



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

NATIONAL SECRETARIAT

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To,
The Members of Parliament in Lok Sabha and Rajya Sabha,

Greetings from AiNNI!!

We write to you today to share our views, express our concerns and propose certain recommendations for your kind consideration on the proposed amendments to the Protection of Human Rights Act, 1993 (1993), hereinafter mentioned as the Act. The amendments were introduced in the Lok Sabha (the Protection of Human Rights (Amendment) Bill, 2018, hereinafter mentioned as the Bill), by the Minister of State for Home Affairs, Mr. G. Kishan Reddy, on July 8, 2019. It is now listed to be tabled again on July 19, 2019. The same Bill was earlier introduced in the Lok Sabha on August 9, 2018 but lapsed.

The 1993 Act as brought about in 1994, seeks to strive for better protection of human rights and matters connected therewith or incidental thereto. The Bill essentially attempts to change the composition, criteria and tenure of Chairperson and Members at national (National Human Rights Commission, hereinafter mentioned as the NHRC) and at state level (State Human Rights Commission, hereinafter mentioned as the SHRC). The Bill raises serious questions and doubts over government's intent towards ensuring NHRC and SHRCs are autonomous and independent as required according to the United Nations Paris Principles (hereinafter mentioned as the Principles).

There were no consultations held with the concerned stakeholders – non-governmental organisations and the Indian civil society, neither by the NHRC, any SHRC nor the Ministry of Home Affairs (hereinafter mentioned as the Ministry). It is also not clear if the amendments were discussed by the Ministry with the NHRC or SHRCs and their position on the Bill is not available in public domain. The proposed amendments, do not only flout the Principles but are

¹ All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) is a national forum of individuals and organisations to monitor and strengthen the functioning of human rights institutions like the National Human Rights Commission, the National Commission for Women, the National Commission for Minorities, the National Commission for Protection of Child Rights, the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, the Central Information Commission, the Central Commissioner for Persons with Disabilities and their state counterparts for their full compliance to the Paris Principles and their founding law. AiNNI is also a member of the Asian NGO Network of NHRIs (ANNI) based in Bangkok and has consistently contributed to ANNI's annual research and publication. AiNNI has also submitted periodic reports concerning NHRC's accreditation by SCA of GANHRI.

contradictory to the [2011](#), [2016](#) & [2017](#) NRHC review reports of the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI).

AiNNI hereby submits this memorandum to all the Members of Parliament of Lok Sabha and Rajya Sabha and with all humility and sincerity urge that this Bill is not considered in its current form. AiNNI requests that an independent committee (inclusive of representation from the civil society) to set up by the NHRC and SHRCs to propose amendments to the Act, within a specific time frame, which through the Ministry is tabled in the Parliament.

1. Summary of the Bill:

1.1. Composition of the NHRC:

- The Bill seeks to amend Section 3(2)(a) of the Act to provide that a former Judge of the Supreme Court could also be eligible for the post of the NHRC Chairperson, as against the current provision limited to a former Chief Justice of Supreme Court.
- The Bill seeks to amend Section 3(2)(d) of the Act to provide that the number of members of the commission is increased from two to three, at least one of which shall be a woman.
- The Bill seeks to amend Section 3(3) of the Act to provide that the deemed membership is extended to the Chairpersons of the National Commission for Backward Classes, the National Commission of Protection of Child Rights and the Commissioner for Persons with Disabilities, for the discharge of functions specified in clauses (b) to (j) of Section 12 of the Act.

1.2. Composition of the SHRC:

- The Bill seeks to amend Section 21(2)(a) of the Act to provide that a retired judge of the High Court could also be eligible for the post of the SHRC Chairperson, as against the current provision limited to a former Chief Justice of a High Court.

1.3. Tenure of Chairperson and Members of the NHRC:

- The Bill seeks to amend Sections 6(1) and 6(2) of the Act to provide reducing the tenure of the Chairperson and Members of the NHRC from five to three years.
- The Bill seeks to amend Sections 6(1) to provide for the re-appointment of the NHRC Chairperson, similar to the re-appointment of Members under Sections 6(2) of the Act.

