



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



**AiNNI – ANNI Joint Submission to the
Global Alliance of National Human Rights Institutions (GANHRI)
Sub Committee on Accreditation (SCA) along with Endorsees**

Submitted on October 01, 2022

**By
All India Network of NGOs and Individuals
working with National and State Human Rights
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And

**Asian NGO Network on National Human Rights
Institutions (ANNI)
Along with 72 Institutional & 84 individual
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1. Introduction:

The National Human Rights Commission of India (NHRC) is due for its next review and accreditation by the Global Alliance of National Human Rights Institutions (GANHRI) in March 2023. This will be the NHRC's fifth round of accreditation following past processes in 2006, 2011, 2016 and 2017.

This report presents a performance assessment of the NHRC for the consideration of GANHRI's Sub-Committee on Accreditation (SCA). It has been prepared by a collective of civil society in India to highlight key issues and concerns relating to the functioning of the NHRC, which, it is hoped, will help the SCA in its review. A full list of the individuals and organisations endorsing this report is in Annexure 1.

While the focus of this report is the performance assessment, it also provides background and context on developments related to the NHRC in the five-year period since its last assessment. It begins by giving a recap of the latest SCA's recommendations in 2011, 2016 and 2017. It summarises the findings and recommendations of two separate independent assessments of the NHRC conducted in 2018. Amendments to the Protection of Human Rights Act, 1993 (PHRA) were passed in the year 2019, these are briefly analysed for their compliance with the Paris Principles. Data that reveals trends in the NHRC's complaints-handling is presented. This report also highlights endemic human rights challenges in India over the last five years, characterised by rampant violations and difficulties in redress, to situate the environment and urgent need for a responsive national human rights institution. Lastly, it documents specific case studies of NHRC interventions in cases related to the rights of minorities, cases of extrajudicial killings, deaths in custody and custodial violence, the rights of freedom of assembly and association, and systemic violations in the context of Kashmir.

Unfortunately, this report is underpinned by the long disappointment of civil society with the NHRC's abject failure to live up to its mandate, despite efforts by civil society. This disappointment is more acute with the rapid deterioration in protection of human rights in India.

2. Brief recap of the past accreditation processes (2011, 2016 and 2017):

In its 2011, 2016, and 2017 reports, the SCA has reiterated its recommendations to the Government of India and to the NHRC regarding composition and pluralism,

selection and appointment of the NHRC chairperson and members, appointment of senior staff (including the practice of secondment from government), engagement with civil society, and complaints-handling. Despite non-conformity with most of these repeated recommendations, the NHRC has consistently been accredited with 'A' status, raising serious concerns over the accreditation process in the minds of civil society. This section gives the gist of the SCA recommendations.

2.1. SCA Accreditation Report 2011¹:

In its 2011 report, the SCA noted that *“the provisions in the Protection of Human Rights Act (Amendment) 2006 dealing with the composition of the Commission are unduly narrow and restrict the diversity and plurality of the Commission”*.² It further commented that the dominance of the senior judiciary as members further restricts diversity. The SCA recognised that reliance on judicial officers' stems from the NHRC's quasi-judicial functions, but pointed out that *“this is but one of 10 functions”* of the NHRC and this restricted scope *“limits the capacity”* of the NHRC to effectively fulfil its full mandate of functions.³

The SCA noted its concerns that the *“deemed members”*, who are chairpersons of various other thematic national human rights institutions, are not adequately involved in discussions on the NHRC's work, particularly on its non-judicial functions.⁴ The SCA also shared the concerns of the then UN Special Rapporteur on the Situation of Human Rights Defenders, regarding the *“restrictive nature of the appointments process”* of the NHRC, following her official visit to India in 2011.⁵

Expressing its dissatisfaction with the NHRC failing to address one of its recommendations made in 2006 relating to secondments of key positions, the SCA recommended that the NHRC *“advocate to amend the PHRA to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government and to provide for an open, merit-based selection process”*.⁶ It also concerningly noted that serving and former police officers were involved in NHRC investigations, especially where the alleged perpetrators are police.⁷

¹ SCA Report, May 2011, page 13: Available at:

https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_REPORT_MAY_2011_-_FINAL_%28with_annexes%29.pdf

² SCA Report 2011, page 13.

³ SCA Report 2011, page 13.

⁴ SCA Report 2011, page 13.

⁵ SCA Report 2011, page 13.

⁶ SCA Report 2011, page 14.

⁷ SCA Report 2011, page 14.

The SCA noted that the Core/Expert Groups of the NHRC, the main means of direct engagement with civil society, were not functioning effectively.⁸

On complaints handling, the SCA repeated the concerns of civil society groups *“that the NHRC’s complaint handling functions suffer from extended delays”* and it *“does not adequately address human rights violations that have occurred”*.⁹ The UN Special Rapporteur on the Situation of Human Rights Defenders who, at the conclusion of her official visit to India in January 2011, voiced the same concerns:

“(A)ll the defenders that I met during the mission voiced their disappointment and mistrust in the current functioning of (the NHRC). They have submitted complaints related to human rights violations to the Commission, but reportedly their cases were either hardly taken up, or the investigation, often after a significant period of delay, concluded that no violations occurred. Their main concern lies in the fact that the investigations into their cases [were] conducted by the police, which in many cases are the perpetrators of the alleged violations”.¹⁰

The SCA encouraged the NHRC to address these concerns of delay and inclusion of police officers.¹¹

2.2. SCA Accreditation Report 2016¹²:

In 2016, amidst growing human rights violations in India, acutely against religious minorities, the NHRC was reviewed by the SCA in November 2016. After reviewing NHRC’s application and also submissions from civil society including by AiNNI, the SCA deferred the further consideration of the NHRC’s application to its second session in 2017.

Regarding composition and pluralism, the SCA repeated its views from October 2006 and May 2011 that the practice of a majority of members being drawn from the judiciary restricted the scope of potential candidates, leading particularly to the lack of representation of women in the NHRC’s governing body.¹³ In this vein, it noted the NHRC’s statistic that of its total 468 staff, 92 (constituting 20%) are women,

⁸ SCA Report 2011, page 14.

⁹ SCA Report 2011, page 14.

¹⁰ SCA Report 2011, page 14.

¹¹ SCA Report 2011, page 15.

¹² SCA Report, November 2016, page 24, Available at: <https://ganhri.org/wp-content/uploads/2019/11/SCA-Final-Report-Nov-2016-English.pdf>

¹³ SCA Report 2016, page 24.

commented that the NHRC has failed to take steps to ensure pluralism, and called for greater pluralism including gender balance.¹⁴

Regarding selection and appointment, the SCA stated that the enshrined selection process was not “*sufficiently broad and transparent*” and called on the NHRC to seek a process that included requirements stated in the Paris Principles:

- a) Publicize vacancies broadly;
- b) Maximize the number of potential candidates from a wide range of societal groups and educational qualifications;
- 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 individual capacity rather than on behalf of the organization they represent.¹⁵

The SCA repeated its recommendations from 2011 regarding deemed members, civil society core/expert groups, police officers carrying out NHRC investigations, and on the need to cease appointing the secretary general and director of investigations through secondment which affects even the “*perceived independence*” of the NHRC.¹⁶ The SCA recommended that the secretary general “*be recruited through an open, merit-based selection process*” and that the NHRC consider replacing police officers as investigators with “*civilian oversight*”.¹⁷

The SCA flagged a concern that one of the deemed members at that time, the chairperson of the National Commission for Scheduled Castes, happened to be a member of the Indian Parliament. Noting that this position had full voting rights in the NHRC, the SCA reiterated that government representatives or members of the Parliament should only advise and not participate in the NHRC’s decision-making.¹⁸

The SCA again received feedback from civil society of immense delays in the NHRC’s complaint-handling; and expressed concern at the NHRC’s confirmed backlog of

¹⁴ SCA Report 2016, pgs. 24-25.

¹⁵ SCA Report 2016, page 25.

¹⁶ SCA Report 2016, page 26.

¹⁷ SCA Report 2016, page 26.

¹⁸ SCA Report 2016, page 27.

40,000 cases.¹⁹ It called on the NHRC to address complaints through a timely process and “*permit all individuals, regardless of their legal status, access to its complaints process*”.²⁰

2.3. SCA Accreditation Report 2017²¹:

In the 2017 review which took place in November that year, the SCA reaccredited the NHRC with ‘A’ status. It noted that the NHRC had proposed amendments to the PHRA and called on it to press on with advocating for their passage.

The SCA repeated its concerns about the limited choice of candidates due to the dominance of the judiciary, reiterating the impact on gender balance in both leadership and staff. It pointed out that representation of women in staff positions remained at 20% in 2017.²² While acknowledging that a woman member was appointed in 2017 and that the NHRC has advocated an increase in the number of members, with one to be a woman, in the PHRA; the proposed amendment was still pending for adoption.²³ The SCA went on to highlight that simply adding on one woman member does not constitute adequate gender balance and called for proportionate gender balance as well as efforts to ensure the representation of Dalits, religious and ethnic minorities.²⁴

On selection and appointment, the SCA repeated its concerns of an inadequate process of selection, and while stating the NHRC has sought changes, the SCA flagged that these proposed changes would not address their concerns regarding the need for broad consultation, and also pointed to a lack of clarity on how a new selection process would be formalised.²⁵ The SCA stressed the necessity for pluralism and selection on objective criteria.

The SCA repeated its recommendation on appointment of the secretary general through an open objective process. It advised the NHRC that in the interim period while secondment was still in place to exert greater control in selection by setting objective criteria and itself participating in candidate evaluation.²⁶ It also restated its concern of the “*real and perceived*” conflict of interest in having police officers engaged

¹⁹ SCA Report 2016, page 28.

²⁰ SCA Report 2016, page 28.

²¹ SCA Report, November 2017, page 18, Available at: <https://ganhri.org/wp-content/uploads/2019/11/SCA-Report-November-2017-ENG.pdf>

²² SCA Report 2017, page 18.

²³ SCA Report 2017, page 18.

²⁴ SCA Report 2017, page 18.

²⁵ SCA Report 2017, page 19.

²⁶ SCA Report 2017, page 20.

in NHRC investigations and encouraged the NHRC to “diversify the composition of its investigative team beyond police officers”.²⁷

3. Appeal by AiNNI and civil society organisations on NHRCI’s accreditation of ‘A’ Status in 2017:

In February 2018, AiNNI appealed to the members of GANHRI Bureau to review the ‘A’ status given to the NHRC by the SCA in November 2017, terming the ascribing of ‘A’ status a “*major let down for the Indian citizen*”. A letter endorsed by 343 organisations and 247 individuals raised that the NHRC had not demonstrated any substantive compliance with the SCA recommendations of 2011 or 2016 nor could show any visible improvements following its 2017 review. The letter stated that it was learnt through reliable, informed sources that the ‘A’ status was granted based on assurances from the Union Ministry of Home Affairs (MHA) that they will consider the amendments to the PHRA put forth by the NHRC. With many of the signatories closely engaged in matters relating to the NHRC, the letter revealed that the proposed amendments were not publicly available as of February 2018, nor were any pre-legislative consultation processes announced or underway. The related concern of the NHRC proposing amendments in isolation, without any public or civil society input, was flagged. The letter highlighted that following the accreditation deferral in 2016, the NHRC appointed two first-ever ‘NHRC Special Monitors’, both well recognised civil society figures, in a cosmetic exercise giving them mandates but no autonomous authority, in the run-up to the 2017 review. It also appointed a senior officer from the Intelligence Bureau as director general of investigation in December 2017 in utter disregard to SCA recommendations regarding police and security officials.

Summary of compliance with SCA’s repeated recommendations made over accreditation cycles:

| SL.No. | SCA Recommendation | Remarks |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | The requirement for the appointment for the Chair to be a former Chief Justice of the Supreme Court severely restricts the potential pool of candidates | Appears to have complied on paper through 2019 Amendment of Protection of Human Rights Act but in practice, a serious death blow was dealt to the independence of the NHRC, as illustrated in this report. |

²⁷ SCA Report 2017, page 21.

| | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 2. | Composition and pluralism, gender balance in members and staff. Having only one member who is a woman does not represent appropriate gender balance. | No compliance |
| 3. | This method of ensuring pluralism (through Deemed Members) is insufficient. | No compliance. 2019 Amendment of the PHRA shows wanton disregard to SCA recommendation. |
| 4. | Deemed Members are not adequately involved in discussions on the focus, priorities and core business of NHRC non-judicial functions | Not complied with. Meetings are not regularly held. No joint action by the Deemed Members on contemporary challenges |
| 5. | Selection and appointment of Chairperson and Members | Totally non-transparent despite multiple recommendations made over the years |
| 6. | Appointment of Secretary General and the Director of Investigations | No compliance |
| 7. | Involvement of Police Officers in Investigations | No compliance |
| 8. | Cooperation with other human rights bodies | Perfunctory compliance with credible civil society actors choosing to stay away. |
| 9. | Publication of annual reports | No compliance |
| 10. | Complaint process reform | No compliance |

4. Assessments of the NHRC in 2018:

In 2018, two separate assessments of the NHRC were done; one with the NHRC's involvement and the other as an independent fact-finding mission. Their findings and recommendations are briefly summarised below.

4.1. Mission Report on the Performance of National Human Rights Commission of India (NHRCI) commissioned by the Asian NGO Network on National Human Rights Institutions (ANNI):

In July 2018, the Asian NGOs Network on National Human Rights Institutions (ANNI) formed a fact-finding mission with a team of experts comprising Prof. Kwak Nohyun, the former Commissioner and Secretary General of the National Human Rights Commission of South Korea; Ms. Rosemarie D. R. Trajano, a prominent human rights

defender (HRD) from the Philippines; and Dr. Khoo Ying Hooi, Senior Lecturer at the Department of International and Strategic Studies, University of Malaya. The mission took place between August 21–25, 2018, in New Delhi, India. They conducted analysis of secondary documents and gathered information from primary sources. These included interviews with lawyers and jurists, academics, human rights activists, and former staff of the NHRC, and interaction with the NHRC. The report of the fact-finding mission was published in July 2019.²⁸ The mission’s key findings and recommendations are summarised here.

On the NHRC’s Independence, the report states that this has always been “*problematic*” as the institution was born out of government’s needs, rather than as the outcome of a popular or human rights movement.²⁹ A trailblazing recommendation by the expert team is for legal reform to deem the NHRC a constitutional body, and no longer a statutory body under the ambit of the MHA.³⁰

The mission echoes SCA and other observations on the serious gaps in the selection process and appointments made to the NHRC, pointing to the loopholes in the PHRA itself. The expert team raised concerns of the possibility of compromises, and so affecting the independence of the judiciary, in the race for a “*post-retirement job*” at the NHRC.³¹ The expert team highlights that the appointment committee, under the PHRA, is by design dominated by the government of the day which in turn “*seriously compromises the independence of the NHRC*”; and also provides room to the government to appoint its favoured candidates.³² The mission report is sprinkled with anecdotes of candidates with questionable human rights records appointed due to closeness with the ruling party. The expert team flagged with concern the absolute closed nature of appointments and decision-making, which easily dismisses any objections relating to candidates raised by the members from the opposition on the appointments committee. With no public call or process, there is no possibility for civil society or the larger public to be involved.

The expert team repeated the strong concerns of “*conflict of interest*” with serving police and security officers as the leadership and investigating staff of the NHRC. The

²⁸ Mission Report on the Performance of National Human Rights Commission of India, ANNI and FORUM-ASIA, published in July 2019, Available at: https://www.forum-asia.org/uploads/wp/2019/07/2019_ANNI-India-Mission-Report_Final1.pdf.

²⁹ Mission Report 2019, page 5.

³⁰ See chapters 3 and 4 of the Mission Report 2019.

³¹ Mission Report 2019, page 7.

³² Mission Report 2019, pgs. 7-8. The mission report uses the acronym ‘NHRCI’.

team shared that the *“investigation panel should comprise doctors, experts in forensic science, psychologists, academics including experts in sociology, criminology, experienced human rights activists who have engaged in human rights investigations and documentation all their lives and may also have representation of experienced police officials”* with awareness of human rights investigation over criminal investigation.³³ The team repeated the SCA recommendations on appointing the secretary general through an open process.³⁴ It also raised the concern that the majority of NHRC staff are seconded from ministries and departments of the central government, leading to their being ultimately loyal to their parent government department, overly bound by protocol, and with no incentive to develop expertise in human rights work.³⁵ The expert team recommended that all NHRC staff are recruited through an open independent process run by the NHRC itself.

On complaints handling, the expert team notes that the PHRA bestows considerable powers to the NHRC when seen in comparison with other NHRIs. Yet, the expert team concluded that the NHRC acts as a *“post office”*, essentially between itself and the departments of the implicated public servants. With these departments themselves involved, inevitably their reports come back, often much beyond the time provided to respond, alleging there was no human rights violation. The expert team concluded that *“every aspect of complaint handling at the NHRC needs a complete review and changes in procedures”*.³⁶

The mission report lists a series of specific proposed amendments to the PHRA towards complete compliance with the Paris Principles as well as a list of targeted recommendations to the relevant stakeholders.

4.2. Joint Capacity Assessment:

On the NHRC’s request, in December 2018, a capacity assessment was done with the NHRC’s participation with the Asia Pacific Forum of National Human Rights Institutions (APF), United Nations Development Programme (UNDP) Asia Pacific Regional Hub (UNDP APRH), and the United Nations Office of the High Commissioner for Human Rights (OHCHR), based on a concept note by the APF. The report was published in April 2019, but it has not been made available in the public domain. AiNNI has obtained

³³ Mission Report 2019, page 10.

³⁴ Mission Report 2019, page 11.

³⁵ Mission Report 2019, page 11.

³⁶ Mission Report 2019, page 12.

a copy by applying through the Right to Information Act, 2005.³⁷ This section refers to extracts from the report.

