier report is appended as Annexure 2.

NHRC was assessed by GANHRI’s Sub-Committee on Accreditation (SCA) in November 2016 and the report was published in January 2017. The SCA decided to defer NHRC’s application for accreditation to its second session in November 2017. The SCA in its January 2017 report, set out specific recommendations for the consideration of the NHRC and the Government of India relating to composition and pluralism, selection and appointment of members, appointment of senior staff (secondment from government), political representation, engagement with civil society, annual reports and complaints handling.

Established in 1993 via the Protection of Human Rights Act¹, the NHRC, it was hoped, would serve as beacon and a standard-bearer of human rights in a country

¹ http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf

that continues to grapple with pervasive violations, systemic flaws in the institutions mandated to protect and promote human rights – such as the judiciary – and widespread impunity. Disappointingly, the NHRC has failed to live up to its mandate, even one that only nominally conforms to the Paris Principles. Calls by civil society for greater autonomy and independence for the NHRC have evoked little or no response. Efforts by well-meaning Members/Chairpersons in the past to draw attention to the need for more and substantive powers for the NHRC have also come to naught. The Supreme Court of India referred to the NHRC as a “toothless tiger”², spotlighting the NHRC’s lack of credibility and reliability as a human rights watchdog.

Over the past five years, based on a study of the NHRC website – its public platform – there is no evidence of any case in which the NHRC either acted in the capacity of *amicus curiae* to ensure justice or took up *suo motu* cognizance and follow up on a case. In most cases, the NHRC asks for reports to be submitted by the relevant authorities and recommends compensation based on *prima facie* evidence. Independent investigations are few and far between. Actual punitive measures against official perpetrators are rare. The NHRC has not conducted studies or published reports on egregious cases of human rights violations and has made no significant contributions when these cases have come up for hearing in the Supreme Court or High Courts. The NHRC keeps its distance from all ‘controversial’ subjects.

The first segment of the report explores the administrative and financial autonomy highlighted in 2011 and 2016 reports of the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNNI). It analyses the Protection of Human Rights Act (PHRA) and recommends amendments to bring it in consonance with the Paris Principles, especially the part related to “Composition and guarantees of independence and pluralism”.

The second segment evaluates key human rights challenges in India over the past five years and the role, or lack thereof, played by the NHRC as regards redress or mitigation. The section identifies cases related to rights of minorities (religious, caste and indigenous); extra-judicial killings, including those resulting from the application

²<http://timesofindia.indiatimes.com/india/Toothless-tiger-NHRC-needs-more-powers-Apex-court/articleshow/53123650.cms>

of the Armed Forces (Special Powers) Act, the use of the death penalty, women's rights, child rights, LGBTQ rights, plight of human rights defenders and custodial deaths/torture.

The report concludes with a brief note on the role and functioning of the State Human Rights Commissions (SHRCs).

PART I

Transparency, Accountability and Independence of NHRC

1. Appointment of Chairperson, Members and Staff

The Paris Principles recommend a pluralistic membership in any national human rights institution, including representatives who are experts in the field of human rights.³ In addition, GANHRI's Sub-Committee on Accreditation (SCA) in March 2017 considers pluralistic composition of NHRIs to be directly linked to the requirement of independence, credibility, effectiveness and accessibility. Where the members and staff of NHRIs are representative of a society's social, ethnic, religious and geographic diversity, the public is more likely to believe that the NHRI will understand and be more responsive to its needs. The integrity and quality of members is another key factor impacting the effectiveness of the NHRI.

The SCA in its accreditation reports of NHRC, in January 2017, stated that "*The SCA is of the view that the selection process currently enshrined in the Act is not sufficiently broad and transparent. In particular, it does not:*

require the advertisement of vacancies;

establish clear and uniform criteria upon which all parties assess the merit of eligible applicants; and

specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process."

³ Principle 1, Composition and guarantees of independence and pluralism, Principles relating to the status of national institutions (Paris Principles).

The SCA further stated that for appointments, NHRC should:

Publicise vacancies broadly;

Maximise the number of potential candidates from a wide range of societal groups and educational qualifications;

Promote broad consultation and / or participation in the application, screening, selection and appointment process;

Assess applicants on the basis of pre-determined, objective and publicly-available criteria; and Select members to serve in their individual capacity rather than on behalf of the organization they represent.

Despite repeated recommendations made by the SCA, the recent appointments of Ms. Jyotika Kalra and earlier of Mr. Avinash Rai Khanna as NHRC members did not go through a transparent and consultative process. The Government of India did not advertise the vacancy, did not spell out the criteria of assessment, and made these appointments in a secretive manner through a selection committee that was not given full information about the nominees. It is to be noted that the representatives from the ruling party are in a majority in the selection committee as the post of the Leader of Opposition in the Lower House is vacant since May 2014. The Government of India has yet again failed to make the selection broad based and transparent, which would have led to consideration of a wide-ranging pool of desirable candidates from various segments of the society – academicians, social scientists, jurists and civil society.

2. Pluralism and Diversity in NHRC's Composition

With respect to pluralistic representation, the SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRIs, for example: “a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership should be avoided; b) Pluralism through the appointment procedures of the governing body of the NHRIs for example, where diverse societal groups suggest

or recommend candidates; c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member NHRIs, such as an Ombudsperson.”⁴ The SCA notes that the Paris Principles require an NHRI to be independent from the government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.⁵

The SCA through its General Observations made in 2013 had mentioned that “pluralism refers to broader representation of the national society”. This includes representation from civil society as well. Although NHRC’s founding law provides that two persons having knowledge and experience about human rights shall be appointed as its members, no such person has ever been appointed.

The Protection of Human Rights Act (PHRA) provides for a majority in the selection committee for the ruling party. The result is that most appointments are based on political affiliations. Further, per the PHRA, only a Chief Justice of the Supreme Court can be appointed as Chairperson of the NHRC.⁶ As a report by the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) points out: “Limiting the membership to those coming from the judiciary or have served in government, as what the enabling law of the NHRC does, effectively alienates and silences a large part of civil society and the academic community that has worked in the human rights movement in India. Moreover, since the NHRC’s enabling law ensures that majority of its members should come from the judiciary, it inevitably would find it difficult to reach out to grassroots and local human rights defenders. Members of the judiciary, because of the nature of their work,

⁴ G.O. 1.7 Ensuring pluralism of the NHRI, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

⁵ G.O. 1.9 Selection and appointment of the decision-making body of NHRIs, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

⁶ Section 3(2)(a), The Protection of Human Rights Act, 1993

would have difficulty appreciating the value of open consultation and cooperation with human rights defenders.”⁷

Ms. Jyotika Kalra is an Advocate-on-record with the Supreme Court of India. She became a Member of the National Human Rights Commission on 5 April 2017. Earlier the Union Ministry of Power had appointed Ms. Kalra as a part-time non-official Director on the Board of POWERGRID (an Indian state-owned electric utilities company) for a period of three years through an order dated 16 February 2017⁸. Ms. Kalra also serves on the editorial board of *Nyaypravah*, a quarterly published by the Akhil Bharatiya Adhivakta Parishad⁹ (All India Advocates Council). This is the “lawyer’s wing” of the Rashtriya Swayamsevak Sangh (RSS),¹⁰ which in turn is the mother organisation and guiding body for a host of Hindu fundamentalist organisations¹¹.

Mr. Sharad Chandra Sinha was appointed as a member of the NHRC on 8 April 2013. Prior to his appointment to NHRC, he headed the National Investigation Agency (NIA) as its Director General for three years. He has also held several important security positions with State Governments and the Central Government and also with Central Bureau of Investigation. Both organisations have been widely criticised for human rights violations.

The appointment in 2013 violated the transparency norm prescribed by the apex court in P.J. Thomas case. The present foreign minister, Ms. Sushma Swaraj and the present Defence and Finance minister, Mr. Arun Jaitley had then opposed the appointment of Mr. Sinha.¹²

Appointments of police personnel as NHRC Commissioners weaken the independence of the country’s top human rights body.

⁷ Chapter III, Composition, Appointment Process and Tenure, An NGO Report on the Compliance with the Paris Principles by The National Human Rights Commission of India by All India Network of NGOs and Individuals working with National and State Human Rights Institutions, 2011.

⁸ http://www.bseindia.com/xml-data/corpfiling/AttachHis/13cdb389_7762_459e_ac4c_47b0b7de3a09_191914.pdf

⁹ <http://www.adhivaktaparishad.com/wp-content/uploads/2012/01/Oct-to-dec2011-p65.pdf>

¹⁰ <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/santosh-hegde-headed-lawyers-wing-of-rss/article2443665.ece>

¹¹ <https://www.britannica.com/topic/Rashtriya-Swayamsevak-Sangh>

¹² <http://timesofindia.indiatimes.com/india/Two-NHRC-appointments-in-2013-violated-SC-norms/articleshow/39016055.cms> (Accessed on 10/7/2017 at 16:34).

In a similar case in 2004, a police officer, Mr. P.C. Sharma, had been appointed to the NHRC. Mr. Sharma, who retired as CBI director was appointed by the earlier National Democratic Alliance (NDA) government in spite of opposition by then NHRC chairman Justice A S Anand.¹³ The appointment was challenged in the Supreme Court. The matter was referred to a larger bench of the Supreme Court after a division bench gave a split order. Justice Y K Sabharwal, the then Chief Justice of India, who headed the division bench, said that “it was a complete no for appointment of a former CBI or a police official to be appointed as a member of the apex human rights body.”¹⁴The Supreme Court narrowly upheld the appointment.

The three judges who are currently members of the NHRC—Justice H.L. Dattu, Justice Pinaki Chandra Ghose and Justice D. Murugesan –have made no substantive contributions in the area of Human Rights. They have given no landmark judgments in furtherance of upholding human rights. They have been mainly associated with routine work such as granting bails and adjudicating on income tax matters. One of the judges has been credited for being part of a bench that commuted the death sentence of one Mr. Devinder Pal Singh Bhullar who was deported from Germany to face charges of terrorism. But that is not the whole story.¹⁵ The German government and the European Union gave more than one demarche on the Bhullar case as India had violated sovereign assurances given to Germany that the death penalty would not be imposed against Mr. Bhullar – it was on the basis of that assurance that Germany had extradited Mr. Bhullar to India¹⁶.