1.4. Tenure of Chairperson and Members of the SHRC:

- The Bill seeks to amend Sections 24(1) and 24(2) of the Act to provide reducing the tenure of the Chairperson and Members of the SHRC from five to three years.
- The Bill also provides for the re-appointment of the SHRC Chairperson, similar to the re-appointment of Members under Sections 24(2) of the Act.

1.5 Powers of the Secretary General

- The Bill seeks to amend Section 3(4) of the Act to allow the Secretary-General (Chief Executive Officer) of the NHRC to exercise all administrative and financial powers (except judicial functions and power to make regulations under Section 40B), subject to the control of the NHRC Chairperson. According to Section 3(4) of the Act, the Secretary-General discharges all administrative and financial powers (except judicial functions and power to make regulations under Section 40B), as may be delegated by the NHRC (Full Commission) or the Chairperson.

- The Bill doesn't refer to Section 21(3) of the Act – Secretary of the SHRCs. According to this section, the Secretary (Chief Executive Officer) of the SHRC shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

2. AiNNI's Submission on the Bill

On a close perusal of the amendments proposed in the Bill, in light of earlier propositions, AiNNI is of the view that, if the Bill is adopted in its original form, it shall have serious repercussions on the independence, autonomy and effective functioning of the NHRC and SHRCs. The Bill, both in letter and spirit, shows no coherence to the Principles and is rather seen to curb the structure and functioning of the NHRC and SHRCs. Therefore, we categorically put forth the issues and concerns pertaining to the Bill and recommendations for your consideration.

2.1 Deemed Membership of NHRC & SHRC

- 2.1.1** The deemed membership has been extended to Chairpersons of the National Commission for Backward Classes, the National Commission of Protection of Child Rights and the Commissioner for Persons with Disabilities. However, the fact cannot be ignored that these newly added as well as the previous commissions, who enjoy the deemed membership to the NHRC, are often headed by those having close association with the political party in power. This can seriously influence the working of the NHRC as the deemed members are required to discharge of functions specified in clauses (b) to (j) of Section 12 of the Act.
- 2.1.2** The deemed membership of the NHRC provided under Section 3(3) of the Act is the cover used to respond to the pluralism requirements under the Principles. However, if one has to rely on the experiences and facts concerning deemed members' contribution in the discharge of functions specified in clauses (b) to (j) of Section 12 of the Act, this concept needs a complete relook.
- 2.1.3** According to the data collected by AiNNI for the period 2011-15, the Statutory Commission meetings (NHRC + Deemed Members) were held once in 2011 (July 14, 2011), twice in 2012 (February 7, 2012 and December 7, 2012), no meeting in 2013, once in 2014 (February 4, 2014) and once in 2015 (February 3, 2015).
- 2.1.4** In the meeting held on February 7, 2012, Chairpersons of National Commission for Women, National Commission for Schedule Castes and National Commission for Schedule Tribes were absent. In the meeting held on December 7, 2012, all chairpersons (deemed members) were absent. In the meeting held on February 4, 2014, all Chairpersons of all other commissions were absent. In the meeting held on February 3, 2015, Chairpersons of National Commission for Women and National Commission for Schedule Tribes were absent.
- 2.1.5** From the above information, only five Statutory Commission meetings were held between the period 2011-15 with stark absenteeism pattern. The meetings of the Statutory Commission and their minutes suggest clearly that they continue not to be adequately involved in discussions on the focus, priorities and core business of the NHRC's non-judicial functions.
- 2.1.6** In the light of the above, AiNNI is of the view that the Section 3(3) of the Act needs a careful examination. This shouldn't be used to justify adherence only to the pluralism requirements under the Principles. Concerns over political appointments in the commissions falling under the deemed members are real and their possible active presence in the NHRC is of immense concern. Further, on grounds of ignoring the concerns over political appointments, the deemed membership mechanism has been

immensely ineffective in discharging functions specified in clauses (b) to (j) of Section 12 of the Act.