The capacity assessment team comprised of:

- Chris Sidoti (team leader), Senior Consultant – Asia Pacific Forum
- Sisi Shahidzadeh, Deputy Chief, National Institutions and Regional Mechanisms Section, OHCHR, Geneva
- Sharmeela Rasool, Chief Technical Adviser, Human Rights Program, UNDP Bangladesh
- Simon Karunagaram, Deputy Secretary, Human Rights Commission of Malaysia

The capacity assessment team held group and individual discussions with the NHRC chairperson, members, secretary general, joint secretaries, registrar, director general of investigation, deputies and assistant directors, officers and support staff, totaling 282 persons. The team also held interviews and discussions with 24 external stakeholders and administered questionnaires to NHRC staff.³⁸

The capacity assessment team listed out 16 core capacity issues which needed further assessment. Based on these, the capacity assessment team recommended 33 points of action to the NHRC. The recommended actions are grouped under six 'strategic areas' – governance, strategic and activity planning, program delivery, staffing, gender mainstreaming, and external engagement.³⁹

Significant recommended actions are summarized here, particularly those focused on increasing the NHRC's independence, and strengthening its mandate and actions such as complaints handling.

The team recommended the strengthening of the legislative basis of the NHRC's independence after calling the PHRA "*generally a good law*".⁴⁰ Towards this, the team called for several amendments to the PHRA.⁴¹ Firstly, to explicitly state the NHRC is independent "*not subject to direction from the Central Government or any State*

³⁷ Joint Capacity Assessment Mission Report, Available at: <https://ainni.in/2021/08/10/joint-capacity-assessment-report-of-national-human-rights-commission/resources/national/>

³⁸ JCA Report 2019, page 7.

³⁹ JCA Report 2019, page 11.

⁴⁰ JCA Report 2019, page 8.

⁴¹ JCA Report 2019, pgs. 12-13.

government of India". Echoing the SCA's recommendations, the team called for changes to bring in an *"open, transparent"* process for the selection and appointments of the chairperson and members; and notably, to amend the PHRA to enable the NHRC to *"appoint the Secretary General, the head of investigations and all other staff through direct recruitment rather than through deputation from the Central Government"*. On ways to cut down government control over appointments through deputation, the team goes a little further than the SCA recommendation to this effect by recommending that the NHRC find ways through civil service rules to itself advertise, gather applications and make selections in the deputation process, and these posts to have a tenure of at least three years.⁴²

The NHRC was recommended to review the inclusion of deemed members in the statutory membership, particularly to assess their contributions to the NHRC's work. The team goes on to say that deemed members should be retained only if the review finds *"strong reasons"*; otherwise, they should be removed as formal members.⁴³

To improve its legislative review function, the team recommended that the NHRC should create and implement a *"structured program of legislative review"*, beginning with identifying laws related to which human rights are most relevant in advance to prioritise their review. The NHRC should report to the government, Parliament and the public on any law review it undertakes.⁴⁴

On complaints handling, the team identified that the NHRC receives, consistently, about 100,000 complaints a year. The report recommends that the NHRC's complaint handling should be *"effective, responsive, timely, as informal as possible and directed towards resolution of complaints"*. Notably, it calls on the NHRC to commission an external review of its complaints handling procedures, and provides specific, practical suggestions in this regard such as use of interpreters to assist non-Hindi or English-speaking complainants; quick in-take assessment and broadening the scope of possible recommendations beyond compensation and prosecution.⁴⁵

The team recommended that the function of human rights monitoring, particularly in relation to visits to places of detention, must be more highly prioritized by the NHRC,

⁴² JCA Report 2019, page 18.

⁴³ JCA Report 2019, page 13.

⁴⁴ JCA Report 2019, pgs. 15-16.

⁴⁵ JCA Report 2019, page 15.

calling on members and senior staff to also undertake visits. The NHRC should consider setting up a specialized monitoring staff.⁴⁶

The team highlighted the need for a *"Rejuvenation Action Plan"* for the NHRC, and provided several specific recommended actions on strengthening internal, institutional practices and culture, on incorporating gender mainstreaming, and on strengthened engagement with Parliament, NGOs, and state human rights commissions.

It must be noted that the then secretary general of the NHRC sent a letter to the Capacity Assessment Team in May 2019, a few weeks after the report was published, communicating that the NHRC does not require the further intervention of the APF in implementation or other aspects of capacity assessment. While it appreciated the team's efforts and report, the letter expressed that a two-week assessment was insufficient to *"appreciate or understand"* the NHRC's working and the NHRC was well-equipped to advance its capacity. While watch dog mechanisms generally seek more powers or teeth, here is a unique case where the NHRC does not wish to pursue recommendations to make it a stronger body.

5. Protection of Human Rights (Amendment) Act, 2019:

The amendments to the PHRA were passed by the Parliament and notified in July 2019.⁴⁷ The 2019 amendments are exceedingly limited in scope, bringing the NHRC's parent legislation no closer to compliance with the Paris Principles. They do not address the SCA recommendations made in 2011, 2016 and 2017 in terms of composition, pluralism, independence, appointments, secondment, or complaints handling. In certain aspects, they further curtail the NHRC's independence.

On appointments and membership, Section 3 of the PHRA was amended in two respects. The pool of judges eligible to be appointed as NHRC Chairperson was extended to include any former judge of the Supreme Court. Earlier only a former Chief Justice of Supreme Court was eligible for the post. Though the SCA has repeatedly noted the limitations in both pluralism and capacity due to the dominance of judicial members, the 2019 amendments fail to address this concern. On composition of members, Section 3 of the PHRA was amended to increase the number of members from four to five overall. Under the category of those with knowledge and experience

⁴⁶ JCA Report 2019, page 17.

⁴⁷ Available at: <https://egazette.nic.in/WriteReadData/2019/208592.pdf>

in human rights, the number was increased from two to three provided that “*at least*” one of the three shall be a woman. Amendments to membership were silent on the inclusion of other underrepresented groups such as Dalits, members from indigenous communities, religious minorities, and LGBTIQ+; and makes no mention of more explicit selection criteria regarding human rights knowledge or experience. Taken all together, it appears the amendments provide only for token representation of women and nothing else. The SCA’s observation made in its 2017 report to this provision of amendment bears repeating that having one woman member does not represent “*appropriate gender balance*”.

Despite repeated concerns expressed by the SCA about the ineffectiveness of deemed members engagement on the NHRC, the number of deemed members was increased from four to seven, including the chairpersons of the National Commission for Backward Classes, the National Commission of Protection of Child Rights, and the Commissioner for Persons with Disabilities. This does nothing to address the deemed members’ mode of engagement, and arguably with a greater number of them, the possibility for active, reflective engagement further decreases, exacerbating the problem. It is pertinent to note that NHRC cited the presence of these deemed members time and again before the SCA and other international fora to justify its supposed compliance with the Paris Principles while in practice it engaged with them in a perfunctory manner. There appeared to be a distrust between the regular members of NHRC on the one hand and deemed members on the other. There is no material available in the public domain about any such meeting having been conducted in the last 15 months after the new chairperson took over in June 2021. The agenda of the meetings, even when held, was not substantive and did little justice to 9 out of 10 functions entrusted to the Commission. There was little coordination as can be seen from the total lack of joint fact-finding missions, research studies and other actions jointly undertaken by them.

Notably, the 2019 amendments also reduced the term of office of the chairperson and all members from five years to three years. Shrinking the original tenure means less cumulative time in each post and frequently shifting NHRC’s leadership, which does not bode well for stability, deepened human rights expertise, or building a robust institutional culture. With reappointment a possibility, this further opens the door for the incumbents to curry favour with the government to retain their positions. This

amendment strikes at the root of the NHRC's independence and shows scant regard for its compliance with the Paris Principles.

Important SCA recommendations on removal of the provisions in Section 11 allowing the government to appoint the secretary general and director general of the investigation division through secondment went unheeded in the amendments passed in 2019. No changes were brought to the selection process through the law to make it open, transparent, or based on rigorous objective selection criteria. ⁴⁸

6. Appeal for Special Review in 2021 to SCA:

In June 2021, AiNNI and ANNI appealed separately to the SCA calling for a Special Review of the NHRC, expressing grave concerns on appointments made to the Commission in 2021. On June 1, 2021, Justice (retd.) Arun Mishra was appointed as NHRC's Chairperson, Justice (retd.) M.M. Kumar, and former Director of Intelligence Bureau Mr Rajiv Jain as Members, recommended by the appointment committee.

These appointments, despite demands by civil society as well as by the lone opposition member in the NHRC's appointment Committee, failed to follow a transparent process, set uniform criteria, or be consultative in any manner. Importantly, the letters called attention to the unfitness of these individuals as the leadership rung on the NHRC, marred by allegations of deep political partisanship. They highlighted that Justice Mishra was known for his open praise of the prime minister while being a sitting judge, as well as a string of judicial rulings that fell foul of human rights. There was wide shock expressed at the appointment of a former director of the Intelligence Bureau, Mr Jain, as a NHRC Member. The letters conveyed that at least in the past, positions on the NHRC were not offered to Intelligence bureau officers, particularly in light of risks to human rights defenders critical of the State. Mr Jain was the Subsidiary Intelligence Bureau chief in Ahmedabad from 2005 to 2008. At the time, Prime Minister Mr. Modi was the Chief Minister of Gujarat and the present Home Minister Mr. Amit Shah, was the Home Minister of Gujarat. The letters conveyed that if human rights experience, record and contribution of the candidates were the criteria, these appointments required serious re-thinking.

⁴⁸ AiNNI's memorandum to the Members of Indian Parliament on the 2019 amendments, Available at: <https://ainni.in/2021/08/10/joint-capacity-assessment-report-of-national-human-rights-commission/resources/national/>

In light of these appointments, AiNNI along with several other civil society organisations and individuals appealed to the GANHRI for a 'Special Review', also noting the fact the repeated recommendations of SCA have not been fulfilled by the NHRC including during the amendment of PHRA in 2019. A similar concern and request was expressed by a group of international human rights organisations.

7. Overview of human rights in India 2017-2022:

India perennially faces immense human rights challenges. This brief section provides a snapshot overview of egregious human rights violations, and the larger trends they reveal, in the last five years. While this is not an exhaustive account of the full scale of human rights challenges the country is facing, it points to some of the major challenges of these last five years. It bears mentioning that this signals the larger environment in which India's NHRC is working, pointing to the urgent need for an active, response NHRI.

7.1. Marginalisation of religious minorities:

Discrimination and outright hostility against religious minorities has visibly increased and normalised, since the election of the current government, ruled by the Bharatiya Janata Party (BJP). This manifests in systemic discrimination often through discriminatory changes in laws, a rise in acts of direct violence, a galloping proliferation in hate speech and incitement to violence, and documented incidents of omission and commission by those in positions of authority. The religious minorities most targeted are Muslims and Christians, regarded as 'foreign faiths' within the Hindu majoritarian vision advanced by the BJP. Perpetrators of violence include Hindu right-wing vigilante groups, which have proliferated in the last several years.⁴⁹ These groups receive tacit, and sometimes overt, support from State actors at various levels, as well as from the Rashtriya Swayamsevak Sangh (RSS), the principal Hindu nationalist organisation, which has a long-standing affiliation with the BJP.

⁴⁹ These include newer groups such as Hindu Jagrana Vedike, Hindu Munnani, Hindu Yuva Vahini, along with older groups such as Vishwa Hindu Parishad and Bajrang Dal. Available at: <https://www.theguardian.com/world/2020/feb/20/hindu-supremacists-nationalism-tearing-india-apart-modi-bjp-rss-jnu-attacks>)

7.2. Mob lynchings:

Mob lynchings by Hindu vigilante groups targeting Muslim men on suspicions of cow slaughter⁵⁰, sale and consumption of beef⁵¹, interfaith marriage/relationships⁵², theft and child theft among others, which emerged as a recurring trend from 2014, continue.⁵³ Evidence points to the active support of the ruling dispensation and of police complicity.⁵⁴ As per media reports, 107 incidents of mob lynchings occurred in 2019, and 23 incidents leading to 22 deaths in 2020⁵⁵, with seven cases pertaining to suspicions of cow slaughter alone.

7.3. Hate speech against religious minorities:

It has become a tool in the hands of political leaders and Hindutva figures, including state ministers and individuals associated with the BJP, to engage in incitement to discrimination, hostility, and violence against religious minorities both online and offline, with immense coordination.⁵⁶ Some examples include:

- In the backdrop of the protests against the Citizenship (Amendment) Act 2019, from December 2019 to February 2020, Delhi witnessed an electoral campaign of inciteful speeches by BJP candidates, party leaders, and Ministers of the central government targeted against Muslims and the anti-CAA protestors.⁵⁷ They spread a clear message through a slogan widely used: Shoot the “traitors” of the country.⁵⁸ Yet, there has been negligible action taken and no prosecution initiated against any of these political figures.

⁵⁰ Most states in India impose either a partial or complete legal prohibition on cow slaughter. Since 2014, members of the BJP have increasingly used communal rhetoric towards a violent vigilante campaign against cow slaughter and beef consumption. Following this, states like Rajasthan, Maharashtra and Haryana made their cow protection laws stricter to include new offences (transportation of cattle and/or beef, sale and possession of beef) and substantially increased penalties. The narrative of illegality surrounding cow slaughter and beef consumption, fed by Hindu nationalistic politics and supported by law, creates the context and provides the justification for violence against vulnerable minorities. For instance, in Uttar Pradesh, the BJP led government issued orders to close ‘illegal’ slaughterhouses. Although the illegality pertained to environmental and other regulations, the public perception sought to be created was of slaughterhouses secretly slaughtering cows. Available at: <https://thewire.in/politics/cow-slaughter-laws-vigilantes-victims> and <http://www.firstpost.com/india/up-slaughterhouse-crackdown-here-is-all-you-need-to-know-about-the-laws-regulating-abattoirs-3356182.html>

⁵¹ Available at: <https://www.hrw.org/news/2019/02/19/india-vigilante-cow-protection-groups-attack-minorities>

⁵² Available at: <https://www.newyorker.com/culture/2017-in-review/the-year-of-love-jihad-in-india>

⁵³ Available at: <https://www.thequint.com/quintlab/lynching-in-india/> and <https://www.bbc.com/news/world-asia-india-40402021>

⁵⁴ Lynch mobs comprising of cow protection groups, many claiming to be affiliated to militant Hindu groups such as the Bajrang Dal and Vishwa Hindu Parishad (VHP) which have ties with the BJP, carry out these attacks in public, film the violence, and share widely on social media. Available at: <https://www.wired.com/story/indias-frightening-descent-social-media-terror/>

⁵⁵ <https://csss-islam.com/secular-perspective/mob-lynching-in-2020-misleading-exception-than-a-norm/>

⁵⁶ Available at: <https://www.newslaundry.com/2021/02/15/we-infiltrated-the-telegram-groups-of-the-bjp-leaders-online-network-to-see-what-they-do>

⁵⁷ Available at: <https://timesofindia.indiatimes.com/india/shaheen-bagh-jamia-are-a-plot-to-destroy-harmony-pm-modi/articleshow/73917319.cms>, <https://www.newslaundry.com/2020/03/13/why-are-amit-shah-and-adityanath-not-being-blamed-for-the-delhi-carnage>, <https://www.firstpost.com/politics/will-remove-shaheen-bagh-protesters-mosques-on-state-land-west-delhi-bjp-mp-parvesh-vermas-poll-promise-7965961.html>, <https://indianexpress.com/article/india/karnataka-bjp-mla-somasekhara-reddy-threatens-anti-cao-protesters-6198602/>

⁵⁸ Available at: <https://scroll.in/video/947491/goli-maaro-saalo-ko-bips-kapil-mishra-posts-video-of-his-peaceful-march-supporting-the-cao> and <https://scroll.in/video/951289/watch-anurag-thakur-minister-of-state-for-finance-lead-goli-maaro-saalon-ko-slogans-at-rally>

- In March- April 2020, as India was experiencing the onset of the Covid-19 pandemic, Muslims across India became the target of hate, vilification, and incitement, with orchestrated campaigns⁵⁹ by BJP leaders and pro-government TV news channels⁶⁰, together with social media platforms, blaming Muslims for spreading the virus, and calling for direct action against them. This anti-Muslim targeting spilled over into actual violence, economic boycotts, and denial of public services.⁶¹
- Similar hate campaigns, with dehumanising language replete with anti-Muslim sentiment, were central to the BJP's subsequent campaigns in the 2021 Assam state elections, and 2022 Uttar Pradesh elections, both of which the party won.⁶²
- Most recently, at Hindu religious conferences across several states, Hindutva religious leaders pledged the destruction of the Muslim community, urging their followers to take to arms.⁶³ Calls for “cleanliness drives” against Muslims and to kill “at least 2 million” have been said.