It is apparent that NHRC appointments are based on considerations other than a proven human rights track record. This lone fact undermines the authority of NHRC and weakens its independence.

¹³<http://timesofindia.indiatimes.com/india/bjp-protests-ria-chiefs-selection-as-nhrc-member/articleshow/19299297.cms> (Accessed on 10/7/2017 at 16:35).

¹⁴http://zeenews.india.com/news/nation/sc-upholds-appointment-of-p-c-sharma-as-member-of-nhrc_214403.html?pfrom=article-next-story

¹⁵<http://www.thehindu.com/news/national/supreme-court-commutes-bhullars-death-sentence/article5853765.ece>

¹⁶<http://indianexpress.com/article/news-archive/latest-news/germany-seeks-clemency-for-devinder-pal-singh-bhullar/>

The SCA has also recommended the formalisation of a clear, transparent and participatory selection and appointment process of the NHRI's decision-making body. Such a process should include requirements to: a) Publicise vacancies broadly; b) Maximise the number of potential candidates from a wide range of societal groups; c) Promote broad consultation and/or participation in the application, screening, selection and appointment process; d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.¹⁷None of these processes are followed by the NHRC.

As the earlier AiNNI shadow reports highlight, the PHRA has rigid criteria for membership to the Commission, which prioritises perceptions of prestige over competence, passion, or experience in the field of human rights¹⁸. Section 3(2)¹⁹ of the PHRA requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area²⁰. Staff members are largely deputed temporarily to the NHRC from different government departments²¹. The PHRA does not specifically require the inclusion of minorities, persons of diverse sexual orientation or persons with disabilities. The SCA has criticised the current selection process in the NHRC, noting in particular that of its 468 staff, only 92 (20%) were women²².

¹⁷G.O. 1.8 Selection and appointment of the decision-making body of NHRIs, General Observations of the Sub-Committee on Accreditation, adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

¹⁸ An NGO report on the Compliance with the Paris Principles by the National Human Rights Commission of India, All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI), April 2011. Available at http://www.peopleswatch.org/dm-documents/HRD/NGO%20Report_Paris%20Principles_NHRC_India.pdf (last accessed on 23rd June, 2017 at 5 pm)

¹⁹ Section 3 (2): The Commission shall consist of:

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one Member who is or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

²⁰*Insights into Editorial: NHRC a toothless tiger: Panel Chief*, June 2, 2016. Available at <http://www.insightsonindia.com/2016/06/02/insights-editorial-nhrc-toothless-tiger-panel-chief/> (last accessed on 23rd June, 2017 at 5 pm)

²¹ Mandeep Tiwana, *Needed: More Effective Human Rights Commissions in India*, CHRI. Available at http://www.humanrightsinitiative.org/publications/nl/articles/india/needed_more_effective_hr_comm_india.pdf(last accessed on 23rd June, 2017 at 5 pm)

²² Neeraj Chauhan, *NHRC chief plays down UN body's posers*, The Times of India, February 13, 2017. Available at <http://timesofindia.indiatimes.com/india/nhrc-chief-plays-down-un-body-s->

The NHRC employs police officers to investigate complaints, which creates a real or perceived conflict of interest in cases of abuse committed by police and impacts the ability of the victims to access justice²³. These police officers are on deputation to the NHRC and are not permanent employees of the NHRC. Their primary loyalty therefore is to their parent police departments. What is even more worrying is the large number of Intelligence Bureau staff deputed to the NHRC. These officers are not answerable to the NHRC and have no expertise in the field of human rights. In the past, a senior Intelligence Bureau officer, Mr. Ashok Chakravarty served on deputation from the Intelligence Bureau in the NHRC. He before retirement was integrated within the staff of the NHRC. Another Intelligence Bureau officer, Mr. PS Rao was on deputation to the NHRC and retired a few years ago. Presently, Mr. O P Vyas, who is also an officer of the Intelligence Bureau, was integrated within the NHRC. He is now the Assistant Registrar (Law) in the NHRC.

It must be noted that the Intelligence Bureau has no Parliamentary oversight and has no financial accountability to the Comptroller and Auditor General of India. It is known to be a major human rights violator²⁴.

Though the PHRA stipulates that the Commission may appoint such other “administrative, technical and scientific staff” as it may consider necessary, its choices are limited as the Government determines the salaries of all staff members²⁵. There is no statutory requirement to include as staff members, academics, representatives of NGOs or other organizations or members of civil society that have significantly contributed towards enhancement of human rights.

posers/articleshow/57117018.cms . (last accessed on 23rd June, 2017 at 5 pm) See also, <https://www.pressreader.com/india/the-times-of-india-new-delhi-edition/20170213/281947427599915> (last accessed on 23rd June, 2017 at 5 pm)

²³*Why the Global Alliance of National Human Rights Institutions Has Deferred the Re-accreditation of India's National Human Rights Commission*, GAHRI. February 22, 2017. Available at: <http://www.caravanmagazine.in/vantage/why-ganhri-deferred-the-reaccreditation-of-nhrc#sthash.Y37d5tq5.dpuf> (last accessed on 23rd June, 2017 at 5 pm)

²⁴<http://indianexpress.com/article/india/politics/amit-shah-not-named-in-supplementary-chargesheet-filed-by-cbi-in-ishrat-jahan-fake-encounter-case/> see also http://www.hrdc.net/index.php?option=com_content&view=article&id=419:007-never-had-a-licence-to-kill-and-intelligence-services-are-not-above-the-law&catid=8:hfr-monthly&Itemid=108

²⁵*India: No defence for retention of death penalty*, Asian Centre for Human Rights, November 2015. Available at <http://www.achrweb.org/reports/india/India-No-defence-for-retention-of-death-penalty.pdf>. (last accessed on 23rd June, 2017 at 7 pm) See also, A.G Noorani, Human Rights, the Commission's Powers, *The Statesman*[India], 22 August, 1997

Many social and human rights activists have the knowledge and practical experience of contemporary trends in the human rights movement and can greatly contribute towards the working of the Commission.

In its response to the AiNNI report, the NHRC defended its stand on the composition of its members and staff, stating that Governments are less likely to question directives passed after a quasi-judicial process when they know that the NHRC has on it three Members who have held the highest judicial offices²⁶. This proposition rests on flimsy grounds. Per data shared by the Government, nearly half of the cases recommended by the NHRC for monetary relief are pending since 2013-2014²⁷.

Data provided to Parliament shows that a total 1,292 cases were recommended for monetary relief of 33.59 crore²⁸. Of all the cases registered with the NHRC, 44% of the cases were from the state of Uttar Pradesh alone. However, 46% of the cases recommended by NHRC for monetary relief are still pending. Out of the 1292 cases recommended by NHRC for compensation, 699 are disposed and 593 are still pending since 2013-14 as per the information shared by the government in the Lok Sabha (lower house of Indian Parliament) in August 2016. Between 2013 and 2016, disciplinary action was recommended in 107 cases out of which 49 are from Uttar Pradesh alone. The sole case where prosecution was recommended was from Uttar Pradesh. The pendency of such large number of orders only highlights the scant regard of the state governments for institutions like the NHRC.²⁹

The NHRC has itself gone on record to ask for more teeth for implementing its recommendations.

²⁶ *India opposes UN resolution for moratorium on death penalty*, The Times of India. Updated: Nov 19, 2016. Available at <http://timesofindia.indiatimes.com/india/India-opposes-UN-resolution-for-moratorium-on-death-penalty/articleshow/55512844.cms>. (last accessed on 23rd June, 2017 at 7 pm)

²⁷ Rakesh Dubbudu, *Close to half the NHRC Compensation Orders are not complied with*, January 21, 2017. Available at <https://factly.in/46-cases-recommended-nhrc-compensation-still-pending/> (last accessed on 23rd June, 2017 at 7 pm) See also, Ministry of Home Affairs, Lok Sabha Unstarred Question No.2743. Available at <http://164.100.47.190/loksabhaquestions/annex/9/AU2743.pdf> (last accessed on 23rd June, 2017 at 8 pm)

²⁸ A crore is 10 million

²⁹ Government of India, Ministry of home affairs, (Information in respect of Lok Sabha Unstarred Question 2743 for 02.08.2016), <http://164.100.47.190/loksabhaquestions/annex/9/AU2743.pdf>, (Accessed on 10 July 2017 at 14:21).

The Paris Principles strictly require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. In a move that clearly violated the Paris Principles of political autonomy, the ruling Bharatiya Janata Party (BJP) Vice-President Avinash Rai Khanna was to be appointed as a member of the NHRC with a high-level selection panel headed by the Prime Minister clearing his name³⁰. Subsequently, a petition was filed in the Supreme Court challenging his appointment under Section 24 (3) of the PHRA and Articles 14 and 21 of the Constitution.³¹ As a result of public outcry, Mr. Khanna recused himself from the appointment.

Collaboration with civil society

The SCA recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities as their expertise could be extremely valuable in dealing with vulnerable groups. A working relationship with human rights NGOs is especially important to improve accessibility as the NGOs are likely to have closer relations with vulnerable groups due to their more extensive network and are almost always likely to be closer to the ground.³² There has been little or no initiative on the part of the NHRC to work with organisations working in different geographical locations such as Kashmir or Manipur or address issues like torture, custodial deaths, atrocities against Dalits or minorities or violations committed by the armed forces controlled by the Union Home Ministry or the Indian Defence Ministry.

