

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

## NATIONAL SECRETARIAT

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## **Press Release**

## NHRC Appointments Devoid of the Required Processes

According to the 2017 SCA Report, NHRC had advocated for changes to the selection process – advertisement of vacancies and establishment of clear and uniform criteria to assess merit of eligible applicants.

The All India Network of NGOs and Individuals working with the National and State Human Rights Institutions (AiNNI) expresses shock and grave concerns on the procedures and methods adopted for the recent appointments in the National Human Rights Commission (NHRC). AiNNI strongly believes that the NHRC Appointment Committee has completely disregarded the recommendations of the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), NHRC's own submissions before the SCA in 2017, amendments to the Protection of Human Rights Act (PHRA) in 2019 and the appeals made by civil society.

AiNNI in collaboration with several organisations had written to the President of India on May 11, 2021, urging that the appointments to the NHRC are made at the earliest, on the basis of the required process and recommended human rights standards, with definite criteria to assess each candidate and all efforts to be inclusive and transparent. However, as it appears from the letter of Mr. Mallikarjun Kharge, Leader of the Opposition in the Rajya Sabha and the dissenting member in the committee, government preferences dominated over all suggestions and recommendations.

The SCA in 2011, 2016 and 2017 expressed serious concerns on the lack of pluralism in the NHRC, meaning inadequate representation of women, caste, tribe and religious communities in NHRC's leadership. These reports also highlight the need for a transparent appointment process – advertisement of vacancies, assessing candidates on clear and uniform criteria and holding broad consultations. According to the 2017 review report, "the NHRC has advocated (with government) for changes to the selection process to include requirements to require the advertisement of vacancies and the establishment of clear and uniform criteria upon which to assess the merit of eligible applicants".

While it is evident that the recent appointments failed to follow a transparent process, set uniform criteria and hold broad consultations, the committee, despite the recommendations of Mr. Kharge, outrightly rejected the principle of pluralism. Following the 2019 PHRA amendments, whereby the provision pertaining to NHRC Chairperson was amended - requirement amended from being a Chief Justice of India to a Judge of the Supreme Court - the appointment committee missed the opportunity to appoint a

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retired woman Judge of the Supreme Court as NHRC's Chairperson, when there were two candidates available, namely, Justice R Banumathi and Justice Indu Malhotra. NHRC in its 28 years of existence has never been headed by a retired women Judge of the Supreme Court. It is also unclear if NHRC Member Justice PC Pant, holding considerable seniority over Justice Arun Mishra and eligible to be appointed the NHRC Chairperson, was considered to head the apex human rights body. With Justice Arun Mishra, whose admiration for the current government was self-proclaimed and his conduct and judgements as a Supreme Court judge in question - as documented by credible media sources, being selected over a galaxy of eligible candidates, cast doubts whether the selection criteria, if any, met the required human rights standards.

Appointment of the former director of the Intelligence Bureau as a NHRC Member – supposed to have the knowledge and experience in human rights – in a country with several credible human rights defenders, comes as a shock. It is unprecedented that a former head of the Intelligence Bureau will be a commissioner of the apex human rights institution. The Judicial Member recommended for appointment, given his present age, can serve this office not more than 19 months. It is to be noted that this post has been vacant for close to three years after the retirement of Justice Murugesan. If human rights experience, record and contribution of the candidates were the criteria, these appointments require serious re-thinking.

AiNNI, on the concern of 2019 PHRA amendments permitting further space for the government to have unfettered discretion in appointments had stated that, "This will only allow the appointment committee to handpick the most 'favourable' judge to head the NHRC which is a matter of grave concern. If the NHRC needs to be headed by a judge of the Supreme Court, in the interest of the institution, it is desirable that it is the CJI, hence restricting the government's influence on the NHRC and the judiciary. Justice J S Verma opposed a similar amendment with this provision that was proposed in 2006 and the provision was thereafter withdrawn when the bill came to the Rajya Sabha."

Looking back at the SCA granting the NHRC an 'A' accreditation, following the 2017 review, on promises of reforms through amendments in the PHRA ensuring adherence to the UN Paris Principles, is no less than a mockery. The big question remains whether the NHRC misled the SCA to recover its suspended 'A' status, a matter of great significance for India in international diplomacy. Subverting and manipulating the appointment process endangers the credibility of the institution and our democratic credentials as a country.

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SCA Reports -

2011 – <a href="https://ainni.in/wp-content/uploads/2021/06/SCA-REPORT-MAY-2011-FINAL.pdf">https://ainni.in/wp-content/uploads/2021/06/SCA-REPORT-MAY-2011-FINAL.pdf</a>
2016 – <a href="https://ainni.in/wp-content/uploads/2021/06/Annexure-02B-SCA-Final-Report-Nov-2016-English.pdf">https://ainni.in/wp-content/uploads/2021/06/Annexure-02B-SCA-Final-Report-Nov-2016-English.pdf</a>

2017 - https://ainni.in/wp-content/uploads/2021/06/SCA-Report-November-2017-ENG.pdf