- 2.1.7** AiNNI believes adherence to pluralism according to the Principles is significant to ensure representation from all diverse sections of the society. Measures should be taken to amend Section 3(2)(d) of the Act to drastically increase the number of Members in the NHRC to ensure larger representation from diverse communities based on linguistic, region, religion, caste, tribe, ethnicity and gender. At least half of all Members of the NHRC should be women. Similar amendments are also sought in Section 21 (2)(c) pertaining to the SHRCs.

2.2 Amending the Criteria of Appointment for NHRC and SHRC Chairpersons

- 2.2.1** The Protection of Human Rights (Amendment) Bill, 2005, proposed similar amendments to Section 3(2)(a) and Section 21(2)(a) of the Act, i.e. eligibility criteria for Chairperson of NHRC and SHRC respectively. This 2005 bill was referred to the Parliamentary Standing Committee on Home Affairs (hereinafter mentioned as the Committee) headed by Ms. Sushma Swaraj, a former BJP legislator and Union Minister for External Affairs. The Committee rejected amendments to Section 3(2)(a) and Section 21(2)(a) of the Act.

- 2.2.2** The only difference between the 2005 bill and the current Bill, pertaining to amendments to Section 3(2)(a) and Section 21(2)(a) of the Act, is that the former provided for an additional criterion of eligibility for the posts of NHRC and SHRC Chairpersons. The 2005 bill proposed a judge with three years of service in the Supreme Court to be eligible for the NHRC Chairperson and a judge with five years of service in the High Court to be eligible for the SHRC Chairperson. The present Bill has no reference to any such criteria.

- 2.2.3** AiNNI is of the view that if the post of the Chairpersons at the NHRC and SHRC are to be headed by a former member of the judiciary, the current provisions of Section 3(2)(a) and Section 21(2)(a) of the Act remain.

The Bill dilutes the eminence of the NHRC and SHRCs, permitting further space for the government to have unfettered discretion in appointments. This will also devoid the NHRC and SHRCs of the required institutional status, experience and expertise. An amendment broadening the criteria for appointment of the NHRC and SHRCs Chairpersons will open up a wide bracket of choices for the government, which will, in turn, have the potential of resulting in an unhealthy competition among the members of the serving judiciary and politicisation of the same.

- 2.2.4** Allowing a judge of the Supreme Court or a High Court as the Chairperson of NHRC or SHRC respectively, might allow breeding of internal conflict on grounds of seniority between the appointed Chairperson and Member appointed according to Section 3(2)(b) and Section 21(2)(b). This we fear might severely obstruct the day to day functioning of the NHRC and SHRCs and hamper institutions' dignity.

- 2.2.5** Amendments to Section 3(2)(a) and Section 21(2)(a) of the Act without amending Section 4 (1) and Section 22 (1) of the Act, and in the absence of a comprehensive, objective and transparent appointment process will raise serious questions on the independence and autonomy of not just the NHRC and SHRCs but also allow vulnerability of the judiciary. Unlike, the current appointment committee, where major membership comes from the ruling party, there must be an independent committee, where members have no political affiliations and ample accreditation to their name. The current appointment committee has representation from the ruling party and the opposition, in a 4:2 ratio. With a selection panel, consisting solely of politicians, it is highly recommended that the least step towards an accountable mechanism would be

laying down a categorical process of appointment. With a voluminous history and an unprecedented rise in human rights violation allegations against the state, this only caters an apparent conflict of interest.

- 2.2.6** To translate the Principles of transparency and participation, India should look at best international practices, including but not limited to open invitations, nominations, and public consultations. Any amendments made to the Act should be in complete coherence with the mandate set out and the Principles, striving towards an autonomous and independent body, not to make it another tool in the hands of the government throttling any mechanism of checks and balances.