³⁰ *Avinash Rai Khanna to be appointed NHRC member*, Updated: November 06, 2016. Hindustan Times. Available at <http://www.hindustantimes.com/india-news/avinash-rai-khanna-to-be-appointed-nhrc-member/story-b4s4tro6wR6WXX7Zs4mNnK.html>. (last accessed on 25th June, 2017 at 10 am) See also, *BJP Vice-President to be Appointed As NHRC Member*, November 06, 2016. Available at <https://thewire.in/78184/nhrc-centre-politician/> (last accessed on 25th June, 2017 at 10 am)

³¹ Harpreet Kaur, *NHRC row: Ex-MP Avinash Rai Khanna 'rejoins' BJP*, Hindustan Times. December 17, 2016. Available at <http://www.hindustantimes.com/punjab/nhrc-row-ex-mp-avinash-rai-khanna-rejoins-bjp/story-ZbPo9NxO9TX9KAUBhxPIhL.html> (last accessed on 25th June, 2017 at 10 am)

³² G.O. 1.5 Cooperation with other human rights bodies, General Observations of the Sub-Committee on Accreditation, Adopted by the GANHRI Bureau at its Meeting held in Geneva, Switzerland, 6 March 2017.

None of the eight ongoing projects listed on the NHRC website as being undertaken by NGOs on behalf of the NHRC are on issues relating to violations by the Indian state.

Annual Reports and Other Information

The SCA recommends that NHRIs publish annual, special and thematic reports. They serve to highlight key national human rights concerns and provide means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities. Section 20 of the PHRA provides for the publication of annual reports and their tabling in Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. Since its annual report of 2012, NHRC has not published any annual reports. SCA in its report in January 2017 noted the concerns regarding the non-publication of annual reports. The annual report for the year 2016-17 is also not made public. There is no information available in the public domain indicating that NHRC has requested the Government of India to table the report with an Action Taken Report (ATR) from the Union Home Ministry in Parliament.

With respect to special reports and recommendations, there have been none, other than a documentation of visits to various prisons and the condition of the prisoners,³³ mental hospitals,³⁴ juvenile/vagrant homes³⁵ and programmes on human rights awareness³⁶. Since 2010, none of the guidelines given by NHRC have been amended or updated and no new guidelines or recommendations to the government on any subject have been made.³⁷

3. Financial Autonomy

Section B.2 of the Paris Principles addresses the requirement for NHRIs to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: "*The national institution*

³³http://nhrc.nic.in/Reports_prison.htm (last accessed on 23rd June, 2017 at 4pm).

³⁴http://nhrc.nic.in/Reports_mental.htm (last accessed on 23rd June, 2017 at 4pm).

³⁵http://nhrc.nic.in/Reports_juvenile_vagrant.htm (last accessed on 23rd June, 2017 at 4pm).

³⁶http://nhrc.nic.in/HR_Awareness.htm (last accessed on 23rd June, 2017 at 4pm).

³⁷<http://nhrc.nic.in/nhrc.htm> (last accessed on 23rd June, 2017 at 4pm).

shall have an infrastructure which is suited to the smooth conduct of its activities, in particular, adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."³⁸

The NHRC is funded by grants from the Central Government under Section 32 of the PHRA. State Human Rights Commissions (SHRCs) are similarly funded by grants by State Governments. At a conference of NHRC and SHRCs in 2015, the then Acting Chairperson Justice Cyriac Joseph in his Presidential Address stated that "unless the Government sanctions the necessary infrastructure and provides sufficient grants to the Commission it cannot function properly or efficiently."³⁹ Justice Joseph also called for attention to grievances faced by SHRCs, including the lack of infrastructure which impeded their effective functioning. In fact, however, the government sharply cut the annual allocation of funds for the 2010-2011 financial year by 20 percent, granting only Indian Rupees 18 crores⁴⁰ INR (USD \$3,829,771) instead of the INR 24.10 crores (USD \$5,127,655) by the NHRC⁴¹. Thus, the NHRC's contention that it enjoys complete financial independence with regard to its budget and is under no Governmental pressure is disingenuous. The budget, once formulated, is sent to the Ministry of Home Affairs for inclusion in the "Demand for Grant" of the budget document and is then placed by the Ministry before the Parliament along with the Union Budget. It is only upon approval from the Parliament that the funds are granted by the Ministry of Home Affairs. As independence of an organization is closely linked to its appointment procedure and budgets, the government's control over NHRC's funding casts a shadow over its financial autonomy.

As recommended by SAHRDC in its report titled *Judgement Reserved: The Case of the National Human Rights Commission of India*, funding decisions should be

³⁸ *Principles relating to the Status of National Institutions (The Paris Principles)*

Adopted by General Assembly resolution 48/134 of 20 December 1993

³⁹ Conference of NHRC And SHRCs – 2015, Presidential Address by Justice Cyriac Joseph, Acting Chairperson, NHRC. Available at http://nhrc.nic.in/Documents/speech_acting_CP_NHRC_SHRC_Meeting_18092015.pdf(last accessed on 25th June, 2017 at 10 am)

⁴⁰ A crore is 10 million

⁴¹ *NHRC budget slashed by 20% for 2010-2011*, December 12, 2013. Available at <http://www.igovernment.in/articles/31180/nhrc-budget-slashed-by-20-for-2010-11>(last accessed on 25th June, 2017 at 10 am)

entrusted to a non-partisan parliamentary body, or the Commission should have an adequate and independent budget drawn directly from the Consolidated Fund of India⁴². The Election Commission, for instance, has an independent budget finalized directly in consultation between the Commission and the Finance Ministry of the Union Government which helps it function without any undue governmental influence as far as finances are concerned.

Section 3(5) of the PHRA categorically states that the Commission may, with the previous approval of the Central Government, establish offices at other places in India. The NHRC however, in a very feeble attempt to save its depleting reputation, when questioned on the lack of accessibility in the AiNNi shadow report, stated that “it is not a question of lack of resources but that there was no provision to establish regional offices of the NHRC in the PHRA”⁴³. This is factually not only incorrect but also absurd and disparaging.

PART II

The complaint handling mechanism of NHRC is not effective and suffers from inordinate delays. Section 17 of PHRA empowers the NHRC to conduct its own investigation in cases where the authorities of Central Government or State Government do not respond within the stipulated time. But this provision has been seldom used by the NHRC.

In 2015, the High Court of Allahabad in a landmark judgment ruled that the recommendations made by NHRC cannot be ignored as mere ‘opinion or suggestion’ and be allowed to be disregarded with impunity⁴⁴. The High Court also emphasised the importance of NHRC and its role in ‘better protection of human rights’ and observed that Section 18 of the PHRA allows NHRC to approach the Supreme Court or High Courts to ask for orders or direction upon completion of its own enquiry into incidents of human rights violations.

⁴² *Judgement Reserved: The Case of the National Human Rights Commission of India*, South Asian Human Rights Documentation Centre, pp 23, September 2001.

⁴³ NHRC, India Comments on AiNNi Report, Available at http://nhrc.nic.in/Documents/Reports/NHRC_Comments_on_AiNNi_Report.pdf

⁴⁴<http://www.livelaw.in/human-rights-commission-orders-not-merely-recommendatory-state-duty-bound-comply-allahabad-hc/>

The year 2016 witnessed large number of incidents of human rights violations including systemic attack on fundamental freedoms enshrined in the Constitution of India⁴⁵. But not even in a single case, during this period, did the NHRC approach the courts for upholding human rights nor did it make itself a party to any of the ongoing cases of human rights violations. Rather it has confined itself to being another bureaucratic set-up without trying out any alternative or innovative ways to ensure justice to the victims of human rights violations nor to proactively protect the fundamental rights of the citizens.

The SCA in its accreditation reports of NHRC, in January 2017, stated that NHRC should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRC should:

- ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives; and

- ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

The concerns expressed in the previous ANNI report persist. There are significant delays and police officers are constantly used to investigate complaints, including those against the police. There is over reliance on instrumentalities of a coercive state. Far from being impartial and being the ones against whom the complaint are lodged with the NHRC.

The complaints regarding the violations of rights of Human Rights Defenders (HRDs) are also handled in the same manner as other complaints sent to the NHRC even though there is National Focal Point for HRDs at the NHRC. On the instances of false cases being filed on HRDs, the NHRC has never exercised its powers under Section 12 and intervened on behalf of the HRDs, despite several written requests. NRHC has repeatedly made a lame duck excuse about the large number of cases it has to deal with. It is pertinent to mention here that every single petition with regard to a specific case of human rights violation is numbered separately but heard only

⁴⁵<https://www.hrw.org/world-report/2017/country-chapters/india>

after clubbing many complaints together. Since NHRC accepts complaints from multiple sources and later clubs them together, the number of complaints dealt by the Commission is not a true reflection of the instances it has intervened in. A closer look at these cases will also reveal that a larger number of these cases are either dismissed in limine or transferred to State Human Rights Commissions after closing the case at the NHRC's end.

The NHRC should be more proactive while corresponding with the government authorities, given the inordinate delay in its communication with government authorities. While asking for action taken reports or status of any incident, the NHRC must insist on strict compliance with time limits for responses. Though the NHRC has powers to issue summons to government officials or approach the Supreme Court or High Court, this power has not been well used.

A study of the NHRC recommendations, collated from its monthly newsletters for the year 2016 and January-April 2017, reveals that of the total 317 recommendations were made in 2016, 122 cases (38.48%) were treated as closed with its recommendations having been carried out. In five of these cases the pendency before the NHRC was for seven years; in three cases for six years; in nine cases for five years; in 19 cases for four year; in 33 cases for three years. Out of the 376 cases where compliance has been reported for 2016, in only 144 cases was compliance reported within one year.⁴⁶

Recent Cases of Human Rights Violations and the Role of NHRC

1. Extrajudicial Killings

The NHRC issued non-binding guidelines on procedure and conduct in cases of 'encounter' deaths (euphemism for extrajudicial killings) in 1997. These were subsequently amended in 2003 and 2010.⁴⁷ According to these guidelines, every state is to report any cases of extra-judicial killings within 48 hours to the NHRC.