7.4. Online abuse against Muslim women:

Online abuse against Muslim women has visibly increased. On 1 January 2022, Muslim women were reported to be put on ‘auction’ via an app called ‘Bulli Bai – your deal of the day’. This was the second instance of an online so-called auctioning app with images of prominent Indian Muslim women. The names of the apps, Bulli Bai and Sulli Bai, are derogatory terms used for Muslim women.⁶⁴ The organized nature of virtual bullying, with threats of sexualized violence, is aimed at silencing women.⁶⁵ No arrests or prosecutions followed the first incident in July, 2021. The second one, after being reported widely, led to initiation of investigations and arrests.⁶⁶

While authorities only rarely taken any action against perpetrators of anti-minority vilification and incitement, penal provisions on “hurting religious sentiments” are more often instrumentalised against minorities. There has been growing criminalisation of

⁵⁹ Available at: <https://www.bbc.co.uk/news/world-asia-india-52147260>

⁶⁰ Available at: <https://www.newslaundry.com/2020/04/27/audit-of-biqotry-how-indian-media-vilified-tablighi-jamaat-over-coronavirus-outbreak>

⁶¹ Available at: <https://strongcitiesnetwork.org/en/coronajihad-covid-19-misinformation-and-anti-muslim-violence-in-india/>

⁶² Available at: <https://www.aljazeera.com/news/2021/3/25/stress-on-hindu-identity-bjp-hate-campaign-in-poll-bound-assam> and <https://thewire.in/communalism/100-instances-of-hate-speech-religious-polarisation-hindutva-supremacy-in-adityanaths-poll-speeches>

⁶³ Available at: <https://thewire.in/communalism/hindutva-leaders-dharma-sansad-muslim-genocide>

⁶⁴ Available at: <https://www.aljazeera.com/news/2022/1/2/bulli-bai-muslim-women-auction-online-india>

⁶⁵ Available at: <https://thewire.in/rights/clubhouse-and-the-fantasy-of-sexual-violence-against-muslim-women> and <https://www.aljazeera.com/news/2021/7/12/sulli-deals-a-virtual-auction-of-indian-muslim-women>

⁶⁶ Available at: <https://www.aljazeera.com/news/2022/1/7/india-police-arrest-alleged-creator-bulli-bai-app-muslim-women>

free speech⁶⁷ and political criticism⁶⁸ and even more frequent censure of minority voices.⁶⁹

7.5. Discriminatory and sweeping changes through law:

The BJP government has pushed new laws and policies governing **citizenship** which disproportionately affect minorities and vulnerable groups, particularly Muslims. On December 11, 2019 the Parliament passes the Citizenship (Amendment) Act. The law fast-tracks citizenship to India for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians escaping religious persecution in Pakistan, Bangladesh and Afghanistan.⁷⁰ It excludes Muslims, including persecuted Muslim communities. The CAA 2019 was met with widespread protest and legal challenges, on the grounds that it is discriminatory on the basis of religion and contravenes domestic and international law.⁷¹ Coming on the heels of the troubling experience of the National Register of Citizens in Assam, the CAA and the NRC regime imposes a requirement to 'prove' citizenship. With Muslims excluded from the CAA, acute fears arise that Muslims without the documents to prove citizenship would be most at risk of facing statelessness.⁷² A report by a NHRC Special Monitor found that detainees who have been declared 'foreigners' are kept in sub-standard, prison-like conditions, and children are separated from their parents.⁷³

On 5 August 2019, the Government of India revoked Article 370, stripping the state of Muslim-majority **Jammu and Kashmir** of its special autonomous status and removed Article 35A removing guarantees for the state's indigenous population without consultation.⁷⁴ These moves extinguished statehood and made Jammu and Kashmir a Union Territory, bringing it under the direct control of the central government. To

⁶⁷ Available at: <https://timesofindia.indiatimes.com/india/19-arrested-for-cheering-pakistans-champions-trophy-victory/articleshow/59243368.cms>; <https://www.indiatoday.in/india/story/rajasthan-teacher-arrest-celebrated-pakistan-t20-win-against-india-1870152-2021-10-27>

⁶⁸ Available at: <https://www.hindustantimes.com/india-news/arrested-over-a-facebook-status-7-times-people-landed-in-jail-for-posts-against-politicians/story-ON1jukoStfV6T8aYcJEVGGJ.html>

⁶⁹ Available at: <https://www.newsclick.in/Jharkhnad-Activist-Arrested-Jeetrai-Hansda-Facebook-Remarks>; <https://thewire.in/rights/muslim-student-in-madhya-pradesh-arrested-for-calling-rss-men-pigs-on-facebook>

⁷⁰ Available at: <https://egazette.nic.in/WriteReadData/2019/214646.pdf>

⁷¹ The UN High Commissioner for Human Rights called the CAA 'fundamentally discriminatory', Available at: <https://news.un.org/en/story/2019/12/1053511>, and has filed an intervention application to offer assistance in the legal challenge in the Supreme Court of India, Available at: <https://www.livelaw.in/top-stories/united-nations-commissioner-of-human-rights-files-intervention-application-in-sc-against-caa-153401>. A resolution against the CAA was tabled and preliminarily debated in the EU Parliament, but it was prevented from being passed, Available at: https://www.europarl.europa.eu/doceo/document/RC-9-2020-0077_EN.html

⁷² Available at: <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23884>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24247>

⁷³ Available at: <https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>

⁷⁴ Available at: <https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to-ik/article28821368.ece>

impose this and for months following, the central government has ordered the arrests of thousands of Kashmiri politicians, intellectual figures, cut off internet and communication services, increased troops in the Kashmir valley, and imposed a continuous curfew.⁷⁵

7.6. Weaponisation of security laws against human rights defenders (HRDs):

The situation of HRDs in India continues to deteriorate. The 2021 Front Line Defenders' Global Analysis documents that India, among all countries, has the fourth highest number of human rights defenders (HRDs) killed in 2021.⁷⁶ HRDs from religious minorities, student activists, lawyers, academics, journalists, Dalit and indigenous rights defenders, and those based in militarized regions, such as Kashmir, Chhattisgarh, and states in Northeast India, have been especially vulnerable to attack and imprisonment.

A range of laws, particularly anti-terror and preventive detention laws, foreign funding regulations, cyber security laws, and 'offences against the state' in the Indian Penal Code, such as sedition, are being used routinely to persecute defenders.⁷⁷ Bail is extremely difficult to obtain for those held under the anti-terror law, the Unlawful Activities Prevention Act (UAPA), even where there are health risks and/or delays in starting trial. Courts are inconsistent in exerting strong judicial oversight. According to unpublished civil society estimates, there are currently at least 29 HRDs incarcerated in various Indian prisons under the UAPA across India. The UAPA is frequently invoked against HRDs.

There is a visible pattern in several cases of HRDs being implicated in multiple criminal cases, with an ultimate UAPA charge that ensures prolonged custody. Or, even in cases where bail is granted through court, new cases are filed to prevent release.

⁷⁵ Available at: <https://thewire.in/rights/article-370-two-years-read-down-rights-violations-continue-jk-rights-forum>

⁷⁶ Available at: <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0>

⁷⁷ Section 43D-2 of the anti-terror law, [the Unlawful Activities Prevention Act \(UAPA\)](#) allows for the period for investigation (i.e., the time allowed by law to the police to file a chargesheet or final report) to extend up to a maximum of 180 days for offences punishable with death, imprisonment for life, or imprisonment for a term not less than 10 years. Under ordinary criminal law, the maximum period is 90 days for this threshold of offences. Preventive detention laws, such as [the National Security Act \(NSA\)](#) and [Kashmir's Public Safety Act \(PSA\)](#), enable the political executive to pass detention orders, allow for detention up to 12 months and more. The lack of judicial oversight in this system results in recurring detention often over years.

Illustrative cases of concern

- **Bhima Koregaon:** Since June 2018, 16 HRDs have been jailed under the UAPA in the Bhima Koregaon case.⁷⁸ The accused – Sudhir Dhawale, Rona Wilson, Shoma Sen, Mahesh Raut, Surendra Gadling, Sudha Bhardwaj, Arun Ferreira, Vernon Gonsalves, Varavara Rao, the late Stan Swamy, Anand Teltumbde, Gautam Navalakha, Hany Babu, Jyoti Raghoba Jagtap, Sagar Tatyaram Gorkhe, and Ramesh Murlidhar Gaichor – have been repeatedly denied bail, despite health concerns.⁷⁹ Reports by Arsenal Consulting, a digital forensics consulting company, revealed that the Pegasus spyware was used to plant evidence on the computers of at least two of the accused in the case: Rona Wilson and Surendra Gandling.⁸⁰ At the time of writing, with the exception of Varavara Rao and Sudha Bharadwaj who are out but with stringent bail conditions, all the accused are currently in pre-trial detention stretching into four years.
- **Stan Swamy:** On 5 July 2021, 84-year-old Jesuit priest Stan Swamy – incarcerated for nine months in the Bhima Koregaon case – died in custody after contacting Covid due to the lack of effective and timely medical treatment in jail and the routine denial of bail. Stan, suffering from Parkinson’s disease which advanced while he was in jail, may have survived had he been given access to timely medical care and proper treatment. The UN Working Group on Arbitrary Detention has publicly released its opinion in this, stating that his death in custody will forever remain a stain on India’s human rights record.⁸¹
- **Delhi Communal Violence:** 18 HRDs leading and participating in protests against the Citizenship Amendment Act (CAA) 2019 were targeted and jailed under the UAPA, as well as additional charges under the Indian Penal Code, in Delhi in 2020. These HRDs are being accused of instigating communal violence in Delhi.⁸² These

⁷⁸ The case relates to caste-based violence that took place in Bhima Koregaon, in the state of Maharashtra on 1 January 2018. While Hindu nationalist political figures, associated with the RSS, were first implicated as instigating the violence, the State soon filed charges against HRDs even while most of them were absent at the site of violence. Prosecution of Hindu nationalist leaders is not taking place.

⁷⁹ In this case, the HRDs were arrested when the BJP was in power in Maharashtra. The arrests and investigation were being conducted by the state police. In 2020, a coalition government led by the Shiv Sena won the state elections. After taking the reins, the new government announced it will thoroughly review this case. Following this, the central government abruptly transferred the investigation to the National Investigation Agency without the state government’s consent. Available at: <https://scroll.in/latest/951029/bhima-koregaon-case-handed-over-to-nia-centre-didnt-take-our-consent-alleges-maharashtra-minister>

⁸⁰ Available at: <https://internetfreedom.in/the-arsenal-reports-bhima-koregaon-arrests/>

⁸¹ Available at: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

⁸² The violence took place in North East district of Delhi from 23-26 February 2020, in which 53 people were killed, hundreds injured, and property damaged including Muslim places of worship. The majority killed were Muslims.

HRDs are being held as reprisal for their strong opposition to the CAA on the grounds that the law makes citizenship to India subject to discrimination based on religious identity.⁸³ 12 defenders remain in jail to date with no sign of trial beginning. All of those presently in jail are from the minority Muslim community.⁸⁴

- **Hidme Markam:** In March 2021, the WHRD was arrested while participating in an event to mark International Working Women’s Day in Dantewada, Chhattisgarh, by Chhattisgarh police on a slew of charges, including under the UAPA. She continues to be incarcerated in a Raipur prison.
- **GN Saibaba:** A renowned academic and HRD was convicted with life imprisonment in March 2017 by the Indian courts under the UAPA and sedition, despite no direct evidence for alleged links to banned groups. He has challenged the conviction. Saibaba has been a vocal advocate against State atrocities on tribal communities in Central India. He is 90% disabled and living under extremely harsh prison conditions, with little or no access to required medical facilities. Recently, on May 10, 2022, after his lawyer voiced concerns of the harsh conditions imposed on Saibaba, the jail authorities installed a wide-lens CCTV camera in front of his jail cell. This covered it entirely, including the toilet and bathing area. He lost any semblance of privacy. His family relayed within civil society that the jail authorities removed the camera and provided him a water bottle on 14 May. This happened only because he and his family were able to raise some public outcry. It remains a testament to the hostile and discriminatory environment GN Saibaba has to face in incarceration by the jail authorities.
- **HRDs in Kashmir:** suffer routine surveillance, raids and reprisals. Following the unilateral abrogation of Article 370 of the Constitution and removal of statehood in August 2019⁸⁵, Kashmiri defenders faced even greater threats. Many live and work

⁸³ Members of the BJP and Hindu nationalist figures who propagated open hate speech and incitement to violence (multiple sources of video and documentary evidence are available in the public domain), targeting anti-CAA protestors, in the time immediately preceding the violence, are not being prosecuted for their possible role.

⁸⁴ Of those arrested under a UAPA charge, to date, six – Natasha Narwal, Devangana Kalita, Safoora Zargar, Ishrat Jahan, Asif Iqbal Tanha, and Md. Faizan Khan – have been released on bail. Twelve others – Sharjeel Imam, Umar Khalid, Khalid Saifi, Tahir Hussain, Saleem Malik, Mohd. Saleem Khan, Meeran Haider, Shadab Ahmed, Tasleem Ahmed, Shifa Ur Rehman, Athar Khan, and Gulfisha Fatima – remain in jail.

⁸⁵ On 5 August 2019, the Government of India revoked Article 370 of the Constitution of India, stripping the state of Jammu and Kashmir of its special autonomous status and removed Article 35A removing guarantees for the state’s indigenous population without consultation. These moves took away Jammu and Kashmir’s statehood, making it a Union Territory under the direct rule of the central government. Since then, the government has enacted regulations to open the region for purchase of land by ‘outsiders’, facilitated the armed forces to acquire private land, and reorganise electoral constituencies. At the time of the abrogation, many HRDs and others, as per our records over 4000, were detained and lodged in jails in various Indian states. All Kashmiri political leaders, including former chief ministers and former ministers in the Indian government, were placed under house arrest for over a year.

under threats of a raid, interrogation or arrest/detention on baseless charges. The October 2020 raids on several human rights organizations and defenders' homes including that of Khurram Parvez, was a signal of greater repression to follow. The arrest of Kashmiri human rights defender Khurram Parvez, on 22 November 2021, on terror funding charges is an extremely grave attempt to silence HRDs and delegitimize and criminalize their important work.

- **Khurram Parvez:** On 22 November 2021, officials of the National Investigation Agency (NIA), raided Khurram's home and office in Srinagar. Khurram has actively engaged on human rights violations in Kashmir, specifically on enforced disappearances, with the UN and other international platforms. NIA officials seized several electronic devices and documents, and arrested him under the UAPA on allegations of funding terrorism, being a member of a terrorist organization, criminal conspiracy, and waging war against the state. He is currently lodged in Delhi's Tihar Jail.

7.7. Freedom of Expression and Freedom of the Press:

India continues to target journalists for reporting on human rights violations and is ranked 150/180 in the 2022 Reporters Without Borders - Press Freedom Index.⁸⁶ Anti-terror laws and sedition are used routinely against journalists to silence dissent. Muslim journalists, especially those working in Indian administered Kashmir have been particularly at risk.

- **Siddique Kappan:** and two of his associates were arrested on 5 October 2020 while travelling to Hathras District, Uttar Pradesh State, to report the brutal gang rape and murder of a Dalit girl. They were charged under the UAPA, and others including sedition. Kappan and his associates remain in Mathura jail with no sign of trial beginning.
- **Fahad Shah:** is currently detained under the PSA. The journalist was first arrested by Pulwama Police in Jammu and Kashmir on 4 February 2022 under three First Information Reports which included charges under the UAPA. The context is his reporting and analysis that captured a victim families' version of a case of extrajudicial killing, which diverged from the police version. He was granted bail in

⁸⁶ Available at: <https://rsf.org/en/country/india>

two of the cases through court. During the bail hearing for the third and final case, police introduced fresh charges under the Public Safety Act (PSA), ensuring that he remained in administrative detention irrespective of a court ruling. Under the PSA, authorities are empowered detain individuals without trial for up to two years.

7.8. Restrictions on foreign funding affecting human rights work:

The Foreign Contributions Regulation Act (FCRA) contains provisions which are easily misused by the Government against CSOs. In the domains of civil liberties and social justice, several prominent organisations intervening in instances of state excesses, caste atrocities, discrimination against marginalised communities, communalism, and environment, have been subjected to arbitrary actions under the FCRA.⁸⁷ Analysis of the government data provides a grim picture, since 2011 close to 29,000 CSOs have had their FCRA license either not renewed, or cancelled. As of February 2022, 22,489 CSOs continue to have the valid FCRA license with many of them awaiting the status of their renewal application. By September 2021, at least 90 international NGOs, supporting Indian CSOs, have been placed on government's Prior Reference Category (PRC).⁸⁸ The Government has, in addition to the use of the FCRA, also taken recourse to initiating criminal proceedings being investigated by the Criminal Bureau of Investigation (CBI) against certain selected organizations and individuals.⁸⁹ These organisations and several others have been compelled to temporarily suspend or shut down. The Indian government, on record in court in the case of CPSC, has objected to its engagement with international human rights mechanisms and stated this as a reason for non-renewal of FCRA. The Indian National Human Rights Commission (NHRC) has unfortunately been a mute spectator and refrained from providing any relief in any of these cases. Despite several appeals, it has not exercised its powers to review the FCRA.

On a last note, following the outbreak of the coronavirus pandemic on 11 March 2020, the Government of India imposed a nationwide lockdown on 25 March 2020 which continued until 31 May 2020. Allegations, complaints and video and photo footage of police across Indian states using excess force to "enforce" lockdown conditions

⁸⁷ To name a few, Lawyers Collective, Anhad, Sabrang Trust, Centre for Promotion of Social Concerns (CPSC, also known through its program unit People's Watch), Navsarjan Trust, Commonwealth Human Rights Initiative, Oxfam India, Greenpeace India, and Amnesty International India.

⁸⁸ Available at: <https://thewire.in/government/union-govt-restricts-funding-for-10-ngos-working-on-environment-childs-rights-report>

⁸⁹ Available at: <https://www.omct.org/en/resources/statements/india-should-stop-using-abusive-foreign-funding-law-end-harassment-against-peoples-watch-other-rights-groups>

surfaced through the duration.⁹⁰ India's experience of the second wave of coronavirus in 2021 led to a huge number of deaths and endemic lack of access to adequate healthcare and oxygen supply.⁹¹

8. Section on NHRC's Performance

8.1. Establishment and Independence:

The NHRC was established on October 12, 1993, barely nine months after the Paris Principles were adopted by the UN General Assembly. India's NHRC is among the longest standing NHRIs in the world, and the second oldest in Asia.

The inherent design of the PHRA provides that the NHRC is constituted by, and financially dependent on, the Central Government.⁹² The NHRC is directly placed under the MHA, the same ministry responsible for India's internal security and that oversees central security forces as well as police in Union Territories.⁹³ Section 40 of the PHRA gives the Central Government the power to make rules to implement PHRA's provisions, giving the design of principal operative functions to the parent Ministry. NHRC is reliant on, and reports to the MHA on all financial matters. This jeopardises the NHRC's independence and functional, financial and administrative autonomy.

