



# All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI)

NATIONAL SECRETARIAT

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To,  
Shri Ram Nath Kovind,  
Hon'ble President of India,  
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**Subject: AiNNI - Memorandum - Urgent Concerns Regarding the News of Possible Appointment of Mr. Sharad Kumar as a Member of National Human Rights Commission**

Your Excellency President of India Shri. Ram Nath Kovindji,

All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) is a national forum of individuals and organisations from across the country to monitor and strengthen the functioning of human rights institutions.

We write today to express serious concerns with regard to the recent news of the possible appointment of Former National Investigation Agency (NIA) Director General Sharad Kumar as the member of the National Human Rights Commission (NHRC). If his appointment is made, he is to be appointed as a Member of the NHRC under Section 3 (2) (d) of the Protection of Human Rights Act 1993 (PHRA), stating '*two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights*'. Appointment of Mr. Kumar at a juncture when most of the cases handled by the NHRC are against police and security agencies sends a wrong message to the people of India and challenges the independence of NHRC which the Global Alliance of National Human Rights Institutions (GA-NHRIs) through its Sub-Committee on Accreditation (SCA) highlighted in 2011, 2016 and 2017.

Mr. Kumar is a 1979 batch retired officer of the Indian Police Service belonging to the Haryana cadre. He was promoted to the rank of Additional Director General of Police of Haryana in November 2007 and then to the rank of Director General of Police in December

2011. He was posted as Director, Haryana Vigilance Bureau and was the Director General of Prisons in Haryana when he was appointed the Director General of NIA in July 2013. He superannuated in October 2015. However just a day before the superannuation, in an unprecedented and questionable move, he was reappointed as the NIA Chief on contract for a period of one year ending October 31, 2016. He was given another extension till October 31, 2017 by the Appointment Committee of the Cabinet.

It is largely believed that Mr. Kumar is close to the current government in India and the two-year extension as the NIA Chief sufficiently justifies the same. According to a news report, Mr. Kumar is the brother in law of the Union Minister of State for the Ministry of Parliamentary Affairs and Ministry of Statistic and Implementation Mr. Vijay Goel. His role as the NIA Chief has come under severe questioning as during his term all terror cases by right-wing Hindutva outfits associated with the Rashtriya Swayamsevak Sangh (RSS) were closed and almost all resulting in acquittals of the accused. Bhartiya Janata Party (BJP) is the political wing of the RSS and formed the government in May 2014.

In the 2007 Samjhauta Express bombing case, the prime accused Swami Aseemanand was granted bail in August 2014, three months after BJP formed the government. NIA which was the prosecuting agency, headed then by Mr. Kumar, didn't oppose the bail. Clean chit was also given to Colonel Purohit by the NIA, who was earlier charge sheeted by the ATS in the case. In the 2007 Ajmer blast case, Swami Aseemanand was again acquitted in 2017 by the local court. Sunil Joshi who was murdered in 2007 just when the first arrests in the saffron terror cases were being made was convicted along with two others. The court pointed out NIA's actions while questioned NIA's clean chit to other accused Pragya Thakur and Indresh Kumar. In the 2006 and 2008 Malegaon blast cases, NIA gave clean chit to Pragya Thakur and dropped the case against her and the other accused Colonel Purohit also secured bail from the Supreme Court and re-joined the army. The special public prosecutor in this case, Rohini Salian, in an affidavit stated that the NIA had asked her to go soft against the accused. The 2008 Modasa blast case was closed by the NIA in 2015 citing 'lack of evidence'. In the 2007 Mecca Masjid Hyderabad blast case all the accused were acquitted.

We are dismayed with the news of Mr. Kumar's possible appointment as a NHRC Member as this post is sought to be filled by a person with knowledge or experience of human rights. Mr. Kumar's professional background and the controversies surrounding him as the NIA Chief do not suggest that he can be considered as a choice for this position. This

raises serious concerns as this news comes at a juncture when the NHRC team is assisting the Central Bureau of Investigation (CBI) in the extrajudicial killings in Manipur and also a series of cases are pending regarding serious human violations by security forces in West Bengal, Chhattisgarh, Jammu and Kashmir etc.

This appointment, if done, will be contrary to the universally accepted human rights standards evolved under the aegis of the United Nations. It is also detrimental to the functioning and reputation of the NHRC and such measures lead to the formation of a serious trust deficit in the institution itself. It will further erode the public faith in the institution, which has been declining steadily over the past ten years. The SCA in its 2017 report on the NHRC, as it did in 2011 and 2016, raised concerns regarding representatives of security agencies on the NHRC.

AiNNI believes that the appointment of the new Member in a non-transparent and non-consultative manner directly contradicts the UN Paris Principles that provide the guidelines for appointments in national human rights institutions. SCA in its 2017, 2016 and 2011 reports has categorically stated that *'It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process for an NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of an NHRI.'* According to the requirements of the Paris Principles B.1 and its General Observations 1.8 on 'selection and appointment of the decision-making body of NHRIs', the appointment process should include broadly publicizing the vacancies to maximize the number of potential candidates from a wide range of societal groups and educational qualifications; promoting broad consultations and/or participation in the application, screening, selection and appointment process; and, assessing applicants on the basis of pre-determined, objective and publicly-available criteria.

We humbly request you to urgently intervene in this matter through your powers of assent and accordingly direct the Appointment Committee to ensure that due process of appointment to NHRC is followed and respect UN Paris Principles and SCA recommendations in 2011, 2016 and 2017. Through you we urge that the Appointment Committee should take into consideration the contributions to human rights made by each of the eligible candidate being considered for the post of NHRC Member and the process should meet the requirements of the Paris Principles B.1 and its General Observations 1.8

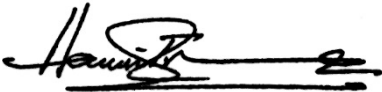
We would also like to draw your attention to a letter dated April 12, 2017, by the UN High Commissioner for Human Rights addressed to the Union Minister of External Affairs. In his letter, the UN High Commissioner among other pressing concerns regarding the NHRC and PHRA, had clearly stated the following –

- Establishing an open, transparent and merit-based selection process for the members of the governing body of the NHRC by giving equal representation to all sections of the society.
- Appointing an advisory council to the governing body of NHRC without voting rights comprising NGOs, civil society actors and independent experts.

As India steadily marches ahead as an emerging global power the country can ill afford to weaken its international standing. Non-adherence to UN principles and other established international standards with regard to appointment and functioning of an important national institution like the NHRC is certainly not a direction towards strengthening this image.

Thanking you for your patient reading of this memorandum and hoping for your kind and urgent intervention.

Yours sincerely



(Henri Tiphagne)

National Working Secretary,

All India Network of Individuals and NGOs working with National and State Human Rights Institutions [AiNNI]

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