⁴⁶<http://ainni.in/wp-content/uploads/2017/07/AiNNI-study-of-recommendations-and-their-compliance-as-reported-with-NHRC-Monthly-Newsletter-for-the-period-of-Jan16-April17.pdf>

⁴⁷ Available at, <http://nhrc.nic.in/Documents/CasesOfEncounterDeaths.pdf> (last accessed on 19th June, 2017 at 5pm).

Furthermore, the NHRC recommended that the Criminal Investigation Department (CID) in each state investigate all cases of 'encounters'. However, most states do not follow these non-binding guidelines and conduct perfunctory departmental investigations.⁴⁸ From 2010 to 2014, almost 700 cases of extra-judicial killings have been reported.⁴⁹ However, the NHRC's role in most of these cases has been minimal. In December 2012, the NHRC informed the Supreme Court that it had received 1,671 complaints of extrajudicial killings in the previous five years.⁵⁰ Following his 2012 visit to India, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, emphasized the need to end impunity and bring perpetrators promptly to justice.⁵¹ In the record of discussion between NHRC and UN Special Rapporteur, the NHRC's members downplayed the problem and stated that extrajudicial killings were not as common as they were being made out to be.⁵²

A thorough revamp of policing in India has been long overdue but is on the backburner due to the reluctance of the political establishment to give up its power and influence over policing, The NHRC has not thought it fit to recommend urgent attention to the issue. The Supreme Court of India is yet to take up hearings on a challenge preferred by the Andhra Pradesh Police Association to a five-member bench decision of the Andhra Pradesh High Court making it mandatory for the filing of First Information Reports (FIRs) in cases of extra judicial executions. Importantly, the High Court had also stated that the police were not authorised to file closure reports without judicial scrutiny.⁵³

⁴⁸ US Department of State's India 2013 Human Rights Report, p.2, *available at* <https://www.state.gov/documents/organization/220604.pdf> (last accessed on 19th June, 2017 at 5pm).

⁴⁹ Refer to NHRC's Annual Reports from 2010-2013 and Rajya Sabha-Unstarred question no.3733 On the 13th August, 2014 answered by the Ministry of Home Affairs.

⁵⁰ *Extra Judicial Execution Victim Families Association (EEVFAM) & Anr. v Union of India*, Writ Petition (Criminal) No.129 of 2012, Decided on 8th July, 2016, ¶ 52.

⁵¹ <https://www.hrw.org/world-report/2014/country-chapters/india> (last accessed on 19th June, 2017 at 5pm)

⁵² Record of Discussion of the Interaction between NHRC, India and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions held on 22.03.2012. *Available at*, <http://nhrc.nic.in/Documents/Reports/Record%20Note-%20UN%20Spl.Rapporteur%20on%20Extra-Judicial%20Powers.pdf> (last accessed on 19th June, 2017 at 5pm).

⁵³ (2009) 2 ALD 1

The cases below highlight the human rights violations by police and armed forces over the past five years, and the NHRC's role, or lack thereof, in those cases:

Violent protests erupted in July 2016 in the state of Jammu and Kashmir after the killing of three alleged members of armed opposition groups by security forces. During civilian protests over the killings, over 90 protesters and two police officers were killed, and hundreds of others were injured. The Central Reserve Police Force (CRPF)⁵⁴ and the government defended the use of shotguns that fired pellets and resulted in hundreds of eye injuries. The NHRC admitted to the UN Human Rights Council (UNHRC) that use of pellet guns during the turmoil in Kashmir Valley was "controversial" but added that it would withhold its comments on the matter since "human rights of both sides are involved, when young crowd pelt stones at Police personnel". This badly worded and incoherent justification is an example of how seriously the NHRC takes its mandate.⁵⁵ Rather than consult and cite a range of international norms and guidelines on the use of force⁵⁶, the NHRC chose to dismiss the issue.

*Extra Judicial Execution Victim Families Association (EEVFAM) & Anr v. Union of India*⁵⁷- In this case, the petitioners compiled 1528 cases of alleged extrajudicial executions carried out by the police and security forces in the state of Manipur over the last 20 years. There were no evidence or criminal records to show in most cases that the persons killed were terrorists or militants. The questions before the court were whether Manipur police and the armed forces were using excessive force and was the retaliatory force permissible in law on the ground that the victims were 'enemy' as defined in Section 3(x) of the Army Act.⁵⁸ The court examined Section 4(a) of the Armed Forces (Special Powers) Act, 1958 which allows armed forces to use force "in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances"

⁵⁴ An armed police force under the control of the Union Home Ministry.

⁵⁵ <http://www.greaterkashmir.com/news/front-page/use-of-pellet-guns-controversial-says-nhrc/248334.html> (last accessed on 19th June, 2017 at 5pm)

⁵⁶ Refer to General Provisions of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁵⁷ Writ Petition (Criminal) No.129 of 2012, Decided on 8th July, 2016.

⁵⁸ *Supra* n.38, ¶ 117.

and concluded that only in such situations can death be caused and also that this provision does not allow the use of excessive force. The court also referred to the case of *PUCL v. Union of India*⁵⁹ and held that “there can be no doubt about it, that in view of the consistent opinion expressed by this Court, that an allegation or complaint of absence of a reasonable connection between an official act and use of excessive force or retaliatory force will not be countenanced and an allegation of this nature would always require to be met regardless of whether the State is concerned with a dreaded criminal or a militant, terrorist or insurgent. It must also be held that to provide assurance to the people, such an allegation must be thoroughly enquired into.”⁶⁰

The court ordered the NHRC to conduct enquiries and investigations in all the 1528 cases. The petitioners referred to the NHRC as toothless tigers, which have not found any human rights violations in cases filed by the State of Manipur.⁶¹ In the submissions made by Senior Advocate Gopal Subramaniam on behalf of NHRC, he stated that the Protection of Human Rights Act, 1993 must be amended to give the NHRC the power to prosecute delinquent officers, make the recommendations by it enforceable and binding under Section 12 of the PHRA, and even stated that there is a shortage of trained staff. Furthermore, the guidelines issued by NHRC on the procedure to be followed by the State governments in cases of encounter deaths and the requirement of magisterial enquiry are generally never complied with.⁶² The NHRC is not even empowered to conduct investigations in cases involving armed forces. Only the Central government can order enquiries. NHRC can only give recommendations, which are non-binding. The court asked the Union of India to consider the recommendations. Some of the recommendations were also inspired by the 2000 Justice Ahmadi Committee report⁶³. But recommendations to empower NHRC are not enough. The institution has various powers under the current PHRA like

⁵⁹ (1997) 3 SCC 433.

⁶⁰ *Supra* n.38, ¶ 135.

⁶¹ *Supra* n.38, ¶ 38.

⁶² *Supra* n.38, ¶ 45-¶ 50.

⁶³ Refer to NHRC's Annual Report 1999-2000, Part IV(B), available at http://nhrc.nic.in/ar99_00.htm#IV (last accessed on 20th June, 2017 at 6pm).

taking *suo motu* cognizance⁶⁴ of cases and intervention in cases of human rights violations in courts but these powers are rarely used by the NHRC in such cases.

In August, 2016 security forces killed a 19-year old man in Bastar region in the state of Chhattisgarh in what activists alleged was an extrajudicial killing.⁶⁵ There is no record of any investigation or *suo motu* cognizance being taken by the NHRC. In fact, there is no information available on whether at least an internal enquiry was conducted or not.

In July, 2016, security forces in the state of Odisha killed five indigenous villagers, including a two-year-old child, claiming they were killed in crossfire during anti-Maoist operations, an assertion disputed by the National Commission of Scheduled Tribes. A Joint Fact-Finding and Representatives Team looked into the matter.⁶⁶ Once again, there is no record of the NHRC taking up the matter.

The Armed Forces (Special Powers) Act, 1958 was revoked in the state of Tripura in May, 2015 but continued to be in operation in other states in northeast India and in Jammu and Kashmir. Despite criticism by human rights groups. The NHRC has issued no report, recommendations or analysis, and has undertaken no surveys or studies to test the impact of the Act.

In July 2013, the Central Bureau of Investigation (CBI) filed charges against policemen responsible for the 2004 killing of Ishrat Jahan, a young student, and three others in a faked armed 'encounter'. In 2014 and 2015, several police officials were reinstated in the state of Gujarat, where the incident took place, despite having been implicated in the alleged 'encounter', raising concerns about the government's commitment to police accountability. The matter was highlighted by the media and human rights groups, but there is no record of any action by the NHRC.

⁶⁴ Section 12(a), Protection of Human Rights Act, 1993.

⁶⁵<http://www.hindustantimes.com/india-news/chhattisgarh-under-trial-tribal-killed-in-fake-encounter-in-bastar/story-Bjz2kYt5dOLEy5Qv4yAL0N.html> (last accessed on 20th June, 2017 at 7pm)

⁶⁶<http://www.indiaresists.com/adivasis-odisha-killed-cold-bloodedly-police-fact-finding-report-pictures/> (last accessed on 20th June, 2017 at 7pm)

2. Women and Child Rights

Data by the National Crimes Record Bureau shows the number of rapes reported in India have increased from 24,206 in 2011 to 34,651 in 2015.⁶⁷ Violence against women is endemic, in the public and private spheres. Sexual violence is also reported in areas affected by conflict. Women belonging to minority groups, lower castes, and indigenous groups are particularly vulnerable. Most women find it difficult to report instances of violence due to the stigma attached to it – the insensitivity of the police and the courts effectively stymie efforts to access justice. The NHRC is yet to pronounce itself authoritatively in this issue.

Recently, NHRC took *suo motu* cognizance in 16 *prima facie* cases of rape and physical assault on women by police personnel in Chhattisgarh.⁶⁸ The case was highlighted by the *Indian Express* newspaper on 2 November 2015. In February 2016, NHRC sent a spot team for investigation.⁶⁹ This is one of the rare occasions in which the NHRC acted promptly and effectively – compensation and relief were recommended immediately through an interim order. However, there are hundreds of cases that either never come to light or even if they do, it takes years for the victims and their families to get justice.