Section 4 of the PHRA provides for an appointment committee of six members in charge of appointing the NHRC's chairperson and members, a seeming buffer against the government being able to select the NHRC's leadership. The appointment Committee is made up of the Prime Minister, Speaker of the Lower House of the Parliament (Lok Sabha), Minister of Home Affairs, Leader of the Opposition in the Lok Sabha, Deputy Chair of the Council of States (Rajya Sabha), and Leader of the Opposition in the Rajya Sabha.

Yet, in practice, the six-member appointment committee guarantees only two representatives from the opposition, one from the House of People and the other from

⁹⁰ Available at: <https://www.dw.com/en/india-police-under-fire-for-using-violence-to-enforce-coronavirus-lockdown/a-52946717>; <https://www.thehindu.com/news/national/coronavirus-sit-ups-squats-murga-punishment-police-try-new-ways-to-keep-people-at-home/article61958395.ece>; <https://www.hindustantimes.com/india-news/police-brutality-led-to-12-deaths-ngo/story-CCj4QPlfg7VF61x0TlvhKl.html>

⁹¹ Available at: <https://www.bbc.com/news/world-asia-india-56891016>

⁹² See Sections 3 and 32, PHRA.

⁹³ Please refer to the MHA's Department of Internal Security under which 'Protection of Human Rights Act' is placed, Available at: <https://www.mha.gov.in/departments-of-mha>.

the Council of States. Out of six members on the appointment committee, three come from the ruling party of the government – the Prime Minister, the Minister of Home Affairs, and the Speaker of the Lok Sabha⁹⁴. The remaining members, Deputy Chair of the Council of States, may or may not belong to the ruling party as that post can be taken by the opposition party if it is in a majority in the House of Council of States.

The composition of the appointment committee would be in the ratio of 4:2 in most cases in favour of the government, or 3:3 in rare cases. Since May 2014 to the present, the main opposition party has not qualified to have a Leader of the Opposition in the Lok Sabha.⁹⁵ In turn, the ratio in favour of the ruling party in the appointment committee for the NHRC has further grown to 4:1 or 3:2. Since 2014, two NHRC chairpersons and six members have been appointed.⁹⁶ With a corresponding rise in human rights violations, allegations against a government-dominated appointment committee brings into sharp focus the apparent conflict of interest.

In this scenario, the reduction of the tenures of the NHRC chairperson and members from five to three years (through the 2019 amendments), with a possibility of them being reappointed, clearly brings greater leverage to the ruling government and its control. Considering the thoroughly opaque appointments process, for chairpersons and members seeking a second term, it would be logical that they satisfy the government. This dangling carrot of a second tenure can compromise NHRC's independence.

A three-year tenure does not outlive the tenure of a ruling government, and can be easily used as an alternate to the cumbersome process of removal under Section 5 of the PHRA. A three-year tenure is an exceedingly short duration to understand human rights work within the demands of the NHRC.

8.2. Composition and Pluralism

8.2.1 Recent Appointments and Appointment Process:

As mentioned, the 2019 amendments to the PHRA allow a former judge of the Supreme Court of India to be eligible for the post of the NHRC chairperson, as

⁹⁴ While the Speaker is an elected post chosen by the Members of the House, the convention is that a Member from the ruling party is made Speaker, Available at: <https://speakerloksabha.nic.in/roleofthespeaker.asp>.

⁹⁵ Available at: <https://thediplomat.com/2014/06/indias-parliament-will-have-no-opposition-leader/> and <https://www.indiatoday.in/elections/lok-sabha-2019/story/17th-lok-sabha-leader-of-opposition-bjp-congress-1533766-2019-05-24>

⁹⁶ Available at: https://nhrc.nic.in/about-us/composition_prev

against the earlier provision limited to a former chief justice of the Supreme Court. In addition, the number of members of the NHRC were increased from four to five, of which at least one shall be a woman.

As of September 2022, the positions of two members are vacant, and no woman member at present. These vacancies are in effect from September 2021 and April 2022.⁹⁷

In terms of the widened pool of Supreme Court judges eligible to be NHRC chair brought in through the 2019 amendments to the PHRA, amendments to widen the eligibility criteria for chairperson of the NHRC in Section 3 were first proposed in the Protection of Human Rights (Amendment) Bill, 2005, (eventually not passed).⁹⁸ The 2005 Bill proposed broadening the eligibility for NHRC chair to a judge of the Supreme Court 'for at least three years'. This 2005 bill was referred to the Parliamentary Standing Committee on Home Affairs, then headed by Late Ms. Sushma Swaraj, a former BJP legislator and Union Minister for External Affairs. The Parliamentary Standing Committee rejected the proposed amendments to Section 3(2)(a) of the Act. The only difference between the provision in the 2005 Bill with what was passed in 2019 was the additional criteria of three years of service.

In light of the powerful discretion in the hands of the government dominated appointments committee, the 2019 amendment is a further blow to the sanctity of the position of NHRC chairperson. If the chairperson of the NHRC is to be drawn from among Supreme Court judges, the original provision limited to former chief justices of the Supreme Court is a stronger safeguard. With the wider pool of judges to choose from, this opens up a bracket of choices for the government, which in turn, has the potential of leading to unhealthy competition among Supreme Court judges, and possibly politicisation.

As stated above, multiple SCA reports on the NHRC have noted that the reliance on Supreme Court judges "*severely restricts the potential pool of candidates*" for the post of NHRC Chairperson. The SCA repeatedly stated that the NHRC's quasi-judicial function is only one of ten and does not justify the

⁹⁷ Available at: <https://nhrc.nic.in/about-us/composition-of-commission>

⁹⁸ Available at: http://164.100.47.4/billstexts/rsbilltexts/AsIntroduced/CXXV_%202005.pdf

disproportionate representation of judges – the chairperson and two out of five members – on the leadership of the NHRC. The SCA recommendations of adequate amendments in the PHRA to ensure representation to all segments of society and varied human rights expertise on the NHRC are reiterated here.

Allowing a Supreme Court judge, other than the chief justice, as the chairperson of the NHRC, may breed internal conflict on grounds of seniority between the appointed chairperson and member appointed as per Section 3(2)(b), who is also to be a judge of the Supreme Court. This could lead to disturbances and cause rifts.

Though it is not officially documented, as is the case in such scenarios, information gathered from informal sources suggest that Justice Prafulla Chandra Pant, who was appointed as the NHRC Member in April 2019, after the PHRA amendments in July 2019 was eligible to be the NHRC chairperson following the retirement of then Chairperson Justice HL Dattu in December 2020. Justice Pant was appointed the Acting Chairperson after Justice Dattu's retirement⁹⁹. However, Justice Arun Mishra, was appointed the Chairperson in June 2021 and Justice Pant thereafter resigned in September 2021. Justice Pant had retired from the Supreme Court in August 2017 and Justice Mishra in September 2020.

Ultimately, in the absence of an independent committee on appointments, and a comprehensive, objective and transparent appointments process, the questions on the independence and autonomy of the NHRC will remain. Unlike, the current appointment committee, where major representation comes from the ruling party, there must be an independent committee, where members have no political affiliations and are properly qualified to choose the leadership of the NHRC.

During the latest appointments in June 2021, Indian civil society and a group of international NGOs had (confidentially) written to the GANHRI raising concerns not only of the, but also to highlight the flaws in the process, including omission of contributions to human rights as a criterion. The SCA has repeatedly raised concerns of the flawed and opaque appointments process at NHRC reviews.

⁹⁹ Available at: <https://www.thehindu.com/news/national/justice-pant-appointed-nhrc-acting-chairperson/article34471512.ece>

The lone opposition voice in the appointment committee, Mr. Mallikarjun Kharge, leader of the opposition in the Rajya Sabha, during the appointment of former Supreme Court Judge Arun Mishra as chair of the NHRC in June 2021, raised strong disagreements.¹⁰⁰ Justice Mishra's appointment prompted widespread criticism from legal experts and human rights groups due to his being perceived as close to the Bharatiya Janata Party government. These perceptions stem from public statements he made in open praise of the Prime Minister Mr. Narendra Modi. He has also been criticized for delivering judgments in favour of the government and against marginalised and vulnerable populations.¹⁰¹ However, Mr. Kharge's objections at best can be mere persuasions. He condemned the appointments saying they "*smack of partisanship and quid pro quo*".¹⁰²

A historical and unprecedented press conference by sitting Supreme Court judges in January 2019 raised their serious anxieties related to the internal workings of the Supreme Court, including the then Chief Justice's decisions on allocations of cases to particular benches. A prime concern was the assignment to a bench led by Justice Arun Mishra of public interest litigation petitions seeking an independent probe into the murder of Judge B.H. Loya, viewed as an integral case to be adjudicated by an independent, civil liberties minded bench.¹⁰³ Judge Loya died under mysterious circumstances, with allegations of murder, while he was presiding, as a special Central Bureau of Investigation court judge, over the Sohrabuddin Sheikh fake encounter case in which present Union Home Minister Mr. Amit Shah (member of the appointment committee) was an accused¹⁰⁴. Justice Mishra's continuous possession of the allotted Delhi bungalow after his retirement in September 2020 from the Supreme Court, negating the rule of vacating within a month, also led to questions of the extent of his being able to curry favour with the government.¹⁰⁵

¹⁰⁰ Available at: <https://scroll.in/latest/996461/justice-arun-mishra-takes-over-as-nhrc-chief-congress-leader-opposes-his-appointment>

¹⁰¹ Available at: <https://thewire.in/government/controversial-judge-who-praised-modi-to-be-nhrc-chief-opposition-leader-dissents>

¹⁰² Available at: <https://scroll.in/latest/996461/justice-arun-mishra-takes-over-as-nhrc-chief-congress-leader-opposes-his-appointment>

¹⁰³ Available at: <https://www.thehindubusinessline.com/news/supreme-court-crisis-all-not-okay-democracy-at-stake-say-four-senior-most-judges/article64312451.ece> and <https://timesofindia.indiatimes.com/india/after-junior-judge-recuses-himself-cji-to-hear-loya-case/articleshow/62586190.cms>

¹⁰⁴ https://main.sci.gov.in/supremecourt/2017/40744/40744_2017_Judgement_19-Apr-2018.pdf

¹⁰⁵ Available at: <https://thewire.in/law/justice-arun-mishra-official-residence>

Along with Justice Mishra, former Director of the national Intelligence Bureau, Mr. Rajeev Jain, was appointed as a member of the NHRC. The appointment of senior police officials, again perceived to be close to the government, is a clear violation of the Paris Principles and the spirit and mandate of a NHRI, as reiterated by the SCA in reviews on India's NHRC. Mr. Jain's appointment also raises concerns because of the Intelligence Bureau's past actions, which, as leaked reports¹⁰⁶ suggest, has targeted civil society organisations for opposing projects that harm the environment and accused some of them of backing violent armed groups – accusations which have impacted the ability of these organizations to secure foreign funding or to work without harassment from authorities.

The third appointment was of Justice Mahesh Mittal Kumar. He was already the chairperson of the National Company Law Tribunal since June 2016. Prior to that he was the chairperson of the Company Law Board. Given his age, he can serve at the NHRC 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 D. Murugesan.

Other appointments after the last SCA reviews, Justice Pinaki Chandra Ghose, Justice Prafulla Chandra Pant and Dr. Dnyaneshwar Manohar Mulay, were also in the same manner.

Multiple SCA reports on the NHRC highlight the need for a transparent appointment process – advertisement of vacancies, assessing candidates on clear and uniform criteria and holding broad consultations: *“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.”*

¹⁰⁶ Available at: <https://timesofindia.indiatimes.com/india/foreign-funded-ngos-stalling-development-ib-report/articleshow/36411169.cms>

The SCA, emphasising on the formalisation of a clear, transparent and participatory selection and appointment process, recommended 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.

On April 12, 2017, the UN High Commissioner for Human Rights had addressed a letter to the Union Minister of External Affairs,¹⁰⁷ expressing concern over the working of NHRC. In his letter, the UN High Commissioner on the appointments and composition had recommended 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.

Despite multiple recommendations on this subject by the SCA, UN officials and institutions and submissions from the Indian civil society, the appointment process continues to be opaque and solely determined by the government.

8.2.2. Pluralism:

Multiple SCA reports termed the appointment process unduly narrow, expressed serious concerns on the lack of pluralism in the NHRC, especially the inadequate representation of women, caste, tribal / indigenous, and religious minority communities in the NHRC's leadership.

Following the 2019 PHRA amendments, whereby the provision pertaining to NHRC chairperson was amended - requirement amended from being a chief justice to a judge of the Supreme Court - the appointment committee missed the opportunity to appoint a retired woman judge of the Supreme Court as

¹⁰⁷ Available at: <https://tinyurl.com/2uvsp2ns>

NHRC's chairperson, when there were two candidates. In its 28 years of existence, the NHRC has never been headed by a retired woman judge of the Supreme Court.

The SCA through its General Observations emphasised that *“pluralism refers to broader representation of the national society”*. This includes representation from civil society as well. The 2017 SCA report, in responding to NHRC's advocacy with the government to require one member to be a woman, stated, *“having only one member who is a woman does not represent appropriate gender balance”*. The SCA further commented that the NHRC should advocate for gender balance in its composition and that the diversity of the Indian society is represented including, but not limited to, Dalits and other religious or ethnic minorities.

A token representation of women in the NHRC by amending Section 3(2)(d) is against the spirit of the Paris Principles. If the government is concerned about inadequate representation of women in the NHRC, the 2019 amendment should have made provisions to the effect that at least half of the total strength (chairperson + members) of the NHRC are women.

Representation from other sections of the society in a country as diverse as India is also missing in the NHRC. There is no representation of Dalits, members from indigenous communities, religious minorities, LGBTIQ+ and others in the current composition of the NHRC. Human rights defenders, social activists from civil society, journalists, academics, human rights lawyers, are rarely considered to serve on the NHRC.

Increasing the number of members in the NHRC from four to five, effectively just by one, is wholly inadequate for a country and population as large as that of India, particularly in light of the number of complaints that reach the NHRC every year. The amendments contain no measures to consider SCA recommendations on pluralism and should have amended Section 3(2)(d) of the PHRA to not only drastically increase the number of members in the NHRC but in tandem to ensure larger representation from diverse communities based on linguistic, region, religion, caste, tribe, ethnicity and gender.

In the 2021 appointment committee meeting, Mr Kharge had advocated for pluralism and representation from marginalised communities and sought reconvening of the appointment committee with a new list of names for consideration and deliberations. This was rejected and he later submitted his dissent note in writing.

8.3. Deemed Members:

Section 3(3) of the PHRA was amended and the deemed membership of the NHRC was 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. However, it cannot be ignored that these newly added, as well as the already existing commissions, who enjoy the deemed membership to the NHRC, are often headed by those having close association with the political party in power.

In review processes, the SCA has noted that, *“the presence of ‘deemed members’ from the National Commissions addressing caste, women’s rights, minorities, and scheduled tribes on the full statutory commission. While this is a welcome initiative, there are concerns that they are not adequately involved in discussions on the focus, priorities and core business of the NHRC non- judicial functions.”*

The deemed membership of the NHRC provided under Section 3(3) of the PHRA is the cover used by the NHRC to respond to the pluralism requirements under the Paris 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.

According to the data collected from annual reports for the period 2011-19, the Full 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), once in 2015 (February 3, 2015), no meetings in 2016 and 2017, and once in 2018 (November 27, 2018). There were also no meetings in 2019 and one meeting on January 30, 2020, and another on March 10, 2021. After that there has been no full commission statutory meetings reported since even the NHRC’s monthly newsletters are not available on NHRC’s web site from

November 2021 till April 2022 and again from July 2022 till date. These Full Statutory Commission meetings are mostly marked with stark absenteeism of deemed members. The meetings' 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.

PHRA Section 3(3) needs a careful examination, and this should not be used to justify adherence to the pluralism requirements under the Paris 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.¹⁰⁸ 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.

8.4. Staff Appointments

The SCA has repeatedly expressed concerns over the secondment of the secretary general from the government and has stated, *"The SCA continues to be of the view that, notwithstanding the justifications provided and the changes proposed, these practices have a real impact on the perceived independence of the NHRI. It again recommends that the Secretary General be recruited through an open, merit-based selection process. In the interim, the SCA encourages the NHRCI to pursue policy and/or administrative measures to provide the NHRCI with greater control over the process, including by setting the selection criteria and by participating in the evaluation of candidates."*

¹⁰⁸ National Commission for Backward Classes Chairperson is Dr. Bhagwan Lal Sahni, a (Bharatiya Janta Party) BJP leader from the state of Bihar, Available at: https://www.business-standard.com/article/pti-stories/bjp-leader-from-muzaffarpur-bhagwan-lal-sahni-to-head-ncbc-119030100699_1.html

National Commission for Minorities Chairperson is Mr. Iqbal Singh Lalpura, a BJP leader from the state of Punjab and a member of the parliamentary board and election committee of BJP, Available at: <https://www.hindustantimes.com/cities/chandigarh-news/lalpura-appointed-member-of-bjp-s-parliamentary-board-poll-committee-101660769139332.html>

National Commission for Protection of Child Rights Chairperson is Mr. Priyank Kanoongo, associated with the work and ideology of the Rastriya Swayamsevak Sangh (RSS) and supporter of the BJP in the state of Madhya Pradesh, Available at: <https://timesofindia.indiatimes.com/india/govt-appoints-chief-of-child-rights-body/articleshow/66200329.cms>

National Commission for Scheduled Castes Chairperson is Mr. Vijay Sampla, a BJP leader and former parliamentarian and union minister from the state of Punjab, Available at: <http://ncsc.nic.in/files/review%20proforma/Biographical%20Sketch%20Chairman.pdf>

National Commission for Scheduled Tribes Chairperson is Mr. Harsha Chauhan, a former office bearer of the RSS in the state of Madhya Pradesh, Available at: <https://www.newsbarati.com/Encyc/2021/2/20/Social-activist-Harsh-Chauhan-appointed-Chairman-of-NCST.html>

National Commission for Women Chairperson is Ms. Rekha Sharma, a BJP leader from the state of Haryana, Available at: https://www.business-standard.com/article/pti-stories/ncw-gets-2-new-members-both-with-bjp-links-115082801309_1.html

Chief Commissioner for Persons with Disabilities is Ms. Anjali Bhawra, who is Secretary, Department of Empowerment for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, Available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1810592>

Similar concerns were raised with regard to the appointment of the Director General of Investigation and the investigation team comprising of only police personnel. The SCA has stated, *“The SCA continues to be of the view that for victims of abuses by police, there may be a real or perceived conflict of interest in having police officers engaged in the investigation of human rights violations, particularly those committed by the police, and this may impact on the ability to conduct impartial investigations as well as the ability of victims to access human rights justice.”*

In one of the instances, a senior police officer from the state of Uttar Pradesh was appointed to the NHRC while the NHRC was enquiring into cases of extra-judicial killing. In this police officer’s jurisdiction, three such cases of killings in Uttar Pradesh were recorded and were the subject of enquiry by the NHRC. *(more details are in the case study section on Uttar Pradesh Encounter Killing Cases)*

The SCA has repeatedly emphasised that a fundamental requirement of the Paris Principles is that a NHRI is, and is perceived to be, operating independent of government interference or undue influence. Where an NHRI’s members are seconded from government departments, and to positions at the highest level in the NHRI, the question of independence from government is stoked.