2.3 Amending Tenure of Chairperson and Members of NHRC and SHRCs

- 2.3.1** Reduction of tenure of NHRC and SHRC Chairpersons and Members from five to three years, and with a possibility of them being reappointed, will significantly constraint the work and approach of the Chairpersons and Members. This will eventually lead to a greater government control. For the Chairpersons and Members to have a second term, it would be a non-negotiable that they satisfy the government, which eventually determines the outcome of the appointment committee.
- 2.3.2** A three-year tenure falls very much within the tenure of a government and can be easily used as an alternate to the cumbersome process of removal under Section 5 and Section 23 of the Act.
- 2.3.3** A three-year tenure is an exceedingly short duration to understand the system and make effective implementation therein. By the time a Chairperson and Member grasp the understanding and working of the NHRC or SHRC, and take actions to implement the Act, her/his tenure will be nearing completion. This will lead to a decrease in efficiency and productivity of the NHRC and SHRCs, with new members coming in at frequent intervals.
- 2.3.4** Amendment to Sections 6(1) and partially for 6(2) of the Act is short-sighted. The Chairperson of the NHRC (a former Chief Justice of the Supreme Court) appointed under Section 3(2)(a) of the Act and a Member of the NHRC (a former judge of the Supreme Court) are minimum 65 years of age at the time of the appointment. Given this, none of them can have another full term after having served their first term.

2.4 Increasing the Strength of the NHRC

- 2.4.1** The amendment seeks to increase the number of Members in the NHRC from four to five. Given the huge volume of cases the NHRC deals with annually, averaging significantly over 1 Lakh, an addition one member will make no difference. NHRC with just five Members and a Chairperson will continue to be highly inadequate to be serving a population, as large as that of India.
- 2.4.2** This also affects the principles of pluralism and diversity as enshrined in the Principles. Measures should be taken to amend Section 3(2)(d) of the Act to drastically increase the number of Members in the NHRC to ensure larger representation from diverse communities based on linguistic, region, religion, caste, tribe, ethnicity and gender.
- 2.4.3** It is worth noticing that a change in the strength, by increasing number of Members from four to five, has only been proposed for the NHRC and not the SHRC.

2.5 Representation of Women in NHRC

- 2.5.1 A call for representation of women in NHRC was also made in the report submitted by the advisory committee on amendments to the Protection of Human Rights Act, 1993². However, this wasn't adopted in the amendment undertaken in 2006. The provision has been re-introduced in the said bill.
- 2.5.2 While it may appear to be progressive by providing for representation of women in the NHRC by increasing the number of members from two to three, it is merely symbolic. In 25 years of the NHRC, only three women have served as its Members and none as its Chairperson.
- 2.5.3 A token representation of women in the NHRC by amending Section 3(2)(d) is against the spirit of the Principles. If the government is concerned about unequal representation of women in the NHRC and SHRCs, it should bring amendment to the effect that at least half of the total strength (Chairperson + Members) of the NHRC and SHRCs are women.
- 2.5.4 It appears just as an amendment to appease the SCA of GANHRI on the Principles requiring equality and pluralism in the NHRC. This can be proved from that fact given that there is no mention of amendments to ensure women representation in the SHRCs.

2.6 Powers of the Secretary-General

- 2.6.1 Section 3(4) of the PHRA, 1993 has previously also undergone a change via the 2006 amendment. In the 1993 Act, it read as follows: *“(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.”* However, later via the 2006 Amendment to the 1993 Act, it was revised to add the words – *“(except judicial functions and the power to make regulations under section 40B) as may be delegated to him by the Commission or the Chairperson, as the case may be.”*
- 2.6.2 Here, the shift is evident – while originally, the Secretary-General could be delegated powers by the Commission only, the 2006 amendment act extended it to both the Commission as well as the Chairperson. The present bill is a further attempt, to dilute the powers of the Commission and weaken its structure, by taking away power to regulate the functions of the Secretary-General from the Commission and resting it solely with the Chairperson. This may open floodgates for wide discretion on the part of the Chairperson, resting on him unfettered and unguided powers, especially in the context of proposed amendments to Section 3(2)(a). As the Chief Executive Officer of the Commission, the Secretary General should be acting under the control of the full commission, in coherence with its mandate.