In August, 2015, a Khap Panchayat, an informal village ‘court’ that holds no legal authority but is often socially accepted, in the state of Uttar Pradesh ‘ordered’ the rape of two sisters as punishment for their brother having run away with a married woman. Their father apparently approached the NHRC twice⁷⁰ and the matter was taken up by Amnesty International⁷¹ but there is no public record of NHRC having any steps towards judicial recourse.

⁶⁷ Crimes in India, 2015. Available at,

⁶⁸<http://nhrc.nic.in/dispatchive.asp?fno=34165> (last accessed on 21st June, 2017 at 3pm)

⁶⁹<http://indianexpress.com/article/india/chhattisgarh-cops-raped-and-assaulted-16-women-nhrc-4464388/> (last accessed on 21st June, 2017 at 3pm)

⁷⁰http://www.huffingtonpost.in/2015/09/08/dalit-girls-india_n_8095322.html (last accessed on 21st June, 2017 at 3pm)

⁷¹<https://www.amnesty.org/download/Documents/ASA2023162015ENGLISH.pdf> (last accessed on 21st June, 2017 at 3pm)

In 2013, following a heinous case of gang rape of a woman in New Delhi in December, a committee headed by former Supreme Court Chief Justice, J.S. Verma, made a number of recommendations for amendment of the criminal justice system. Some of the recommendations were based on various reports by NHRC but the NHRC itself ⁷² provided no suggestions on the recommendations after they were submitted to the Parliament. Furthermore, the recommendations accepted by the government were mainly related to provisions of punishment and criminalising various forms of rape under the Indian Penal Code, but no steps were taken for providing better safety for women or implementation of these provisions in order to ensure speedy justice. In fact, the deterrent value of these punishments is also not clear. The courts and the trial process in India continue to intimidate and harass women during the pendency of the case.

- In a case related to sexual harassment of a minor boy by army personnel, the NHRC has done precious little. Annexures C and D are screenshots from the NHRC website. They reveal that for the last three years, no action was taken. The date of the incident was 10 August 2014 and the status on action taken is unfilled, as on 20 June 2017. The NHRC had assured the complainant that action would be taken within eight weeks.

Female genital mutilation/cutting (FGM/C) is a disturbing practice that has no law criminalising it or even addressing it. According to the US Department of State Report on Human Rights in India, various human rights groups and media reports found that between 70 and 90 percent of Dawoodi Bohras, a population of approximately one million concentrated in Maharashtra and Gujarat, practise various forms of FGM/C. Neither the NHRC nor the National Commission on Women (NCW) carried out studies on the issue. The National Commission for Women (NCW) supported a campaign for a law banning this practice that violates an individual's right to their body but has offered no substantive analysis or recommendations.

⁷²Available at, <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>(last accessed on 21st June, 2017 at 5pm).

In 2016, a new Juvenile Justice Act replaced the previous act formulated in 2000. One of the highlights of the new Act is that under Section 15, children offenders between the age of 16-18 can be prosecuted as adults for heinous crimes⁷³. A number of human rights NGOs, especially NGOs working in the field of child rights objected to the provision. Young minds are more prone to influence, both negative and positive so the efforts of the government and the judicial system should be more towards reformation and rehabilitation instead of retribution, the NGOs argued. “*Various studies conducted in America, after 25 years of the transfer system, have shown that children transferred to the adult criminal justice system commit more serious offences later in life compared to those children who were dealt with under the JJ system,*” said HAQ Centre for Child Rights.⁷⁴The NHRC did not conduct any study to either support or reject the claims of the NGOs. Considering the extent of controversy around the law and claims of it being a violation of child rights, as the apex government human rights institution, the NHRC could have submitted recommendations supported by a study to the government under Section 12 of the PHRA. However, there is no record of its involvement.

3. Rights of Sexual Minorities

Lesbian, Gay, Bisexual and Transgender (LGBT) individuals continue to face harassment, extortion, intimidation, and abuse, by family, in work places, by medical establishments and the police. In 2013, the Supreme Court in the case of *Suresh Kumar Kousal & Anr. v. Naz Foundation & Ors.*⁷⁵ upheld the validity of Section 377 of the Indian Penal Code, overturning the 2009 Delhi High Court judgment in *Naz Foundation v. Govt. of NCT & Ors.*⁷⁶The section, which criminalises ‘unnatural sexual intercourse’ has been used to penalise sexual acts in private between consenting adults. The court went on to state that only the legislature could change the law. In February 2016, the Supreme Court of India allowed a challenge, referring the case to a five-judge bench. The NHRC did not intervene in any of the

⁷³ Section 2(33), Juvenile Justice Act, 2015.

⁷⁴<http://haqcrc.org/news/kids-accused-of-heinous-crimes-to-be-tried-as-adults-will-the-law-be-misused/>(last accessed on 21stJune, 2017 at 5pm).

⁷⁵ (2014) 1 SCC 1

⁷⁶(2009) 111 DRJ 1 (DB)

proceedings, as it was empowered to do, and should have done, considering the serious human rights implications of the case. It could also have set out recommendations and guidelines for government offices and police officials to follow, to prevent misuse of the provision to harass members of the LGBT community.

4. Custodial Deaths

Between 2010 and 2015, at least 591 people died in police custody in India according to the National Crime Records Bureau (NCRB).⁷⁷ A study by Human Rights Watch examined police disregard of arrest regulations, custodial deaths from torture, and impunity. It described the investigations of 17 deaths in custody that occurred between 2009 and 2015 and found that in each case, the police did not follow proper arrest procedures, making the suspect more vulnerable to abuse.⁷⁸ Between April 2012 and June 2015, of the 432 cases of deaths in police custody reported to the NHRC, the commission recommended monetary relief totalling about 22,910,000 rupees, but recommended disciplinary action in only three cases and prosecution in none.⁷⁹ This number reportedly went up to five with the NHRC recommending disciplinary action in two more cases in 2016.⁸⁰ The NHRC website displays 100 reports of prison visits conducted from 2001 to 2015 onwards.⁸¹ These detailed reports describe the administration lacunae and the condition of prisoners in the prisons visited, but there is no information on whether these reports were actually tabled in the Parliament and if action was taken. The NHRC website has not updated its list of custodial cases since 2006-2007 and there is no information available in the public domain about the steps NHRC has taken in various cases reported on custodial deaths. The last guidelines issued by NHRC which are available on their website are from 1997. They have not been revised or updated.

⁷⁷<http://ncrb.nic.in/StatPublications/CII/CII2015/chapters/Chapter%2013-15.11.16.pdf><https://76crimes.com/2016/10/17/nearly-1500-arrested-last-year-under-indias-anti-gay-law/> (last accessed on 26th June, 2017 at 2pm)

⁷⁸<https://www.hrw.org/news/2016/12/19/india-killings-police-custody-go-unpunished> (last accessed on 26th June, 2017 at 2pm)

⁷⁹<https://counterview.org/2016/12/19/deaths-in-custody-could-be-prevented-if-police-follow-rules-designed-to-deter-mistreatment/> (last accessed on 22nd June, 2017 at 3pm)

⁸⁰<http://timesofindia.indiatimes.com/india/Deaths-in-police-custody/articleshow/53484910.cms> (last accessed on 28th June, 2017 at 3pm)

⁸¹http://nhrc.nic.in/Reports_prison.htm (last accessed on 22nd June, 2017 at 3pm)

5. Communal⁸² Violence

Communal violence has been a blot on the India's human rights record even before Independence, with inter-community rivalry extending to well before that⁸³. On 21 September 2016 the NHRC released the findings of their investigations in a case of communal violence in a town called Kairana. The investigation was based on a complaint on the alleged "exodus" of Hindu families from the town because of increasing crime. A report by the NHRC claimed that the allegations were "serious" and that several Hindu families had "migrated" from Kairana because of the "increase in crime" and "deterioration" of the law-and-order situation after victims of the previous riots in Muzaffarnagar, a nearby town, had settled there⁸⁴.

Pursuant to the directions of the Commission, a team consisting of Dy.S.P. Ravi Singh, W/Inspector Suman Kumari, Inspector Saroj Tiwari and Inspector Arun Kumar carried out spot enquiry and submitted their report. The report released by NHRC states that the investigation team visited a number of places affected by the violence and examined witnesses, victims, police officials and other government SDM. It obtained a list of 346 displaced families/persons, of which three residential localities were selected for verification.

However, activists working with people displaced by the Muzaffarnagar riots since 2013 said that the report was nothing but "communal rumour-mongering"⁸⁵. Activist Farah Naqvi added that the report provided no evidence for its claims and was not based on facts but only "feelings" gathered from a few people. Naqvi said it was a matter of grave concern that "our premier human rights body in a public document spoke so loosely and irresponsibly, based only on what unnamed

⁸² The word, "communal" in India denotes sectarian in most cases of Hindu-Muslim violence

⁸³ Mohammad Sajjad, *Splintered Justice' in the Aftermath of Communal Violence*, The Wire, February 15, 2017. Available at <https://thewire.in/108972/splintered-justice-communalism/> (last accessed on 25th June, 2017 at 4 pm)

⁸⁴ *NHRC calls for action taken report from the Government of Uttar Pradesh over the findings and recommendations of its investigation team about exodus of families from Kairana area*, New Delhi, September 21, 2016. Available at <http://nhrc.nic.in/dispArchive.asp?fno=24109>(last accessed on 25th June, 2017 at 4 pm)

⁸⁵ Jahnvi Sen, *NHRC Report on Kairana 'Partisan and Prejudiced', Say Activists, Riot Survivors*, September 29, 2016. Available at <https://thewire.in/69831/nhrc-kairana-report/>(last accessed on 25th June, 2017 at 4 pm)

witnesses said they feel and stigmatise an entire community of Indian citizens as criminals.⁸⁶

In 2008, following communal violence in a district called Kandhamal in the state of Orissa, over 25,000 people were forced to flee.⁸⁷In 2011 the NHRC merely directed the Orissa state government to submit a report on the steps taken in the aftermath. A National People's Tribunal on the Kandhamal violence had also submitted a report to the NHRC in 2010 but the NHRC did not take up the matter⁸⁸. Anto Akkara, author of the book, *Kandhamal Craves For Justice*, extensively researched and reported on the region since the riots in 2008 and stated that the Commission did a lot of things in Delhi, but little on the ground⁸⁹.