The secretary general and director of investigations continue to be seconded from the government, instead of through an independent merit-based appointment. It is not known in the public domain if the NHRC has proposed doing away with, or at least phase out, the secondment process. In the recent amendments, while they failed to address any SCA recommendations on this aspect, all the administrative and financial powers of the secretary general are now subject to the control of the chairperson.¹⁰⁹ Earlier, the secretary general could autonomously exercise the powers delegated to him/her by the commission.

Staff members are largely deputed temporarily to the NHRC from different government departments. Recently consultants are being recruited and often preference is given to those having experience in government service. The PHRA does not specifically require the inclusion of women, minorities, persons of diverse sexual orientation or persons with disabilities in the staffing. There are no statutory requirements to include staff members from the civil society who have experience in the field of human rights.

¹⁰⁹ Amendment to Section 3(4), PHRA

Though NHRC appoints ‘administrative, technical and scientific staff’ as it may consider necessary, its choices are limited as the government determines the salaries of all staff members.

8.4.1. Special Rapporteurs of the NHRC:

The NHRC has also nominated ‘Special Rapporteurs’ in the past. Earlier, they were drawn from very senior retired officers who served as secretaries to the Government of India or senior police officials. For a long time after the last SCA report, many positions of NHRC’s Special Rapporteurs remained vacant until the NHRC on October 29, 2021¹¹⁰ introduced the new concept of zonal-wise and thematic Special Rapporteurs in the NHRC. It was intended to have 12 zonal Special Rapporteurs. However, contrary to this the NHRC’s website reveals fifteen such zonal Special Rapporteurs without their mail ids, contact numbers and bio data indicated. The Special Rapporteurs on a thematic basis covering over 16 themes such as criminal justice systems, bonded labour and child labour, food, human trafficking, environment etc. seem not to have been appointed even till date according to the NHRC website.

8.5. Relationship with Civil Society

On engagement with civil society, the SCA stated, *“the NHRCI relies to a substantial degree on its Core/Expert Groups as the mechanism for engagement. However, the SCA has received information from civil society at both its November 2016 session and its November 2017 session that these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society. The SCA again highlights that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. The SCA encourages the NHRCI to take additional steps to ensure that it engages in ongoing, constructive dialogue and cooperation with civil society and human rights defenders and that this should include regular and ongoing modes of collaboration outside of the Core/Expert Groups.”*

NHRC has multiple core groups on a range of themes and engagement of these core groups are effectively restricted to annual meetings for most of the groups.¹¹¹ The core

¹¹⁰ Available at: https://nhrc.nic.in/sites/default/files/Engagement_of_Special_Rapporteur_29_Oct_2021.pdf

¹¹¹ The present groups are on the following themes: on NGOs and human rights defenders, on business and human rights, on disabilities, on environment, climate change and human rights, on children, on health and mental health., on bonded labour, on criminal justice system, on elderly persons, in LGBTI issues, on the right to food, on women, on trafficking of women and children, and on international conventions and treaties. In the year 2022 so far they have only had meetings of the core groups on business

group on NGOs and Human Rights Defenders has not even met once after 2019 till date. In November 2017, the NHRC also appointed two special Monitors, namely, Mr. Harsh Mander IAS (Retd) for matters relating to communal riots and minorities and Ms. Maja Daruwala for matters relating to jails.¹¹² Mr. Harsh Mander resigned. Excerpts from his letter of resignation¹¹³ read as follows:

“ In our briefing about this role along with Ms. Maja Daruwala, I was told that the NHRC would from time to time seek my services to look into matters concerning the rights of minorities and communal violence. Ever since my appointment, the NHRC has not reached out to me even once on these issues..... During this briefing, we also said that we would accept this responsibility only if we could also take the initiative to raise questions of concern with the NHRC within our mandate This was accepted.... I wrote to the NHRC about encounter killings targeting minorities in UP and Haryana. Despite many reminders, I did not hear back from the NHRC about my proposal to look into these matters. ... Because of the continued silence of the NHRC, both in terms of approaching me for investigation or mission on any human rights concerns of minorities and communal violence, ...it is apparent that there is no constructive role for the NHRC Special Monitor to play in the NHRC. I therefore feel compelled to answer my call of conscience to resign from the responsibility of Special Monitor NHRC for minorities and communal violence...”

While this has been the actual experience of NHRC’s Special Monitors from civil society, the NHRC’s website however points out to Special Monitors for the following thematic areas, namely (i) Trafficking; (ii) Rights of disabled and senior citizens; (iii) Health and Environment issue including Mental Health, Water, Sanitation; (iv) Police and Prison Reform and (v) Human Rights of Minorities. However, to date, the names and other details of these Special Monitors are not indicated on its website.

and human rights, on disabilities, on children and on environment climate change and human rights. In the year 2021 they have had meetings of the core groups on women, the right to food, on children, on health and mental health, on bonded labour and on the criminal justice system. In the year 2020 they have had meetings of the core group on LGBTI only. In the year 2019 they have had meetings of the core group on NGOs and human rights defenders, business and human rights and on women. In the year 2018 they have had meetings of the core group on LGBTI, on children, on disability, health and mental health and on elderly persons. In the year 2017 they have had meetings of the core group on NGOs and human rights defenders, health and mental health issues, elderly persons, on the right to food, on trafficking on women and children and of the on international conventions and treaties.

¹¹² Appointment of Special Monitors of National Human Rights Commission’s office order dated 23.10.2017, Available at:

<https://tinyurl.com/yc3v43zr>

¹¹³ Available at: <https://tinyurl.com/yc3jfs7e>

While there is no direct connect and joint efforts with the civil society to address pressing human rights concerns, multiplication of responsibilities of such special monitors without even a discussion with those who have resigned make the true intentions behind such appointments suspicious. They seem to be more cosmetic exercises. At most these are restricted to seminars and conferences on selected issues, research outsourced to academic institutions and small grants to NGOs, but none related to State violence.

Here it is pertinent to mention that the NHRC has constantly refrained from exercising its function to review laws that restrict civil liberties and impact fundamental rights under Section 12 (d) of the PHRA, and despite repeated submissions and requests from civil society in India. Some of these include the Foreign Contribution (Regulation) Act 2010, Citizenship (Amendment) Act 2019, Unlawful Activities (Prevention) Act 1967. Similarly, despite multiple requests to undertake jail visits and assess the custodial conditions by exercising Section 12 (c) of the PHRA, especially in the cases of human rights defenders, the NHRC has also refrained.

A petition was submitted by NGOs to the NHRC to continue inquiries into pending cases at the Jammu and Kashmir State Human Rights Commission, which was abolished after the change of status of the state into a Union Territory in August 2019. However, the NHRC once again refrained from the same. Thousands of cases of human rights violations continue to the unheard with no clarity on their future, with victims and survivors waiting for justice.

8.6. Annual Reports:

The most recent annual report of the NHRC publicly available is for 2019-2020. The report for 2019 – 2020 has been uploaded by the NHRC only three days prior to the deadline for this report and hence we are unable to use details of the said annual report in this report. Two annual reports for the years 2020-2021 and 2021-2022 are yet to be published and made public.¹¹⁴

In the 2017 Accreditation report, the SCA had stated, *“The SCA notes that NHRCI has proposed amendment to section 20(2) of the Act whereby its annual reports can be tabled in Parliament without Government’s memorandum of action. The SCA further notes that the NHRCI reports that it has mitigated this limitation in its ability to publicize*

¹¹⁴ Available at: <https://nhrc.nic.in/publications/annual-reports>

current annual reports by publishing other reports on thematic issues or the state of human rights generally. The SCA encourages the NHRCI to continue to advocate for changes to its enabling law and to ensure that, in the interim, it releases additional public reports to inform the public about the situation of human rights and the activities of the NHRCI.”

The 2019 PHRA amendments had no reference to any amendment to this provision. There is no information in the public domain if the NHRC has requested the government for this amendment and requests for publication of pending annual reports.

8.7. Complaints Handling:

This section uses data to presents trends on complaints-handling by the NHRC, particularly to get a broad overview of the response of the NHRC to complaints. It looks at three data sets: 1) data from the NHRC’s Annual Reports for 2017-2018, 2018-2019, and 2019-2020; 2) data from complaints submitted by a national platform of human rights defenders in India, Human Rights Defenders Alert – India (HRDA) to the NHRC; and 3 (data from complaints submitted by Bangalar Manabadhikar Suraksha Samiti (MASUM) to the NHRC.

8.7.1. Analysis from NHRC’s annual reports:

8.7.1.1. Analysis from NHRC’s annual reports 2017-2018¹¹⁵ :

The NHRC registered a total of 79612 complaints in the time period April 1, 2017 to March 31, 2018. 74 cases were registered *suo moto*.

In 2017-2018, the NHRC disposed of a total of 86187 cases. Of these, 33290 (37%) were disposed *in limini*, 15364 (18%) were disposed with directions, and 21652 (25%) were transferred to State Human Rights Commissions (SHRCs). To briefly explain the terminology, complaints dismissed *in limini* are dismissed at the first stage and not inquired into. Complaints ‘disposed with directions’ are immediately closed, with no inquiry, following a direction by the NHRC to state authorities to respond directly to the complainant. Once the NHRC transfers a case to a SHRC, it is closed by the NHRC.

Against these three heads cumulatively, this means 80% of cases were not dealt with by the NHRC as they were disposed of at the very first stage. In

¹¹⁵ Annual Report 2017-2018, Available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

this year, the NHRC concluded 15881 cases (18%) after receiving reports from state authorities and others.

The NHRC recommended compensation in 757 cases. The order for compensation was complied with in 151 (20%) cases. 606 (80%) were pending for compliance. The NHRC recommended disciplinary action in 38 cases and prosecution in 2.

8.7.1.2. Analysis from NHRC's annual reports 2018-2019¹¹⁶:

The NHRC registered a total of 89584 complaints in the time period April 1, 2018 to March 31, 2019. 84 cases were registered *suo moto*.

In 2018-2019, the NHRC disposed of a total of 94739 cases. Of these, 28116 (30%) were dismissed *in limini*, 33716 (35%) were disposed with directions, and 18816 (20%) were transferred to SHRCs. In this year, the NHRC concluded 14091 cases (15%) after receiving reports from state authorities and others.

The NHRC recommended compensation in 691 cases. The order for compensation was complied with in 125 (18%) cases. 566 (82%) were pending for compliance. The NHRC recommended disciplinary action in 25 cases. It did not recommend prosecution in any case.

8.7.1.3. Analysis from NHRC's annual reports 2019-2020¹¹⁷ :

The NHRC registered a total of 76628 complaints in the time period April 1, 2019 to May 31, 2020. 64 cases were registered *suo moto*.

In 2019-2020, the NHRC disposed of a total of 76725 cases. Of these, 17861 (23%) were dismissed *in limini*, 39923 (52%) were disposed with directions, and 6801 (9%) were transferred to SHRCs. In this year, the NHRC concluded 12140 (16%) after receiving reports from state authorities and others.

The NHRC recommended compensation in 437 cases. The order for compensation was complied with in 113 (26%) cases. 324 (74%) were

¹¹⁶ Annual Report 2018-19, Available at: https://nhrc.nic.in/sites/default/files/Annual%20Report%202018-2019_final.pdf

¹¹⁷ Annual Report 2019-2020, Available at: https://nhrc.nic.in/sites/default/files/AR_2019-2020_EN.pdf

pending for compliance. The NHRC recommended disciplinary action in 2 cases. It did not recommend prosecution in any case.

Several consistent trends emerge through this data. While the NHRC may register a large number of complaints (notably in these years, the total number of registered cases was less than 100,000), it closes the majority of cases at the very first stage. In effect, as reflected through these figures, the NHRC actually takes on less than 20% of the cases that it registers. In each of the years shown, the compensation orders pending for compliance far outnumbered the number of cases in which the compensation order had been complied with. The frequency of recommendations calling for disciplinary action against public servants appear to be minimal, and recommendations for prosecution very infrequent. This indicates the lesser number of cases in which commission of human rights violations is being found by the NHRC.

8.7.2. Analysis from HRDA cases:

HRDA is a national platform of human rights defenders in India, established in the year 2010. Between 2010-2021, it has submitted over 650 complaints to the NHRC in instances of harassment of HRDs, and in instances of violations of free expression, association, and assembly. An analysis was undertaken by the HRDA, assessing the response of the NHRC in 554 complaints submitted by them between 2015-2020. The three broad areas of analysis were – time taken by the NHRC to respond at various stages of complaints' handling; types of action taken by the NHRC in complaints submitted before it; and final orders passed by the NHRC.

Of the 554 complaints submitted by the HRDA before the NHRC, only 83% of the complaints were registered. The average period between submission of a complaint and its registration at the NHRC is 26 days and 12 days between registration and the first order by the NHRC. The average period between complaint submission and first order is 38 days, i.e. 5-6 weeks.

Analysing the types of first order passed by the NHRC in complaints by HRDA registered are-

- Dismissed in limini – 7%

- Transfer to SHRC – 10%
- Disposed with directions – 14%
- Registered but linked to other complaints – 8% (In instances when a complaint is tagged with another complaint, the tagged complaint's petitioner rarely gets an opportunity to further intervene in the proceedings.)
- Action taken report called for – 60% (A response is called from the relevant authorities)
- NHRC investigation – 1% (The NHRC's Investigation division to inquire into the complaint)

In 31% of the complaints submitted by the HRDA, there was no action initiated by the NHRC and in 8% of the complaints, HRDA was not involved in further proceedings.

In the 60% of the complaints where action taken reports were called from concerned authorities, the average compliance time taken by the authorities was 176 days, i.e. 25 weeks. In all complaints where the NHRC calls for action taken reports from authorities, it grants a time period of 4-6 weeks. Further, in 33% of the complaints where action taken reports were received by the NHRC, the directions to share them with HRDA were passed after 180 days, i.e. 26 weeks.

In only 4% of the complaints where action taken reports were called for, i.e. 1.4% of the 554 complaints submitted by the HRDA, compensation for the HRD (seven complaints) or disciplinary action (one complaint) were called recommended by the NHRC. No recommendations were passed to initiate legal proceedings against any state authority.

8.7.3. Analysis from MASUM Cases:

MASUM, based in the State of West Bengal, addresses broader issues of human rights violations and initiates a collaborative effort to ensure equality and justice. Since its inception in 1997, its primary work revolves around ensuring civil and political liberties by addressing torture, extrajudicial executions, problems in the criminal justice system, sexual violence against women and attacks on human rights defenders.

Over the last three years (2019 – 2021), MASUM has filed 304 complaints primarily with the NHRC on various incidents of human rights violations against the

marginalized community, mainly from Indo-Bangladesh border areas and erstwhile enclaves. The grave human rights violations documented by MASUM in the mentioned time frame are as follows: torture by Border Security Force (BSF) personnel – 75; illegal restriction by BSF personnel – 60; overall marginalization at erstwhile Enclave – 12; marginalisation of bordering populace – 16; extrajudicial killing – 23; illegal detention of Bangladeshi women and children – 51; torture by Police and other administrative officials – 8; livelihood violation – 17; custodial death – 10; attacks upon HRDs – 7; violence against women and Police acquiescence – 13; illegal detention – 4; police inaction and implication in false cases – 2; enforced disappearance – 4 and; firing by the BSF – 2.¹¹⁸

Despite MASUM's detailed complaints on incidents of severe human rights violations, the NHRC has on several occasions disposed of its complaints based on the report submitted by the perpetrators. During the last three years, the NHRC has disposed of more than 50 percent of its complaints based on such reports. NHRC's case status against MASUM's complaints are as follows: cases disposed of with directions to the concerned authority - 159; cases transferred to SHRC, West Bengal - 27; cases closed on basis of reports from the accused police and BSF officials – 68; cases dismissed in limini – 34; recommendations for monetary compensation issued – 16; monetary compensation received by the victims – 4 and; cases pending before NHRC or other concerned authorities – 43.¹¹⁹

The NHRC generally disposes of MASUM's complaints to the authorities to seek action in the respective matters. However, these authorities are the ones where they have lodged the concerned complaint in the first place, but the respective authorities did not take any action in those cases. The concerned authorities did not even acknowledge those complaints but NHRC transmits the same complaint to them repeatedly. Meanwhile, the victims do not get justice and the perpetrators enjoy impunity.

The NHRC is quite reluctant to investigate on its own accord. As per section 12(a) of the PHRA, it is authorised to perform suo-moto action and investigate any case. However, despite the repeated requests of MASUM in almost all its complaints, the NHRC did not employ any form of investigation in those cases as granted by law and

118 Available at: <http://www.masum.org.in/AnnualReports.aspx>

119 Available at: <http://www.masum.org.in/AnnualReports.aspx>

regulations. More so, the very few inquiries conducted by the NHRC based on its complaint are not acknowledged by the NHRC itself.