3. Conclusion & Recommendations:

AiNNI requests Hon'ble Members of Parliament in the Lok Sabha and the Rajya Sabha that instead of moving towards a blind acceptance of the amendments proposed in the bill, the same must be cautiously thought through, allowing the NHRC and SHRCs to serve their mandate to the fullest. It is imperative to mention here that on April 12, 2017, the then UN High Commissioner for Human Rights had addressed a letter to the then Union Minister of External

² **Report of the Advisory Committee on amendments to The Protection of Human Rights Act dated October 1999:** It recommended that while the commission continues to be 5 membered, there shall be two judicial and three non-judicial members. Among the non-judicial members, it proposed to have at least one women member.

Affairs, expressing concern over the working of NHRC. In his letter, the UN High Commissioner had 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.
- Empowering NHRC to issue independently its own rules of procedure and guidelines with provisions for citing any person for violations for these procedures and guidelines.
- Establishing three additional offices of NHRC in Eastern, Western and Southern parts of India and providing the Commission with appropriate funds to carry out its mandate.
- Establishing a toll-free-national- helpline for contacting NHRC in emergency and urgent situations of grave violations of human rights.
- Empowering NHRC to cover all relevant cases involving paramilitary forces and the army, including in the Jammu & Kashmir state.
- Empowering NHRC to inquire into alleged human rights violations and abuses by the armed forces of India.

In addition to the above recommendations of the UN High Commissioner and concerns raised through this memorandum, AiNNI wishes to point out to Section 30 of the Act pertaining to Human Rights Courts and Section 31 of the Act pertaining to Special Public Prosecutor in the Human Rights Courts. In several states these courts and special public prosecutors have been appointed, however, in the absence of notifying the offences to be tried by the human rights courts, this provision continues to remain on paper despite almost 26 years of enactment of this Act.

In order to enhance the working of the NHRC and SHRCs in line with the Principles, adherence to the recommendations of the SCA of GANHRI in 2011, 2016 and 2017, and other best practices relating to human rights institutions across the world, the following are AiNNI's recommendations regarding the changes proposed in the Bill:

- a. Re-examine, the powers and functions of deemed members at the NHRC.
- b. If NHRC and SHRCs are to be chaired by a member of the judiciary, it should be no one other than the Chief Justice of India or Chief Justice of the High Court respectively.
- c. The Appointing Committee of the NHRC should be guided by defined criteria especially the contribution to human rights made by each of the eligible former Chief Justices of the Supreme Court of India when selecting the Chairperson of the NHRC.
- d. The Appointing Committee should take into consideration the contributions to human rights made by each of the eligible candidates being considered for the post of Member of the NHRC, along with other defined criteria. The vacancy should be filled through a public announcement and call for applications.
- e. There should be no delay in filling vacancies; and prospective members should be identified in good time to ensure that no vacancy arises.
- f. The total number of members of the NHRC should be increased by at least 5 times more, with experience and expertise in human rights, and drawn from different competencies including the plurality of civil society.
- g. Maintain the five-year tenure of Chairperson and Members at NHRC and SHRC.
- h. Removal of the provision for reappointment of Chairperson and Members at NHRC and SHRC.

- i. Representation of women members in the commission be at least be 50% of the constitution of the NHRC. A similar provision be made for at least 50% membership of women to SHRC.
- j. The functions of Secretary-General of the NHRC shouldn't be solely to the control of the Chairperson but to the Commission.
- k. Table NHRC annual reports in the Parliament and hold discussions on the same. Once tabled, these reports should be made publicly available on NHRC's website.

In the growing milieu of hate and intolerance in the country, it is of utmost importance that we protect our human rights institutions by exhibiting the utmost respect and sincere regards to our international obligations and constitutional values. The enactment of the 1993 Act, was in itself a commendable step, which should be preserved by undertaking critical legislative review of the same. To conclude, AiNNI believes that the first step for reforms in the NHRC and SHRCs are through amendment of Section 4 and Section 22 of the Act, pertaining to the Appointment Committee. In case of the NHRC, the composition of the appointment committee would be in the ratio of 4:2 in most cases, 3:3 in rare cases or 5:1 as experienced in the past five years with the absence of Leader of Opposition in Lok Sabha. Till government's representation in the appointment committee is in majority, NHRC and SHRCs will seldom be independent as required according to the Principles.