6. Cow Vigilantism

“Cow vigilantism” is a term commonly used in India to describe the current lawlessness taking place under the rubric of cow protection⁹⁰. While some State Governments, and more recently, the Central Government, have been amending cow protection laws to make them more stringent, the State response to incidents of lynching of people suspected of cow slaughter has been woefully inadequate. In 2016, Mohammad Akhlaq, a 60 year old, was lynched in Dadri in the state of Uttar Pradesh for allegedly possessing beef⁹¹. Having taken little or no action against the

⁸⁶ Minority rights activists call on NHRC to apologise for 'communal' report on Kairana exodus, Firstpost, Sep, 2016. Available at <http://www.firstpost.com/politics/minority-rights-activists-call-on-nhrc-to-apologise-for-communal-report-on-kairana-exodus-3027940.html>(last accessed on 25th June, 2017 at 5 pm)

⁸⁷ NHRC directs Orissa to report on Kandhamal violence, Jan 19, 2011. Available at <http://www.hindustantimes.com/india/nhrc-directs-orissa-to-report-on-kandhamal-violence/story-S8dvrkLPsiNUctPGahzWLM.html>(last accessed on 25th June, 2017 at 5 pm)

⁸⁸ *No action taken by NHRC on Kandhamal riots: Justice Shah*, August 23, 2013. Available at http://zeenews.india.com/news/odisha/no-action-taken-by-nhrc-on-kandhamal-riots-justice-shah_871272.html. (last accessed on 25th June, 2017 at 5 pm) See also, *No action taken by NHRC on Kandhamal riots: Justice Shah*, Business Standard, August 23, 2013. Available at http://www.business-standard.com/article/pti-stories/no-action-taken-by-nhrc-on-kandhamal-riots-justice-shah-113082301187_1.html (last accessed on 25th June, 2017 at 5 pm)

⁸⁹ 'The NHRC has failed the riot victims of Kandhamal', Brijesh Pandey, 21.09.2013. Issue 38, Vol 10. Available at <http://www.tehelka.com/2013/09/the-nhrc-has-failed-the-riot-victims-of-kandhamal/> (last accessed on 25th June, 2017 at 7 pm)

⁹⁰ Ujjal Dosanjh, *Cow vigilantism threatens the body and soul of India*, The Indian Express, Updated: April 16, 2017. Available at <http://indianexpress.com/article/blogs/cow-vigilantism-rss-mahatma-gandhi-gau-rakshaks-4612503/>(last accessed on 25th June, 2017 at 7 pm)

⁹¹ *Una, Alwar and Delhi cow vigilantism: A list of 'gau rakshak' attacks since 2015 Dadri lynching*, 03 June, 2017. Available at <http://www.firstpost.com/india/una-alwar-and-delhi-cow-vigilantism-a-list-of->

perpetrators, a local Court instead directed the police to register a case against the victim, Akhlaq, and his family under the Uttar Pradesh Cow Protection Act, 1955 for alleged cow slaughter⁹². This order came as a response to a petition filed by some of the accused demanding action against Akhlaq and his family.

In July 2016, youth belonging to the Dalit community in Una district of the state of Gujarat were assaulted⁹³, stripped and paraded when they were skinning a dead cow⁹⁴. Skinning dead animals and selling their organs is that community's occupation, and the upper castes rely on it to carry away the carcasses –work that the upper castes do not themselves deign to do.

In April, 2017, a 55 year old dairy farmer, Pehlu Khan was branded as a cattle smuggler and assaulted by cow vigilantes in Alwar in the state of Rajasthan⁹⁵. He later succumbed to his injuries. Although the NHRC issued notices to the Central Government, the Union Home Secretary and the Rajasthan Government asking for a detailed report, including information on measures taken to deal with such incidents, there is no record of any follow up action by the NHRC, investigations undertaken, or reports of compliance, if any, with the notices.

7. Freedom of expression – The Case of Kanhaiya Kumar

In February 2016, a group of students from the Jawaharlal Nehru University (JNU) in New Delhi were arrested for “sedition” following allegations of 'anti-India' slogans being raised at an event they had organised to protest against the death penalty awarded to certain terror convicts⁹⁶. The move was widely criticised, as it was seen

[gau-rakshak-attacks-since-2015-dadri-lynching-3401302.html](http://www.thehindu.com/news/national/FIR-for-cow-slaughter-ordered-against-Dadri-lynching-victim-Akhlaqs-family/article14488640.ece)(last accessed on 25th June, 2017 at 7:30 pm)

⁹² Mohammad Ali, *FIR for cow slaughter ordered against Dadri lynching victim Akhlaq's family*, The Hindu, Updated: September 20, 2016. Available at <http://www.thehindu.com/news/national/FIR-for-cow-slaughter-ordered-against-Dadri-lynching-victim-Akhlaqs-family/article14488640.ece> (last accessed on 25th June, 2017 at 7:30 pm)

⁹³ <http://indianexpress.com/article/india/india-news-india/gujarat-7-of-dalit-family-beaten-up-for-skinning-dead-cow-2910054/>

⁹⁴ *Ibid.*

⁹⁵ Manoj Ahuja, *Alwar lynching: Pehlu Khan's uncle threatens to commit suicide with entire family*, Hindustan Times, Updated: April 18, 2017. Available at <http://www.hindustantimes.com/india-news/alwar-lynching-pehlu-khan-s-uncle-threatens-to-commit-suicide-with-entire-family/story-iaVqKshS5EC55SSZvZhMIP.html>(last accessed on 26th June, 2017 at 10 am)

⁹⁶ Shruti Singh, *JNU students union president arrested over Afzal Guru event, sent to 3-day police custody*, India Today, February 12, 2016. Available at <http://indiatoday.intoday.in/story/jnu-students->

as an attempt to restrict freedom of speech and expression in educational institutions. Subsequently, Kanhaiya Kumar, JNU student union leader, was attacked outside the court premises when he was brought in for a hearing. Police present at the scene took no action against the perpetrators.

The NHRC took *suo motu* cognizance of Kanhaiya Kumar's arrest. A team was directed to visit the Central Prison where Mr. Kumar was held, and ascertain the prison conditions. The NHRC team found that the prison had made special arrangements to ensure safety and security of Kanhaiya Kumar but that he was also being subjected to psychological pressure and before being taken to court, was made to issue a statement owing "allegiance to the Constitution" which was dictated by police⁹⁷. A copy of the inquiry report submitted by the NHRC team was forwarded to the Commissioner of Police, Delhi and the Director General of Prisons, Tihar Jail, for their comments⁹⁸. There is no evidence of any other subsequent action taken by NHRC in this matter.

8. Custodial Torture:

Torture is rampant and institutionalised in India⁹⁹. Twenty years after India signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the lower house of the Indian Parliament, the Lok Sabha, passed the Prevention of Torture Bill 2010 on 6 May 2010. This Bill, however fell short of national and international standards and was referred to the Select Committee for scrutiny by the upper house of Parliament, the Rajya Sabha. The Select Committee referred the Bill for enactment with certain changes. Some of the State governments felt that adequate provisions already existed in the domestic

union-president-arrested-over-afzal-guru-event/1/594164.html (last accessed on 28th June, 2017 at 10 am)

⁹⁷JNU row: *Kanhaiya subjected to psychological pressure, says NHRC*, February 20, 2016. Available at <http://www.hindustantimes.com/india/jnu-row-kanhaiya-kumar-subjected-to-psychological-pressure-says-nhrc/story-U2Rz2NTKQzV0uO6NwICiuJ.html> (last accessed on 26th June, 2017 at 10 am)

⁹⁸*NHRC Team visits Central Prison, Tihar to inquire into important issues pertaining to Shri Kanhaiya Kumar; inquiry report forwarded to Commission of Police, Delhi and Director General of Prisons, Tihar Jail for comments*, 19th February, 2016, New Delhi. Available at <http://nhrc.nic.in/dispArchive.asp?fno=13875> (last accessed on 26th June, 2017 at 11 am)

⁹⁹*Prevention of Torture Bill, 2010: A case for intervention with the Government of India*, Asian Centre for Human Rights, June 30, 2010. Available at <http://www.achrweb.org/ncpt/ACHR-PTB-BriefingPaper-30June2010.pdf> (last accessed on 26th June, 2017 at 11 am)

legislations and suggested suitable amendments in these existing provisions. In the meanwhile, the Bill lapsed with the dissolution of the 15th Lok Sabha in May 2014, necessitating introduction of a new Bill in the House¹⁰⁰.