For instance, based on MASUM's complaint in the case of Saiful Mondal from Char Parashpur village of Murshidabad, the NHRC directed the MHA to investigate the matter. Accordingly, the joint secretary (human rights) of the MHA conducted a thorough investigation and provided his report. But the NHRC did not take any action based on this report; neither did they refer to this instance in any subsequent similar cases. In another instance, NHRC special rapporteur and former IPS, Mr. Bibhuti Bhushan Mishra was directed to conduct an inquiry on one of MASUM's complaints regarding the non-fulfilment of promises to the erstwhile enclave dwellers of Cooch Behar district. However, similarly, the report submitted by Mr. B.B. Mishra was not acknowledged by the NHRC; neither was it placed on the NHRC website for further reference.

In 2012, the NHRC conducted a one-to-one sitting with the BSF authority in Kolkata, West Bengal. However, the observations and recommendations made in the meeting are not being followed by the NHRC itself. In this case, as well, the report of the meeting is not showcased anywhere on the NHRC's website for further reference.

8.8. Case Studies – The response of NHRC to specific complaints and its handling of particular suo moto interventions

Apart from these analyses, certain specific case studies are also made to restate the NHRC's sordid reactions and interference in matters concerning grave human rights violations.

8.8.1. Case of the Centre for Promotion of Social Concerns (CPSC)

Background

The Centre for Promotion of Social Concerns (CPSC)¹²⁰ is a charitable trust. It has been functioning since 1981 and, since 1997, runs a program unit named "People's Watch" from Madurai, Tamil Nadu, among other national-level human rights initiatives. Before 2016, CPSC's Foreign Contribution Regulation Act (FCRA) license was suspended on three occasions under Section 13(1) of the FCRA,

¹²⁰ CPSC Trust Deed, Available at: shorturl.at/GLN27

2010,¹²¹ by the MHA, Government of India; in 2016, CPSC's application for renewal of the FCRA certificate was denied by the FCRA Division of MHA¹²² and had suspended to date.

The United Nations High Commissioner for Human Rights Office and the Secretary-General expressed their concerns in 2018¹²³, 2019, 2021¹²⁴, and recently again in 2022¹²⁵ around CPSC's FCRA renewal. In May 2018, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, freedom of peaceful assembly and association, and on the situation of human rights defenders expressed concerns about the closing of civic space by the use of the FCRA to restrict their collaboration with the UN.

Complaint and proceedings before the NHRC

The 7th Human Rights Defender Forum Colombo, Sri Lanka, sought NHRC's intervention in the FCRA license non-renewal of the CPSC¹²⁶ in contravention of the fundamental rights to association and assembly. Subsequently, the NHRC took suo-moto cognizance and issued a notice to the MHA¹²⁷ to furnish information to help it decide whether the review of the FCRA can be recommended under Section 12(d) of the PHR Act, 1993¹²⁸. The MHA was asked to provide the following: (a) NGOs whose renewal of license has been denied in the last three years; (b) justification for CPSC's license rejection based on the litmus test laid by the UN Special Rapporteur¹²⁹; and (c) an analysis of FCRA against the international principles and standards of the right to form an association.

¹²¹ Suspension of certificate.

(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding one hundred and eighty days as may be specified in the order.

(2) Every person whose certificate has been suspended shall:

(a) not receive any foreign contribution during the period of suspension of certificate:

Provided that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

¹²² Denied status of FCRA application submitted by CPSC, Available at: shorturl.at/FQS69

¹²³ [A/HRC/39/41](https://www.unhcr.org/refugees-and-asylum-seekers/2017/01/17-01-2017-a-hrc-39-41), para. 50, and Annex I, paras. 61–62

¹²⁴ [A/HRC/48/28](https://www.unhcr.org/refugees-and-asylum-seekers/2019/01/19-01-2019-a-hrc-48-28), Annex II para. 65.

¹²⁵ [A/HRC/51/47](https://www.unhcr.org/refugees-and-asylum-seekers/2021/01/21-01-2021-a-hrc-51-47), paras. 84- 85.

¹²⁶ Urgent Appeal submitted by the 7th Asian Forum for Human Rights Defenders to NHRC, November 14, 2016, Available at: shorturl.at/cDLST

¹²⁷ Order of the NHRC in Case No. 6259/30/0/2016, dated November 16, 2016, issuing notice to the MHA, GoI, Available at: shorturl.at/wy348

¹²⁸ Section 12(d) of the Protection of Human Rights Act, 1993

12(d): 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;

¹²⁹ The Commission referred to the UN Special Rapporteur on Freedom of Association and Assembly's local analysis of FCRA 2010 and submitted a report to the Government of India in 2016 arguing that FCRA is not conformity with international law, principles and standards as access to resources including the foreign funding is a fundamental part of the right to freedom of

The NHRC, in its first order¹³⁰, noted that prima-facie such a non-renewal is neither legal nor objective and impinges on the rights of human rights defenders. On the receipt of the report by the Under Secretary (FCRA), Foreign Division, MHA, NHRC expressed dissatisfaction with the response, calling it to be incomplete and *vague at the least*, and directed the MHA to file a fresh reaction again. On receipt of the order in June 2017, the NHRC noted that on the validity of the FCRA, a Public Interest Litigation is pending before the Supreme Court, and another matter specific to CPSC's license renewal is pending adjudication before the High Court of Delhi¹³¹. It then decided to await the decision of the Supreme Court and High Court of Delhi. Subsequently, the Supreme Court upheld the constitutional validity of the FCRA¹³² and only read down the provision of Rule 3(v) of FCRA Rules, 2011, to the extent that the expression 'political interest' – to be construed to be in connection with active politics or party politics. To save this provision from being declared unconstitutional, it was further held that only the organizations have a relationship with active politics or participate in party politics covered by Rule 3(vi)¹³³.

After the Supreme Court verdict, the NHRC closed the case observing that issues around FCRA have now become a judicial verdict and are binding upon the parties¹³⁴. It also noted that since CPSC's petition is before the High Court of Delhi to decide the legal issues relating to FCRA and its rules, further intervention by the NHRC is not required. The NHRC has thus refused to use its jurisdiction to stand with human rights defenders by intervening in the courts using its powers under Sec 12 (b) of the PHRA 1993.

Section 12(d) of the PHRA empowers the NHRC to review laws to protect human rights safeguards. However, CPSC's case was a missed opportunity for the NHRC to meaningfully mould the human rights jurisprudence in India and strengthen the

association under the international laws, standards and regulations. It had put forth that any limitation placed on access to foreign funding will have to pass the litmus tests of the following: (i) Prescribed by law; (ii) Imposed solely to protect national security, public safety, public order, public health or morals, or the rights and freedoms of others; and (iii) Necessary in a democratic society such as rights and freedoms of others.

¹³⁰ Intimation of the order of the NHRC in Case No. 6259/30/0/2016, dated July 03, 2017, issuing notice to the MHA, GoI, Available at: shorturl.at/bhJT2

¹³¹ Centre for Promotion of Social Concern's Actions Post-Cancellation of FCRA License is documented, Available at: <http://cpsc-fcra.blogspot.com/>

¹³² INSAF v. Union of India; Civil Appeal No. 15610 OF 2020

¹³³ To make it clear, such organisations not involved in active politics or party politics do not fall within the purview of Rule 3(vi). It has also made it clear that organisations used for channelling foreign funds by political parties cannot escape the rigour of the Act, provided there is concrete material. In that event, the Central Government shall follow the procedure prescribed in the Act and Rules strictly before depriving such organisation of the right to receive foreign contributions.

¹³⁴ Closure order by the NHRC in Case No. 7259/30/0/2016 dated November 2016, Available at: shorturl.at/FMPU8

country's civil society organisations and the law relating to civil society space in India. There was ample evidence of the law and its draconian application to incapacitate civil society organisations and defenders who do not toe the line of the government.

The case of CPSC is a case of the compromised efforts of the NHRC in intervening against state repression under the guise of regulating foreign funding regulation. The above actions on the part of the NHRC paved the way for another reprisal against CPSC in January 2022 when the Central Bureau of Investigation (CBI) registered a fresh FIR against CPSC and its unnamed trustees, the Executive Director of People's Watch, and other unknown persons, under Section 120B r/w Section 420 of the Indian Penal Code, 1860 and offences under the FCRA¹³⁵. A search followed it in the People's Watch Madurai office by a team of 8-10 officials of the CBI, and documents were seized. The investigation into this case continues to date on the premises of CPSC since January 2022.

The NHRC was again intimidated of the recent reprisals to CPSC through a complaint by the Human Rights Defenders Alert – India (HRDA)¹³⁶ in NHRC Case No. 435/22/15/2022. However, the Commission closed the case on February 15, 2022,¹³⁷ stating that a judicial verdict covers the matter.

The Paris Principles and its General Observations have emphasized the importance of NHRIs in maintaining close relations with civil society in considering civil society as an essential partner of NHRIs. However, NHRC's long-pending inaction on the issues of impinging on the civic space is in direct contravention of this. In addition, the NHRC has remained silent in all cases relating to FCRA registered by the MHA or the CBI in the case of Lawyers' Collective, Sabrang Trust, Amnesty International, Greenpeace, and Navsarjan Trust, thus keeping away from in any way standing along with human rights defenders in their right to association issues.

8.8.2. Killings in police firing: Tuticorin

Background of the Case

¹³⁵ First Information Report No. 69/2022 at EOB Police Station, dated January 06, 2022, Available at: https://1drv.ms/b/s!Amq1ykmOg9Dhw5phagEF_UIPQpsyTQ?e=kH5N2Q

¹³⁶ Urgent Appeal to the NHRC by HRDA- India dated January 21, 2022, registered Case No. 435/22/15/2022, Available at: <https://1drv.ms/b/s!Amq1ykmOg9Dhw5pi1M4n83DpCcDLg?e=vu96RZ>

¹³⁷ Intimation of Closure Order in NHRC Case No. 435/22/15/2022 dated February 15, 2022, Available at: <https://onedrive.live.com/?authkey=%21A14y%5FysGz8L2wgU&cid=E1D0838E49CAB56A&id=E1D0838E49CAB56A%211101156&parId=E1D0838E49CAB56A%211101154&o=OneUp>

On May 22, 2018,¹³⁸ police opened fire on civilians protesting against the copper smelter plant Sterlite Copper of Sterlite Industries (a company owned by Vedanta Ltd.) in Thoothukudi, Tamil Nadu.¹³⁹ 16 people were killed in the police firing and atrocities, and hundreds were left seriously injured. The protest on 22nd May marked the 100th day of peaceful public demonstrations since an announcement was made by the company of its expansion plans, sparking grave concerns and public opposition due to the ecological damage caused in the area on account of its operations since 1997 and adverse health impacts on the local people. Following the massacre on 22nd May, the Tamil Nadu Government set up a Judicial Commission under retired judge Justice Aruna Jagadeesan to investigate into the police firing and use of indiscriminate force against protestors and to file its report¹⁴⁰. It also enhanced the compensation to victims and survivors of the police violence to Rs. 20 Lakhs to the next of kin of the deceased, Rs. 5 Lakhs to those seriously injured and Rs. 1.5 lakh to those injured¹⁴¹.

Complaint proceedings before NHRC

NHRC took suo moto cognizance of the incident basis newspaper reports on May 23, 2018, registered under Case No. 907/22/41/2018. Despite of the seriousness of the case, the NHRC merely issued notices to the Government of Tamil Nadu seeking a response in two weeks' time¹⁴². The NHRC however did not consider the complaints filed by individuals and organisations like Peoples Watch¹⁴³ regarding the incident. Accordingly, a Writ Petition No. 5779/2018 was filed by A. Rajarajan, Advocate and Vice President, National Union of Backward Classes, New Delhi, to direct the NHRC to consider his representation and pass suitable orders to conduct an independent investigation and inquiry under Sections 14 and 17 of the Protection of Human Rights Act, 1993¹⁴⁴.

¹³⁸ Available at: <https://www.newindianexpress.com/states/tamil-nadu/2018/may/22/death-toll-in-sterlite-protest-rises-to-11-retired-judge-to-inquire-into-thoothukudi-police-shoot-o-1817978.html>

¹³⁹ Thoothukudi (also known as Tuticorin) is a district in the southern state of Tamil Nadu in India.

¹⁴⁰ Available at: <https://www.indiatoday.in/india/story/controversial-judge-aruna-jagadeesan-to-probe-tuticorin-violence-1239923-2018-05-23>

¹⁴¹ Available at: <https://timesofindia.indiatimes.com/city/madurai/cm-raises-death-compensation-to-rs-20-lakh/articleshow/64346477.cms>

¹⁴² NHRC Press Release dated 23rd May 2018; Available at: <https://nhrc.nic.in/press-release/nhrc-notice-government-tamil-nadu-over-killing-more-10-people-police-firing-tuticorin>

¹⁴³ People's Watch, a member of the Coordinating Committee for People's Inquest into Thoothukudi Police Firing' began its journey in 1995 as a program unit of the Centre for Promotion of Social Concerns, a civil society organisation based in Madurai, Tamil Nadu, Available at: <https://www.peopleswatch.org>

¹⁴⁴ Protection of Human Rights Act, 1993 is the Indian statute under which the National Human Rights Commission of India came to be constituted; Available at: https://www.mha.gov.in/sites/default/files/Protection%20of%20HR%20Act1993_0.pdf

The Delhi High Court passed an order dated May 25, 2018,¹⁴⁵ directing the NHRC to consider the representation of A. Rajarajan for passing suitable directions. Accordingly, on May 29, 2018,¹⁴⁶ NHRC constituted a fact finding inquiry / investigation into the incident by a team¹⁴⁷ to be deputed by the Director-General of Investigation and directed the investigation team to submit its report in two weeks. People's Watch also issued a follow-up communication on May 30, 2018, to include it as a complainant, which was not heeded by the NHRC.

On May 31, 2018, eight UN Special Procedures¹⁴⁸ issued a joint statement condemning the excessive and disproportionate use of lethal force against anti-Sterlite protestors in Thoothukudi and also called for independent investigation into the incident¹⁴⁹. A coalition of civil society organisations and individuals under the banner of 'Coordinating committee for People's Inquest into Thoothukudi Police Firing' organized an independent people's inquest on June 2-3, 2018, conducted by a 23-member team¹⁵⁰. A few members of the People's Inquest team met with the NHRC's investigation team on June 3, 2018, at Thoothukudi and had handed over the interim report¹⁵¹ of the People's Inquest that was released the same evening. The final report of the People's Inquest¹⁵² was also handed over in person to the Hon'ble Chairperson, NHRC, on July 18, 2018, by Ms. Maja Daruwala, Ms. Pamela Philipose, Dr. Usha Ramanathan, and Dr. Rameshnathan, who were members of the People's Inquest team. Another copy of the same was also handed over to the investigation team of the NHRC.

¹⁴⁵ Available at: http://delhihighcourt.nic.in/dhccqrydisp_o.asp?pn=149593&yr=2018

¹⁴⁶ NHRC Press Release dated 29th May 2018; Available at: <https://nhrc.nic.in/press-release/nhrc-decides-send-its-own-investigation-team-conduct-spot-inquiry-police-firing>

¹⁴⁷ Team headed by an officer not below the rank of Senior Superintendent of Police assisted by three or more officers of the rank of Deputy Superintendent of Police and Inspectors

¹⁴⁸ Ms. Anita Ramasastry, Chair of UN Working Group on human rights and transnational corporations and other business enterprises, Mr. Baskut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Ms. Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Mr. John H. Knox, Special Rapporteur on human rights and the environment; Mr. Léo Heller Special Rapporteur on the human rights to safe drinking water and sanitation

¹⁴⁹ UN Special Procedures, Geneva, Press Release dated 31st May 2018, Available at: <https://www.ohchr.org/en/press-releases/2018/05/un-experts-condemn-deadly-police-response-protest-against-copper-smelting>

¹⁵⁰ The People's Inquest team of esteemed members consisted of retired judges, ex-IAS and IPS officers, senior journalists, academics, lawyers, researchers, trade unionists and activists

¹⁵¹ Available at: <https://peoplesinquest.files.wordpress.com/2018/07/peoples-inquest-tuticorin-police-firing-interim-observations.pdf>

¹⁵² Final Report of the People's Inquest organised by the Coordinating Committee for People's Inquest into Thoothukudi firing, titled "the day Tuticorin burned", Available at: https://peopleswatch.org/sites/default/files/reports/full_report/PI%20TUT%20-%20Part%20I%20Final%20without%20Annexures.pdf

On 10th July 2018, the NHRC passed an order in Case No. 907/22/41/2018 recording that the investigation division had submitted its report dated June 28, 2018. However, a copy of the report was not provided to the public or complainants in the case. Meanwhile finally on July 30, 2018, complaint sent by email by People's Watch was finally taken on file by the NHRC under Case No. 907/22/41/2018. However, on October 25, 2018, the NHRC passed an order closing the case. The order records that

- *The Commission considered the report and was of the opinion that adequate compensation has been paid to the victims and appropriate steps have been taken by State Government to maintain law and order.*
- *Judicial Commission was looking into the police excesses if any and no further intervention in the matter is required.*

On December 23, 2018, People's Watch addressed a representation to NHRC to reopen the case. Pertinently, a copy of the investigating report was not provided to the complainants. Accordingly, on May 6, 2019, People's Watch filed an application under the Right to Information Act, 2005 for obtaining a complete report of the investigation and other related information. On June 6, 2019, NHRC replied stating it cannot furnish the report considering the safety of witnesses. People's Watch published a follow-up report on May 22, 2019, titled '*A Year After Thoothukudi Burned*'¹⁵³, which records the inaction by all authorities including the NHRC to hold the police officials accountable for the firing and indiscriminate use of force against protestors. On September 3, 2019, People's Watch filed a review petition before the NHRC, however, no effective directions were passed in the same. On August 4, 2020, and August 31, 2020, further applications were filed before NHRC to furnish the report and finally on September 24, 2020, the NHRC furnished its reply and forwarded a copy of the enquiry report. While acknowledging the killings of protestors and recommending resurvey and enhancement of compensation to victims, the enquiry report does not hold police officials culpable or recommend any action against them. Henri Tiphagne, Advocate and Executive Director, People's Watch filed a Writ Petition in W.P.(M.D.) No. 10526/2021 before the Madras

¹⁵³ Coordinating committee for People's Inquest into Thoothukudi Police Firing

High Court praying for reopening of NHRC case. The Madras High Court passed order dated June 25, 2021,¹⁵⁴ issuing notice and directing NHRC to file its reply and place on record the report. The NHRC has opposed the reopening of the case and the matter is currently pending before the Madras High Court¹⁵⁵.