The result is that India still does not have any law on prevention of custodial torture, nor does it have any robust procedural safeguards against possible custodial violence¹⁰¹. In response to a Public Interest Litigation (PIL) filed by a former Union Law Minister, pleading for an independent legislation on torture, the Supreme Court sought a response from the NHRC in January 2017, to be submitted within a month, on the need for a stand-alone anti-custodial torture law¹⁰². This report is not available for the perusal of the general public, which again goes to show how the functioning of NHRC is rather non-transparent. Furthermore, the NHRC keeps count of incidents of custodial torture only if the torture led to death and not otherwise¹⁰³. Between 2013-2016, the NHRC recommended disciplinary action in a mere two cases of custodial torture.¹⁰⁴

9. Death Penalty

The issue of death penalty in India seems to be a second level concern against the backdrop of various human rights violations in the country¹⁰⁵. This perception was further reaffirmed during the interaction of the NHRC with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns in 2012. When posed with the question of death penalty in India complying with international human rights standards, NHRC Member Justice G.P. Mathur responded by referring to

¹⁰⁰ *Amended draft of anti-torture Bill ready: Govt.*, The Hindu, May 11, 2016. Available at <http://www.thehindu.com/news/national/amended-draft-of-antitorture-bill-ready-govt/article8585596.ece> (last accessed on 26th June, 2017 at 12 pm)

¹⁰¹ Aditya Manubarwala, *Revisiting India's Obligations against Custodial Torture*, May 19, 2017. Available at <http://blogs.lse.ac.uk/humanrights/2017/05/19/revisiting-indias-obligations-against-custodial-torture/> (last accessed on 26th June, 2017 at 12 pm)

¹⁰² Dhananjay Mahapatra, *Supreme Court seeks NHRC's reply on anti-custodial torture law*, The Times of India, January 10, 2017. Available at <http://timesofindia.indiatimes.com/india/supreme-court-seeks-nhrCs-reply-on-anti-custodial-torture-law/articleshow/56432105.cms> (last accessed on 26th June, 2017 at 1 pm)

¹⁰³ Krishnadas Rajagopal, *SC for broad anti-torture legislation*, The Hindu, April 24, 2017. Available at <http://www.thehindu.com/news/national/frame-anti-torture-law-sc-tells-govt/article18200856.ece> (last accessed on 26th June, 2017 at 1 pm)

¹⁰⁴ *Supra* n. 74

¹⁰⁵ Sankar Sen, Address on "Death Penalty", 10th October 2012 at IIC Centre, Available at http://eeas.europa.eu/archives/delegations/india/documents/keynote_address_-_death_penalty.pdf (last accessed on 26th June, 2017 at 2 pm)

Section 303 of the Indian Penal Code (IPC), which according to him was the only section in the entire Code that prescribed mandatory death sentence and was struck down by the Supreme Court while hearing the *Bachan Singh* case. The distinguished Member failed to mention that the death penalty may also be applied for murder, gang robbery with murder, abetting suicide of a child or innocent person, for waging war against the government, and for a number of offences committed by the members of armed forces under the Army Act 1950, the Air Force Act, 1950, and the Navy Act, 1956.¹⁰⁶ He added that in practice, there is practically no death sentence in India. The number of executions over the past five years reveal otherwise. A report published by Centre on the Death Penalty, National Law University, Delhi, states that the number of prisoners on death row as on 31 December 2016 was 397. It added that despite the judgement of the Supreme Court in *Shabnam v. Union of India and Ors*¹⁰⁷, which held that the Sessions Court cannot issue death warrants for executions without ensuring that all legal remedies of the prisoner have been exhausted, the Sessions Court went ahead and issued death warrants for the execution of five prisoners before they had exhausted all their legal options¹⁰⁸.

As recently as March 2017, BJP Member of Parliament, Subramanian Swamy introduced the Cow Protection Bill, 2017, in the Rajya Sabha. The Bill seeks “deterrent punishment”, including the death penalty, for the slaughter of a cow¹⁰⁹.

Although the Supreme Court has held and reiterated, that the death penalty can be imposed only in the “rarest of rare” cases, the exact definition or contours of the phrase have not been spelt out by the courts; to that extent therefore, there is no clarity on what exactly constitutes “rarest of rare”¹¹⁰. “In the same month, different benches of the Supreme Court have treated similar cases differently, often apparently reflecting their own positions for or against the death penalty. While in one case the defendant’s young age could be a mitigating factor sufficient to

¹⁰⁶*Ibid.*

¹⁰⁷ (2015) 6 SCC 702

¹⁰⁸ Death Penalty in India, Annual Statistics 2016, Centre on the Death Penalty, National Law University Delhi, 2017

¹⁰⁹ *Bill Seeking Death Penalty For Cow Slaughter Introduced In RS By Subramanian Swamy*, Huffpost, March 25, 2017. Available at http://www.huffingtonpost.in/2017/03/25/bill-seeking-death-penalty-for-cow-slaughter-introduced-in-rs-by_a_22011334/ (last accessed on 26th June, 2017 at 2:30 pm)

¹¹⁰ *Supra* n. 38.

commute the death sentence, in another it could be dismissed as a mitigating factor. In one case, the gruesome nature of the crime could be sufficient for the Court to ignore mitigating factors and in another case a similar crime was clearly not gruesome enough.”¹¹¹

The NHRC has played no role in the campaign for the abolition of death penalty. It has refused to entertain petitions pertaining to death row convict’s access to clemency¹¹². A 2015 Law Commission Report on the death penalty also saw no significant contribution from the NHRC. The Chairperson of the NHRC has stated that “India hadn’t yet reached the stage where capital punishment can be done away with.”¹¹³ The blatant disregard of international human rights standards by the head of a country’s premier human rights institution is nothing short of appalling.

In a recent UN General Assembly which called for a moratorium on death penalty in 2016, India voted against the resolution on the grounds that such a moratorium contravened Indian statutory law and the right of every country to determine their own legal system¹¹⁴. There was no comment by the NHRC.

10. Honour Killings

UN Special Rapporteur Christof Heyns, among other things, questioned the NHRC regarding the prevalence of dowry deaths (women being murdered for not bringing a sufficient amount of dowry to a marriage) and honour killings. The Members’ response was disappointing. These are social problems and there is already an Act in place to deal with dowry-related matters, a Member said. He added that the term itself was a “media construct”, and that the instances of these so-called ‘honour’ killings were very few¹¹⁵. With regard to NHRC’s role *vis-à-vis* honor killings, the Members added that NHRC’s jurisdiction only extends to violations of human rights by the state and its agencies. and not private persons.

¹¹¹ Amnesty International-India and the People’s Union for Civil Liberties (Tamil Nadu & Puducherry), Lethal Lottery: The Death Penalty in India, A study of Supreme Court judgments in death penalty cases 1950-2006, New Delhi, 2 May 2008. Available at, <https://darkindia.wordpress.com/a-study-of-supreme-court-judgments-in-death-penalty-cases-1950-2006/>-(last accessed on 28th June, 2017 at 1pm)

¹¹² *Supra* n. 22.

¹¹³ *Ibid.*

¹¹⁴ *Supra* n. 23.

¹¹⁵ *Supra* n. 38.

11. Refugees

With its porous borders, India is host to thousands of refugees, most of whom hail from Sri Lanka, Tibet, Afghanistan and Myanmar. The Rohingya Muslims, belonging to the stateless Rohingya community, live in different parts of India¹¹⁶ and are viewed as one of the world's most persecuted minorities¹¹⁷. The Rohingyas have been subjected to persecution by Myanmar's military, the border police and certain Buddhist extremist groups. In India, where they sought refuge, they continue to face violence. Continuing turmoil in the Kashmir Valley has inflamed religious tensions in Jammu, a Hindu majority area, and Rohingya refugees are bearing the brunt of it¹¹⁸. The South Asia Forum for Human Rights (SAFR) along with South Asian Human Rights Documentation Centre (SAHRDC) sent a petition to the NHRC highlighting the imminent threat to the lives and liberty of Rohingya refugees living in and around Jammu city in March 2017, but no significant action has been taken by NHRC since. A string of suspicious fires at the Rohingya settlement in the past few months have further increased tensions. The police hinted at electrical short-circuit but the refugees suspect sabotage¹¹⁹. The lackadaisical attitude of NHRC towards the apathy and violence faced by these destitute Rohingyas in Jammu makes them further vulnerable to human rights violations.

Despite the restrictions and inadequacies in the Protection of Human Rights Act, the NHRC, can nevertheless take much more proactive measures to address and improve the state of human rights if it would only make full use of the powers already granted to it. The 2006 amendment to Section 18(c) now enables the NHRC to recommend relief at any stage of the enquiry. The NHRC is also entitled to approach the Supreme Court or the High Court for such directions or orders or writs as that

¹¹⁶*The Most Unwanted: A gripping account of Rohingya refugees living in India*. Updated: January 8, 2017. The Indian Express. Available at <http://indianexpress.com/article/india/the-most-unwanted-a-gripping-account-of-rohingya-refugees-living-in-india-4464103/> (last accessed on 28th June, 2017 at 3 pm)

¹¹⁷ Feliz Solomon, *Burma Is Pursuing 'Ethnic Cleansing' of Rohingya Muslims, U.N. Official Says*, Nov 25, 2016. Available at <http://time.com/4582157/burma-myanmar-rohingya-bangladesh-arakan-ethnic-cleansing-suu-kyi/> (last accessed on 27th June, 2017 at 11 am)

¹¹⁸ Abhishek Saha, *Fled Myanmar but fear grips Rohingya refugees in Jammu as fresh threats emerge*, Hindustan Times. May 08, 2017. Available at <http://www.hindustantimes.com/india-news/fear-grips-rohingya-refugees-in-jammu-as-fresh-threats-to-leave-emerge/story-caauSvsM3fa2o0uy1FyqjO.html> (last accessed on 27th June, 2017 at 11:30 am)

¹¹⁹*Ibid.*

court may deem necessary if its recommendations are cast aside¹²⁰. In case of violation of human rights by private persons the Commission can intervene by looking into the failure of police, or public authorities to prevent violation of human rights.

The Supreme Court's adverse observations in the case of *EEVFAM v. Union of India*¹²¹, regarding the NHRC being a toothless tiger, may also have endorsed the view of the first Director General (Investigation) of the NHRC who recently said: "Instead of bemoaning its lack of powers, NHRC has to play a more proactive and transformative role for the advancement of human rights in the country"¹²².

1. Attacks on human rights defenders in Chhattisgarh

The central Indian state of Chhattisgarh, has witnessed several incidents of large scale and systemic violations of human rights of innocent villagers and tribal population including sexual violence, abduction and extrajudicial killings by the security forces. The Chhattisgarh administration and police and vigilante groups supported by the State have systematically targeted activists, researchers, academicians, journalists, lawyers and other human rights defenders who raised their voice against these human rights violations. After repeated complaints sent to NHRC and numerous call for independent investigation, the NHRC in April 2016 sent its investigation team to Chhattisgarh to enquire into the complains of gross human rights violations. However, despite repeated requests from Human Rights Defenders Alert – India (HRDA) and Women against Sexual Violence and State Repression (WSS), NHRC has not released its report.