The Judicial Commission under Justice Aruna Jegadeesan set up by the Tamil Nadu Government to investigate into the police firing and use of indiscriminate force against protestors has filed its final report on May 22, 2022, holding that the police firing was unprovoked¹⁵⁶ and indicting 17 senior police officials. However, no action has been initiated against the police officers in pursuance of the report. Meanwhile, the CBI has indicted 101 members of the public (and only one police official) in PRC No. 82/2020 before Chief Judicial Magistrate, Madurai, in relation to the protest, who are currently facing criminal trial.

Here is once again a major case indicating the slackness and negligence of the NHRC through its complaints handling process, even when over 16 persons were killed and over 200 injured. The NHRC has not only closed the complaint, but also refused to review the same despite a court litigation before the High Court of Madras still pending and the incident having been jointly condemned by eight UN Special Rapporteurs eight days after the date of police firing in May 2018.

8.8.3. Violations in Kashmir

CASE BACKGROUND

Article 370 of the Indian Constitution provided a special status for the state of Jammu and Kashmir. After Article 370 was abrogated by the Parliament in a sudden proceeding initiated by the Indian Government, the entire Kashmir valley was reeled under a lockdown, internet connections were cut, the area was isolated for several months. Prominent persons, including former chief ministers, activists, and journalists, were detained under preventive detention laws. Thousand others were detained and lodged in jails in other Indian states.

¹⁵⁴Available at:

[https://hcservices.ecourts.gov.in/hcservices/cases/display_pdf.php?filename=QnBUxJ6a3glx%2B5SFrUiAoLqnO%2BLNh72Az0eSnShwrEztpJbdeO1Wiz%2FA14nU2iDv&caseno=WP\(MD\)/10526/2021&cCode=2&appFlag=](https://hcservices.ecourts.gov.in/hcservices/cases/display_pdf.php?filename=QnBUxJ6a3glx%2B5SFrUiAoLqnO%2BLNh72Az0eSnShwrEztpJbdeO1Wiz%2FA14nU2iDv&caseno=WP(MD)/10526/2021&cCode=2&appFlag=)

¹⁵⁵WP MD No. 10526 of 2021 dated 13.09.2021 in Thoothukudi Police Firing, Available at: <http://surl.li/dells>

¹⁵⁶ Available at: <https://frontline.thehindu.com/news/inquiry-commission-report-on-thoothukudi-firing-names-top-police-officials-for-serious-offences-against-unarmed-civilians/article65782715.ece>

HRDA COMPLAINT

On August 30, 2019, HRDA dispatched an urgent appeal and requested NHRC to intervene into the gross violation of basic human rights of millions of Kashmiri people who were arbitrarily detained, illegally arrested and there was complete clampdown on fundamental freedom of expression, association, and assembly.

COMPLAINT PROCEEDINGS BEFORE NHRC

NHRC registered HRDA complaint as Case No. 106/9/0/2019 on September 4, 2019. On September 5, 2019, NHRC requested a comprehensive investigation report from the Ministry of Home Affairs, Government of India. On November 6, 2019, the commission noted a subsequent complaint in the same matter restricting to arbitrary detention of thousands of Kashmiri residents in other Indian states. NHRC again requested the ministry to submit a thorough report detailing the overall number and status of detainees in J&K within four weeks.

The ministry submitted a report on November 8, 2019. However, as it failed to respond to the questions by the NHRC, a detailed response on lines of the earlier order was sought. NHRC in this complaint continued to wait for reports and recorded the same as per its orders on November 6, 2019, January 29, 2020, and July 1, 2020. On September 14, 2020, NHRC noted that the ministry has once more submitted the same report as it submitted on November 8, 2019. Finally, on June 6, 2021, i.e., almost two years after the directions to submit response, NHRC noted that a report by ministry was submitted which refuted HRDA's claims. NHRC closed the case on September 30, 2021, stating no response from HRDA. HRDA's response was submitted on October 26, 2021, after a letter to the NHRC seeking extension of time.

HRDA's complaint in this matter pertained to denial of fundamental rights to millions of citizens in Kashmir and arbitrary detention of thousands of citizens under prevention detention laws. NHRC, while granting close to two years to the government to respond, hastily closed the matter citing no response from HRDA despite extension applications and followed up by a submission.

8.8.4. NHRC's Investigation into Complaints of alleged extrajudicial killings by Uttar Pradesh Police

Complaint to NHRC

On May 7, 2018, nine families of the victims and civil society organisations filed two separate complaints before the NHRC highlighting 17 cases of extrajudicial killings by the state police of Uttar Pradesh. NHRC clubbed these two complaints as Case No. 10824/24/0/2018-AFE. On May 9, 2018, the Commission observed the necessity for fair inquiries into these alleged police encounter cases and directed the investigation division to constitute a four-member team to initiate the inquiry. NHRC further directed the state authorities to submit relevant documents pertaining to the investigation in all the 17 cases.

Proceedings before the NHRC

In its first order in May 2018, NHRC set four weeks as the deadline for completing the inquiries and submission of the documents.¹⁵⁷ Four years have passed since then, out of the 17 cases under investigation 15 cases have been closed, one is yet to be decided and no information is available for one case. 13 out of the 15 cases have been closed by the NRHC exonerating the state police of all accusations on the ground that there had been no human rights violation of the deceased persons as the police acted in self-defence. The Commission's delay in conducting the investigation becomes more poignant in the light of the fact that during these four years, approximately 100 more people were killed in a similar manner in police encounters in Uttar Pradesh.

Soon after the case was registered before the NHRC, families of the deceased victims and human rights defenders supporting the families began facing threats, intimidation and harassment by state and non-state actors. The complainants wrote 13 letters intimating the NHRC about the continued persecution and harassment of the victims' families and human rights defenders after they approached the NHRC seeking justice. The NHRC, however, neither responded to, nor took on record these letters during its pending inquiries. It directed inquiries in cases of persecution of human rights defenders but closed those inquiries as well.

Since January 30, 2019, the NHRC began closing the cases without informing the complainants or at the very least updating the status of Case No.

¹⁵⁷ NHRC Order dated 09.05.2018 in Case No. 10824/24/0/2018-AFE registered on Complaint of Henri Tiphagne and Others in respect of Noor Mohammad@Haseen Mota, Akbar, Waseem, Naushad, Jaan Mohammad, Ehsaan, Gurmeet and 10 others.

10824/24/0/2018-AFE on its website. This was a violation of NHRC's own Practice Direction 17, which mandates it to ensure participation of complainants before closing the case particularly if the complaints have been filed by non-governmental organisations.

Letters were sent to the NHRC seeking inquiry reports along with supporting documents in closed cases in compliance with the provisions of the PHRA and the NHRC (Procedure) Regulations, 1993 as amended in 1997. NHRC responded partially by providing inquiry reports without any supporting documents. It was only after RTI requests were sent to the NHRC and the order of the Central Information Commission (CIC) directing the NHRC to allow inspection of files of the closed cases, that the complainants were able to get the documents pertaining to these cases.¹⁵⁸

Moreover, the inquiries conducted by the NHRC suffer from considerable infirmities. For instance, the NHRC did not scrutinize apparent contradictions in the police versions, which were evident from witness statements, medical records and the analysis of forensic and ballistic evidence. These contradictions were treated as mere factual deviations. Moreover, the NHRC did not comment on the fact that the FIRs were not registered against the responsible police officers in any of the 17 cases. In all the 14 cases decided as yet, the NHRC is silent in its final order about this.

Except one case, the NHRC exonerated the state's police by declaring 13 out of the 17 alleged killings to be genuine encounters notwithstanding the violation of guidelines issued by both the Supreme Court of India and the NHRC on the investigation of police encounter cases. The magisterial inquiries of these cases were assigned to executive magistrate as opposed to judicial magistrates. Other breaches such as initial investigation by an investigating officer of the same police station, non-collection of weapons used by the police officers during the alleged encounters, and not recording tip offs have also been overlooked.

¹⁵⁸ Central Information Commission, Second Appeal No. CIC/NHRCMA/2020/139604, Henri Tiphagne v. National Human Rights Commission, dated 13.04.2022.

Further, NHRC's inquiries and final orders are based on incomplete evidence. In at least eight cases, NHRC could not secure wireless log book records of the police stations and log book records of the government vehicles used by the police officers. In many of the cases, NHRC recorded that the CDRs were not available due to passage of time.

Another key issue in this case is potential conflict of interest. During the pendency of these complaints, the Deputy Inspector General (DIG) of the NHRC's investigation division belonged to the Indian Police Service of UP cadre. She began her tenure with the NHRC in January 2019 as a Senior Superintendent of Police (SSP). Before being transferred to the NHRC, between July 2017 and April 2018 this officer served as SSP of Meerut district in UP. During her tenure, multiple instances of extrajudicial killings and injuries were reported from Meerut. These incidents were widely reported in the local media. Three of the 17 cases that were being investigated by the investigation division of the NHRC since May 2018. It is a matter of serious concern that while the NHRC was inquiring into allegations of extrajudicial killings by the UP Police, the DIG of NHRC's investigation division from the same state police was entrusted with the inquiry, particularly as some of these inquiries pertained to alleged extrajudicial killings that took place during this officer's tenure as SSP, Meerut. The appearance of bias by itself is sufficient for questions to be raised when the matter pertains to human rights abuses and the performance of an accountability organisation.

8.8.5. Police violence and repression of public protests, Uttar Pradesh

Background of the case

Uttar Pradesh witnessed widespread protests in December 19, 2019, against the passing of the Citizenship (Amendment) Act, 2019; and to condemn police violence against student protestors.¹⁵⁹ Members of the public and civil society organisations came out on the streets, to express solidarity. State authorities, including district administration and police, violently cracked down against the peaceful protesters, resulting in egregious violations of killings, torture, and

¹⁵⁹ Available at: <https://www.thehindu.com/news/national/anti-caa-protests-live-updates-december-19/article62125589.ece>

mass detentions, including of minors.¹⁶⁰ Images and accounts of the violence were widely reported in the media.

Complaint proceedings before NHRC

A set of prominent HRDs filed a complaint with the NHRC against the violence in Uttar Pradesh on December 24, 2019, asking for independent investigation and accountability. Almost three years since the complaint, the NHRC has taken no substantial action towards accountability. There were only occasional communications by the NHRC, in the initial weeks, to state and district authorities for responses, with hardly any responses received. Only after repeated letters from the complainants seeking action, about a year and six months after the complaint was filed, in July 2021, the NHRC finally ordered a 'spot enquiry' to be conducted in several districts in October 2021.

On September 29, 2021, the NHRC sent a letter to the complainants for conducting the spot enquiry and collecting depositions in Lucknow and Kanpur districts from October 4-8, 2021; giving less than even a week's notice for survivor families, lawyers, and support persons to coordinate and prepare among themselves. In October 2021, teams of the NHRC conducted spot enquiries across several districts:

- **4-5 October 2021:** Spot Enquiry was conducted in Meerut, Firozabad
- **6 October 2021:** Spot Enquiry was conducted in Sambhal and Kanpur
- **7-8 October 2021:** Spot Enquiry conducted in Lucknow

The lone action of conducting 'spot enquiry', that materialised after much coaxing and reminding by complainants, left much to be desired. Rather than independent enquiries, as deemed by law, what families experienced was NHRC teams everywhere working with local police units (the perpetrators in victims' eyes), to organise and conduct hearings and depositions for obtaining victim testimonies.

In Firozabad district (site of 7 killings and several grievously injured), the NHRC team met the victim families in a government building, with a large police

¹⁶⁰ Available at: <https://indianexpress.com/article/cities/lucknow/22-people-died-in-violence-during-anti-caa-protests-up-govt-to-hc-6275092/> and <https://thewire.in/rights/up-police-minors-protests>

deployment. Victim families had insisted on meeting the NHRC team to record their statements, in victims' houses. Yet local police, the objects of victims' complaints, accompanied the NHRC team. In Meerut district (5 killings, scores illegally detained), similarly, there was little independent enquiry conducted. Victims were made to provide their written statements in the presence of local police, in government facilities. In Kanpur (3 civilians killed), NHRC team conducted depositions in government facilities, in the presence of local police leadership. In Sambhal district (2 killings), HRDs supporting victim families were allegedly threatened by the local police that accompanied the NHRC team. Similar incidents took place in Bijnore district (3 killings). In Lucknow, the NHRC team demanded meeting with victims and their families at police barracks. Only after the intervention of senior HRDs, including a principal complainant, the venue was changed to a neutral place.

As of September 2022, the NHRC has still not released the reports of their enquiries and there is no information forthcoming. This case demonstrates not just the immense delay of the NHRC in moving on critical cases of egregious allegations, but also the lack of independence in its own proceedings. Considering the allegations are mainly against the police, it is stark and disappointing that the local police and government officials were enabled to be so visible at the district-level enquiries, with little thought as to the impact on and perception of complainants and victim families.

8.8.6. Case of Incarceration of Father Stan Swamy

CASE BACKGROUND

Father Stan Swamy, an 84-year-old Jesuit priest and human rights defender, suffering from advanced Parkinson disease, was arrested from Ranchi, Jharkhand state, on October 8, 2020, by the National Investigation Agency (NIA), in the Bhima Koregaon case¹⁶¹ and lodged in Taloja Jail in Navi Mumbai.¹⁶² He died in custody on July 5, 2021.¹⁶³

HRDA COMPLAINT

¹⁶¹ Bhima Koregaon case: Stan Swamy's custody death a 'stain forever' - The Telegraph
Available at: <https://www.telegraphindia.com/jharkhand/bhima-koregaon-maoist-conspiracy-case-stan-swamys-custody-death-a-stain-forever/cid/1856620>

¹⁶³ Available at: <https://www.ohchr.org/en/press-releases/2021/07/india-death-custody-priest-stan-swamy-devastating-un-expert>

HRDA filed an urgent complaint in early hours of October 9, 2020, urging the NHRC for an immediate intervention to prevent Fr. Swamy's arrest and detention in Navi Mumbai, over 1000 kilometers from Ranchi, given his fragile health and advanced age. HRDA filed follow up submissions in this case on multiple occasions and finally after his custodial death calling for an enquiry according to the NHRC's guidelines on death in custody.

COMPLAINT PROCEEDINGS BEFORE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

On October 9, 2020, NHRC referred the matter to its Investigation division to inquire by telephone and submit a brief report within a week. On October 14, 2020, NHRC noted, *"In response Investigation Division submitted that after going through the facts collected from NIA, allegations levelled in the complaint has been denied by the agency and reported that Fr Stan Swamy has been arrested as per laid down procedure and no human rights of the individual has been violated. However, whether the arrest was required, whether further interrogation of Fr Stan Swamy can be held without taking him in formal custody and his health matter/travelling to Mumbai can only be explained by the NIA for which a formal report is required."*¹⁶⁴

NHRC further directed the NIA to submit a detailed report with all supporting documents within two weeks. On December 1, 2020, NHRC acknowledged NIA's report dated October 26, 2020, NIA claiming to have followed the due procedures while arresting Fr Swamy and directed that this report to be analysed by its investigation division. On January 25, 2021, NHRC closed the complaint citing that the matter is sub-judice, and refrained from submitting its own finding before the court which it is empowered to do so under Section 12 of the PHRA.

Further, in the matter of custodial death of Fr. Swamy, NHRC has not reached any conclusion despite the matter being pending for close to 15 months. The UN Working Group on Arbitrary Detention has also submitted its opinion in this case of arrest and detention of Fr. Swamy.¹⁶⁵

¹⁶⁴ NHRC Case no. 1036/34/16/2020, Action No. 2

¹⁶⁵ Available at: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-57-India-AEV.pdf>

8.8.7. Case of Incarceration of Safoora Zargar

BACKGROUND

In 2019, Ms. Safoora Zargar was studying at the Jamia Milia University in New Delhi, and was involved in protests in Delhi against the Citizenship (Amendment) Act, 2019. She was arrested by the Delhi Police in April 2020 for allegedly being involved in a conspiracy to cause riots in the city.¹⁶⁶ She was pregnant at the time of her arrest.

HRDA COMPLAINT

HRDA India filed a complaint on April 28, 2020, regarding the illegal arrest of Ms. Zargar in violation of the arrest guidelines of the NHRC and the Supreme Court and concerns of the jail conditions and her being subjected to solitary confinement despite her pregnancy.

COMPLAINT PROCEEDINGS BEFORE NHRC

The NHRC registered HRDA's complaint on April 29, 2020, as Case / File No 1672/30/0/2020. The commission on April 30, 2020, ordered that, "*The victim as mentioned in the complaint has been arrested by the police as per procedure set under law. The outcome of the investigation being conducted by the police will be submitted to the competent court.*"¹⁶⁷

NHRC directed the Director General (Prisons), Tihar Central Jail, to submit a report on the allegations pertaining to custodial conditions within four weeks. The NHRC also directed that Ms. Zargar, a pregnant woman should not be subjected to any kind of harassment in judicial custody. HRDA in a letter reiterated the serious allegations of procedural non-compliance during her arrest being ignored by the NHRC which falls under its mandate and jurisdiction.