In November 2016, the Chhattisgarh police had filed a false case of murder against a renowned academician, Prof. Nandini Sundar, and others, who had highlighted a number of human rights violations against the indigenous communities in the Bastar

¹²⁰ Section 18(b), Protection of Human Rights Act, 1993.

¹²¹ Supra n. 38

¹²² Anubhav Dutt Tiwari, *Has the NHRC failed its mandate to protect and promote human rights in India?* July 18, 2016. Available at <https://scroll.in/article/811654/has-the-nhrc-failed-its-mandate-to-protect-and-promote-human-rights-in-india>. (last accessed on 27th June, 2017 at 11:30 am) See also, Sankar Sen, *Not so toothless*, The Statesman, June 15, 2016. Available at <http://www.thestatesman.com/opinion/not-so-toothless-148413.html>(last accessed on 27th June, 2017 at 11:30 am)

region of the state.¹²³ Following public pressure, the NHRC summoned the Chief Secretary of Chhattisgarh and the Inspector General of Police, Bastar, Mr. S.R.P Kalluri, to inquire into the case. Both the Chief Secretary and Mr. Kalluri failed to appear before the NHRC in person. Two representatives from the state government of Chhattisgarh appeared on their behalf before the NHRC and submitted that the state government had prepared a six-point 'Action Plan' to ensure that human rights were protected in Bastar region. The prime accused in the cases brought by the human rights defenders, Mr. Kalluri, was transferred from the Bastar region following the NHRC summons and placed in the state capital.

Further, a close look at the so-called action plan reveals that the provisions are an eye-wash. The action plan proposes the formation of District-Level Human Rights Protection Committee and State Human Rights Protection Committee – an action that had already been directed by the Supreme Court in *Prakash Singh v. Union of India* in 2006. It was the NHRC's duty to admonish the Chhattisgarh government for not following the directions of the Supreme Court for so many years. Instead, the NHRC merely accepted the 'Action Plan'. It did not question the vagueness in the action plans - for instance both the district and state level committees will have 2-3 eminent citizens to act on human rights complaints. There are apprehensions that the government might appoint biased persons to go slow on complaints against the police personnel.

The NHRC did not take cognizance of the fact that under the Chhattisgarh Police Act, 2007, the State government is required to establish a 'State Police Accountability Authority' with powers to inquire into allegation of serious misconduct against police personnel. The NHRC did not even verify whether the State Police Accountability Authority had been formed in that state. The State Government therefore got away by pledging an action that should have been implemented long ago.

¹²³<https://thewire.in/78698/the-fir-against-nandini-sundar-and-archana-prasad-is-a-clear-case-of-vendetta-politics-say-civil-society-members/>

2. Restrictions and arbitrary detention imposed on Mr. Khurram Parvez

Mr. Khurram Parvez is a Kashmiri human rights defender and has highlighted several gross violations of human rights in the state of Jammu and Kashmir. He was not allowed to travel to Geneva by the Indian immigration authorities on 14 September 2016, when he was scheduled to attend the 33rd session of United Nation's Human Rights Council. Mr. Parvez had a valid visa and all the necessary travel documents. He was informed by the immigration authorities at New Delhi's International Airport that due to orders from the Intelligence Bureau he could not travel to Geneva. On 15 September 2016, he was arrested by the Jammu and Kashmir Police and was charged under the draconian Public Safety Act, under which a person can be detained up to six months. He was released only after 76 days when the High Court of Jammu and Kashmir quashed the order of his detention under the Public Safety Act, terming it "illegal" and an "abuse of power"¹²⁴. In October 2016, a group of UN experts urged¹²⁵ the Government of India to release Mr. Parvez, stating that "his continued detention following his arrest just a few days before his participation in the UN Human Rights Council, suggests a deliberate attempt to obstruct his legitimate human rights activism."

HRDA had urged the NHRC to intervene in the case of his arrest and illegal travel ban through a complaint sent on 16 September 2016. The NHRC took cognizance of the complaint and had sought a report from the Home Ministry to which a reply was given by the Joint Deputy Director of Intelligence Bureau, Government of India. After considering the reply, the NHRC passed the following order:

"...It has been reported that Khurram Parvez is a Valley based Human Rights activist having anti-India and pro-separatist disposition. He maintains close links with prominent separatist leaders in the valley and has also participated in conferences/seminars organized by them. With a view to internationalize the ongoing disturbance and to castigate Indian policies, he had written a letter to UN High Commissioner for Human Rights and other Special Rapporteurs of UN for their urgent intervention and at the behest of SAS Geelani, he met foreign diplomats as

¹²⁴<https://thewire.in/83567/khurram-parvez-released-after-76-days-in-detention/>

¹²⁵<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>

well as representatives of HR organization based in Delhi and apprised them of the current situation and sought their intervention. He had also planned to attend the session of UNHRC at Geneva. During the current unrest in Kashmir Valley, he was at forefront of propagating separatist narrative among the valley based civil society activists. Four criminal cases have been against him for inciting violence in the District of Srinagar. Hence, damage could have been caused to national interest if he was allowed to go out of the country.”

It is shocking that, based on a report filed by an intelligence agency which has no parliamentary oversight, the NHRC did not take any action of the case of arrest and illegal deportation of a human rights defender. It closed the complaint without even asking for a response from Mr. Parvez or the complainant, HRDA. It did not use its investigation division to enquire into the matter. Rather, the NHRC violated the principles of natural justice by concluding the case solely on the basis of the report of Intelligence Bureau.

3. Restrictions on funding of human rights defenders

The Centre for Promotion of Social Concerns (CPSC), a non-profit and charitable trust involved in monitoring and documenting of human rights violations through its programme unit ‘People’s Watch’, had applied for renewal of its foreign funding grant license under the Foreign Contribution Regulation Act, 2010 (FCRA). The Government of India refused to renew the FCRA licence in October 2016 stating “adverse field agency reports”. CPSC filed a writ petition in the High Court of Delhi challenging the decision, and the case is pending before the Court.

HRDA filed a complaint in this regard with the NHRC in November 2016. NHRC transmitted the complaint to the ‘concerned authority for appropriate action’ and asking for action taken report in four weeks’ time. The report as on 5 July 2017 is still awaited.

In November 2016, in the same matter, a letter was sent from the 7th Asian Human Rights Defenders Forum to the NHRC asking it to intervene. The NHRC took *suomotu* cognizance of the matter and issued a notice¹²⁶ to the Union Home Secretary asking for a reply within four weeks. The Union Ministry of Home Affairs

¹²⁶ <http://nhrc.nic.in/disparchive.asp?fno=34140>

sent a response to NHRC, which the latter found to be unsatisfactory. Another opportunity was provided to the Union Home Secretary to respond, within four weeks. Nine months later, the NHRC is still awaiting a response. The complainant in this case had requested NHRC for copies of the submissions made by the Ministry of Home Affairs but these were never provided, despite a personal representation to the NHRC Chairperson following a meeting of the NHRC Core Group on NGOs on 12 May 2017.

This was a fit case for the NHRC to use its power under Section 12 PHRA which empowers it to “*review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation*”. The United Nation’s Special Rapporteur on the rights to freedom of peaceful assembly and of association in April 2016 had presented a legal analysis of the Foreign Contribution Regulation Act, 2010 and argued that the statute is not in conformity with international law, principles and standards.

Similarly, in the case of Lawyers’ Collective (LC), a human rights organisation run by eminent lawyers, Ms. Indira Jaising and Mr. Anand Grover, its FCRA registration was cancelled by the Government of India, but the NHRC failed to intervene in to the matter, stating that “*[t]he Commission does not find any reason to intervene into the matter. The complainant may recourse to available legal remedies, if he so desires.*”¹²⁷

2.6.4 Human Rights Defenders’ Cases at NHRC

In 2016, HRDA, a national platform working for the protection of HRDs in India, had sent 124 complaints on attacks on human rights defenders to the NHRC. The NHRC registered 112 of the complaints sent by HRDA. The analysis of the action taken by NHRC shows that 14% of the complaints sent were transferred to the respective state human rights commissions (SHRCs). It is a matter of concern that a large number of cases are transferred to SHRCs, despite the fact that there is a severe shortage of members in SHRCs and most of the posts of Chairperson and Members remain vacant. The SHRCs also suffer from inadequate staffing, lack of resources and infrastructure, and inadequate funding, and lack proper investigations wings.

¹²⁷ <http://hrdaindia.org/?p=1865>

Moreover, the accused in the majority of these cases are local police personnel. The dispatching of complaints to SHRCs, which mostly comprise officials from state government, translates into increased instances of harassment and reprisals against human rights defenders.

Out of the 124 complaints sent, almost 30 per cent of the cases are closed, disposed or dismissed *in limine* by NHRC. In fact, in many cases, the NHRC closes the complaints without sharing copies of reports and responses with the complainants, contravening Practice Directions Guideline 17 of the NHRC dated 28 May 2002. It is an attempt by NHRC to reduce the huge number of backlog of complaints in the NHRC, which is against the principles of natural justice. Thirty per cent of the cases were closed solely based on the report submitted by police. The NHRC does not investigate cases where human rights defenders are falsely implicated in a criminal case, on the grounds that that the cases are sub-judice.

Thirty per cent of the cases from the year 2016 are pending as the government authorities failed to respond within the stipulated time. The NHRC has not taken any measures, provisioned in the PHRA, to prevent this inordinate delay which adversely affects the delivery of the timely justice to the victims of human rights violation and to human rights defenders in particular.

The Commission has linked 12 per cent of the complaints sent by HRDA with complaints sent by others on same matters. But the NHRC fails to duly inform about the updates about the cases to all the complainants in a linked case. The result is that complainants do not get a chance to provide additional information related to their individual cases.

The year 2016 witnessed targeted and systemic attacks on human rights defenders by State and non-State actors across the country. The NHRC has not ordered compensation or prosecution in a single case.

Conclusion

In view of the submissions made above, SAHRDC recommends that the SCA reconsider the accreditation of the Indian National Human Rights Commission.