On August 11, 2020, NHRC shared a copy of the response received from prison authorities, denying all allegations, dated June 10, 2020, and called for HRDA's response. On October 21, 2020, HRDA sent its response. However, on

¹⁶⁶ Violation of Human Rights: UN Panel Slams Safoora Zargar's Arrest, Available at: <https://www.thequint.com/news/india/un-human-rights-council-slams-safoora-zargar-arrest-caa-protests>

¹⁶⁷ NHRC Case No. 1672/30/0/2020, Action No. 1

November 9, 2020, NHRC closed the complaint stating no response from HRDA.

Aggrieved by the said order, on November 10, 2020, HRDA sent a letter to the NHRC objecting to the closure of this complaint on false grounds and requested for reopening the complaint. After more than a year, NHRC vide its order dated December 30, 2021, noted, *“The Commission carefully considered the contents of the complaint, the documents placed on record, the report by the concerned authority and the application for reopening of the case and came to the conclusion that no substantial ground of reopening of the case is made out as the matter was already considered by the Commission on the merits. Accordingly, the present application is declined.”*¹⁶⁸

NHRC refrained from analysing the validity of its own arrest guidelines and hurriedly closed the complaint on false grounds citing non-response from HRDA. The UN Working Group on Arbitrary Detention has submitted its opinion in the case of Ms. Zargar.¹⁶⁹

8.8.8. Case of Incarceration of GN Saibaba

CASE BACKGROUND

Dr. GN Saibaba, a professor of English in the University of Delhi, and 90 percent physically disabled, is incarcerated in the Nagpur Central Jail as a convicted prisoner on charges of terrorism and sedition, which he is contesting. He is a human rights defender and often critical of the government for its policies affecting the indigenous community.

HRDA COMPLAINT

HRDA filed two complaints in the NHRC, on January 2, 2016, and November 13, 2017, pertaining to serious health conditions of Dr. Saibaba. His health condition further deteriorated in the custody.

COMPLAINT PROCEEDINGS BEFORE NHRC

On January 8, 2016, NHRC registered the complaint filed by HRDA as Case No. 159/13/17/2016. After a period of two years, on January 24, 2018, the

¹⁶⁸ NHRC Case No. 1672/30/0/2020, Action No. 5

¹⁶⁹ Available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_91.pdf

NHRC noted that a report received from prison authorities deny the allegations by HRDA. Given several other similar complaints in the case of deteriorating health conditions of Dr. Saibaba, NHRC referred the complaint to its investigation wing to inquire. On May 17, 2018, NHRC directed the authorities to constitute a committee of medical specialists in Nagpur's Government Medical College, to examine Dr. Saibaba. On October 5, 2018, NHRC noted that the committee suggested certain treatment for Dr. Saibaba. HRDA had submitted that the facilities in Nagpur are insufficient to meet Dr. Saibaba's medical needs through multiple representations.

On January 27, 2020, NHRC closed the complaint stating that the Government Medical College and Super Specialty Hospital, Nagpur has enough facilities and faculties with sufficient skills to treat all the conditions at par. HRDA had also requested that an independent enquiry be undertaken with doctors from the All India Institute of Medical Sciences, New Delhi, as Nagpur medical college staff directly fall under the jurisdiction of the state government of Maharashtra who has Dr. Saibaba's custody. Over the years his health condition has drastically deteriorated and several UN institutions have also expressed concerns on the same.

The way Dr. Saibaba is being treated in jail violates both his rights to life, health, privacy, and dignity as well as India's obligations under international law, particularly Article 10 of the International Covenant on Civil and Political Rights. His release on medical grounds had previously been demanded by the UN Special Rapporteur on Human Rights Defenders, who urged the Indian authorities to promptly ensure that Dr. Saibaba has ongoing and unhindered access to health care, including sufficient treatment and rehabilitation.¹⁷⁰

8.9. Half Measures and Foregone Opportunities to Protect Human Rights

The mandate of the NHRC under the PHRA is the 'better protection of human rights'. By human rights the statute under Section 2(d) means, 'the rights related to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants...' To protect human rights the NHRC can utilize

¹⁷⁰ UN experts urge India to release rights defender Dr. G.N. Saibaba on health grounds - OHCHR
Available at: <https://www.ohchr.org/en/press-releases/2018/06/un-experts-urge-india-release-rights-defender-dr-gn-saibaba-health-grounds>

numerous of its 'functions and powers' as defined under Section 12 of the Act. One of the most important human rights functions the NHRC can discharge is with respect to developing the normative architecture around human rights by exercising its power under Section 12(d) and doing a 'review' of 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 measure for their effective implementation'. The other important function relates to 'intervening in any proceeding involving any allegation of violation of human rights pending before any Court'¹⁷¹

Fundamentally the NHRC should function as an independent commission and also be perceived to be independent. In fact, the union government should ensure that the commission is not only independent, but it is seen to be independent as it only then that the NHRC can play a strong role in safeguarding democracy. Yet, in recent times including the last five years, the NHRC has failed to intervene in critical human rights crises. This section illustrates some examples.

The NHRC in the past has been responsive to civil society concerns and come out with recommendations on legislation in which there were legitimate concerns expressed about human rights. With respect to the Prevention of Terrorism Ordinance, 2000, the NHRC came out with a finding that, 'there was no need to enact the new law' and that the concerns around terrorism could be dealt with under existing legislation¹⁷². Yet in more recent times, particularly in light of the weaponised use of anti-terror laws to quell dissent, the NHRC has shown little concern. An online People's Union of Civil Liberties (PUCL) conference held in January 2021 had victims and activists testifying from twelve states across the country on how the UAPA continues to be invoked to criminalise dissent, be it of speech, association or assembly.¹⁷³

The present government, uses various instrumentalities of the State such as the CBI, the Enforcement Directorate, the tax authorities and the National Investigation Authority (NIA), to keep its critics in check. What has however emerged as the

¹⁷¹ See Section 12(b)

¹⁷² Available at: <https://nhrc.nic.in/press-release/prevention-terrorism-bill-2000-nhrc%E2%80%99s-opinion>

¹⁷³ From Jan21-23, 2021 the PUCL online consultation on UAPA and repressive laws was conducted. Below are the links to the three days.

On Jan 21, 2021 activists from Delhi, Telangana, Andhra Pradesh shared their experiences and analysis of the UAPA. Day 1, Available at: <https://fb.watch/7Y7cO5a9rL/>

On Jan 22, 2021 activists from Karnataka, Maharashtra, Punjab, Haryana, Assam and Kerala shared their viewpoints. Day 2, Available at: <https://fb.watch/7Y7hqv8rGj/>

On Jan 23, 2021, activists from Chhattisgarh, Jharkhand, Uttar Pradesh, Kashmir, Day 3, Available at: <https://fb.watch/7Y7gns3Ui9/>

instrumentality of choice of the current government, in all high-profile cases, is the powerful NIA. PUCL's analysis also indicates that of the 396 cases registered by the NIA, 78% were registered during the NDA government with 22% registered during the UPA government. Since 2014, the NIA's professional performance and integrity in political neutrality have quickly fallen.¹⁷⁴

The silence of the NHRC on the human rights implications of both the NIA's investigations as well as the UAPA does damage to the perception of the independence, and the effectiveness, of the NHRC. The NHRC seems to be in silent complicity with the union government and seems to be ignoring the concerns expressed by civil society.

8.9.1. Flouting a normative legal and policy framework around human rights violations

The NHRC has come out with important guidelines in the case of encounter deaths mandating that an FIR should be registered in all cases of encounter against the security forces when the encounter results in death.¹⁷⁵

However, this normative architecture developed by the NHRC as well as Supreme Court judgments is now being ignored by the NHRC itself, as a civil society report points out. In a case initiated by the NHRC with respect to extrajudicial killings by police in UP, the NHRC itself seems to have flouted its own guidelines:

“With an overwhelmingly clean chit for the UP Police, one would expect the NHRC’s orders exonerating police officers suspected of such grave human rights violations to be based on watertight grounds and reasoning. Yet, the analysis of the NHRC’s final closure orders contains glaring contradictions as reflected in the police versions of the facts, significant breaches of procedural and substantive mandates, and gaps in evidence. These have either been

¹⁷⁴ Available at: <https://caravanmagazine.in/crime/rise-and-fall-of-nia-hindu-terror-cases-bhima-koregaon> The agency handled 92 cases in its first six years, an average of 16 cases per year. Under Modi, that number has risen to 373. This has included several cases that are not strictly within the remit of the NIA, but help legitimise conspiracy theories of the Hindu Right that condemn many forms of dissent as related to terrorism. India's most professional investigative agency, formed primarily to deal with terrorism alone, has morphed into one that is sent after inter-religious couples, cattle smugglers, human-rights lawyers, Rohingya refugees and octogenarian priests. Its handling of the Bhima Koregaon case has revealed many of the illegalities it once accused other agencies of. The NIA's history is a tale of how quickly professionalism can be sacrificed at the altar of political manoeuvring.

¹⁷⁵ Available at: <https://nhrc.nic.in/acts-&-rules/guidelines-1>

*overlooked or justified to arrive at the final conclusion. Breaches of its own guidelines and precedents have also been condoned”.*¹⁷⁶

8.9.2. Giving a stamp of approval to egregious human rights violations through flawed investigations and findings

The NHRC increasingly runs the risk of being perceived as an instrument which works to provide its imprimatur to the state’s violations of human rights, rather than function as a check on state arbitrariness. The following examples substantiate the above point.

8.9.2.1. Violation of Students’ Human Rights in Jamia Millia Islamia, University, Delhi:

During the anti – CAA protests in Dec 2019, in JMI University, a team of the investigation division of the NHRC comprising police officers carried out a spot visit on the complaint of alleged human rights violations. After a thorough enquiry the investigating team found the incident to be a ‘law and order’ issue that involved violence and unlawful gathering of mobs, as submitted in its report of August 2020.¹⁷⁷ This finding stands apart from other fact findings by civil society which have found that on December 15, 2019, the police raided the campus of JMI, ‘forcing their way into the libraries, thrashing students, hurling tear gas shells into reading rooms and beating those who were praying’. The finding of the NHRC was widely criticized in the media for ignoring student testimonies of the police entering the library and inflicting brutal violence on students many of whom had medical records of their injuries.¹⁷⁸

8.9.2.2. Clash between Police and Students of Aligarh Muslim University (AMU), Uttar Pradesh:

¹⁷⁶ Extinguishing Law and Life: Police Killings and Cover up in the State of Uttar Pradesh, Available at: <https://thewire.in/rights/extrajudicial-killings-in-up-being-covered-up-even-nhrc-flouting-norms-report>

¹⁷⁷ National Human Rights Commission, 2020-21 Year end Review, Available at: https://nhrc.nic.in/sites/default/files/2020_21YearEndReview.pdf

¹⁷⁸ Available at: [scribd.com/document/458087289/The-Night-of-the-Broken-Glass-Testimonies-from-Jamia-Millia-Islamia](https://thewire.in/rights/nhrc-blames-jamia-students-for-police-violence-wants-real-motive-of-anti-caa-protest-probed). Available at: <https://thewire.in/rights/nhrc-blames-jamia-students-for-police-violence-wants-real-motive-of-anti-caa-protest-probed>, “Advocate Nabila Hasan, who is representing some of the students who were brutally assaulted in the police attack on December 15, 2019, says, “We filed before the NHRC and we gave more than 100 testimonies which displayed the brutality of the police attack on students in the library and other parts of the campus. Those testimonies were ignored by the NHRC. The students not only deserve compensation but also deserve an independent enquiry by an independent committee by a retired judge. In this case, the accused persons are the police and in general law you cannot be asked to investigate yourself. The police cannot be expected to investigate itself and give an impartial report.”

During the anti-CAA protests the police entered AMU and brutally beat up numerous protestors. An investigating team of NHRC found that the incident was prima facie a law and order situation that involved violence and subsequent coercive action by the Aligarh Police and armed Forces and that ‘the action of the police in controlling the situation was justified’.¹⁷⁹ However, a fact-finding report by civil society came to the finding that, ‘overall, the story which emerged was one of largely unprovoked police violence in AMU, more brutal than even in Jamia Millia Islamia (JMI), New Delhi, and indeed than in any university in recent memory. Also, of a university administration which unconscionably abandoned its students and threw them to a hostile and pitiless state.’¹⁸⁰ The DIG of the NHRC, as mentioned earlier in this report, hailed from the Uttar Pradesh cadre of Indian Police Service.

8.9.2.3. Enquiry into case of Delhi riots in February, 2020:

A suo-motu cognizance was taken by the NHRC of communal violence in the North East district of Delhi, which broke out on February 23, 2020. The NHRC ordered a spot enquiry to ascertain whether the role of police was fair and impartial in dealing with the situation irrespective of the religion of the people of that area. NHRC recommended compensation and rehabilitation of victims of the riots (both dead and injured), directions to Commissioner of Delhi Police to carry out the investigation of the criminal cases expeditiously & on merits, and advised the police to carry out the special drive to trace and seize illegal weapons proliferating in the North East district of Delhi.¹⁸¹ This anodyne report by the NHRC is contradicted by a report by the Delhi Minority Commission (DMC) which came to the finding that the violence was “*seemingly planned and directed to teach a lesson to a certain community which dared to protest against a discriminatory law*”.¹⁸²

¹⁷⁹ Available at: https://nhrc.nic.in/sites/default/files/2020_21YearEndReview.pdf

¹⁸⁰ Available at: <https://indianculturalforum.in/2019/12/24/the-siege-of-aligarh-muslim-university-a-fact-finding-report/>

¹⁸¹ National Human Rights Commission, 2020-21 Year end Review, Available at: https://nhrc.nic.in/sites/default/files/2020_21YearEndReview.pdf

¹⁸² The report documents the complicity of the police in the violence and how one of the slogans of the anti-CAA protests, ‘Azadi’, a chant for freedom, was used to taunt members of the Muslim community. In a cruel video which went viral shows the Delhi police surround five young Muslim men lying bleeding on the street and keep beating them with sticks and boots. ‘The police told them to sing “Jana Gana Mana” and directed one Kausar to say “Bharat Mata Ki Jai”’. While beating them, the police were saying, “You want Azadi? Take this Azadi!”’ ‘Report of the DMC Fact-finding Committee on Northeast Delhi Riots of February 2020’, Available at: <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>; thewire.in/rights/delhi-police-chargesheet-riot-media-coverage.

In none of the above investigations did the NHRC do anything to inspire civil society confidence. Civil society members were not part the fact finding and the findings themselves did not engage with what civil society had documented. In short there are serious concerns that the functioning of the NHRC has been to legitimize state action rather than function as an independent investigative commission on issues of human rights.

8.9.3. Silence during 2020 nationwide lockdown:

Experts and highly regarded retired public servants have commented on the egregious human rights violations that accompanied the ‘draconian’ imposition of a nationwide lockdown, following the declaration of the coronavirus pandemic.¹⁸³ Contesting the validity of the legal instruments used to justify the lockdown, there has been widespread anguish at the manner of enforcement which led to a confluence of human rights violations subjected on the poor and most vulnerable communities. An excerpt describes the tragic situation which prevailed:

*“Equally shocking was the way the lockdown was enforced—with baton-wielding police entirely in charge, taking orders from an authoritarian political leadership. There were horror stories of citizens being hounded, beaten up and subjected to all kinds of indignities. The massive number of urban migrants, mostly poor and penniless, was despised because they could be carrying the virus. So they were stopped, sprayed with chemicals and put in isolation barracks with no food or water so that they didn’t spread the disease. Many migrants, including pregnant women and tender kids, were forced on a long march home, crying for food and water en route”.*¹⁸⁴

In the enforcement of the lockdown, the behaviour and actions of the State manifested as ‘riot-curfew’ control rather than the response required to curbs on freedom of movement emanating from an unprecedented public health crisis.¹⁸⁵ The NHRC intervened with half-measures of issuing advisories and

¹⁸³ Available at: <https://www.indialegallive.com/special-story/draconian-measures/>

¹⁸⁴ Available at: <https://www.indialegallive.com/special/curfew-sans-compassion/>

¹⁸⁵ Available at: <https://www.indialegallive.com/special/curfew-sans-compassion/>

holding consultations much after the fact and distant from the ground realities.¹⁸⁶

8.9.4. Failure to intervene in key human rights challenges before the Supreme Court:

The passing of the Citizenship Amendment Act, 2019 by the Central Government triggered one of the most widespread protest movements in contemporary times, with over 140 petitions filed challenging the CAA in the Supreme Court.¹⁸⁷ The unconstitutional implications of the law was also commented upon by the Office of the High Commissioner of Human Rights (OHCHR), with the Office contemplating intervening in the Supreme Court.

The Ministry of External Affairs has opposed this, stating that the Act is “an internal matter of India.” It further went on to characterise the UN body as a “foreign party” and the intervention itself as bereft of “locus standi” as it related to “issues pertaining to India’s sovereignty.”¹⁸⁸

This debate between the Ministry and the OHCHR provided the NHRC an opportunity to issue a statement welcoming the OHCHR intervention as adding a needed dimension of an understanding of international human rights. However, even as civil society debated the merits of the intervention, the NHRC remained silent. The silence extended to the NHRC not intervening in any form in this central debate. The silence of the NHRC was eloquent.

The NHRC did not intervene in pending matters such as the challenge to the electoral bonds scheme which facilitates anonymous corporate funding to political parties and has implications for the right to political participation.¹⁸⁹ The NHRC was also absent in the general criticism of the human rights implications of a series of judgments with implications for human rights. In *Zakia Jaffrey v State of Gujarat*¹⁹⁰ as well as *Himanshu Kumar v State of Chattisgarh*¹⁹¹, there

¹⁸⁶ Available at: <https://nhrc.nic.in/covid-19-advisories-20>

¹⁸⁷ Available at: <https://www.indiatoday.in/india/story/supreme-court-hear-over-pleas-challenging-citizenship-amendment-act-caa-today-1638948-2020-01-22>

¹⁸⁸ Available at: <https://scroll.in/article/955177/un-human-rights-chiefs-cao-plea-puts-the-spotlight-on-indias-international-law-obligations>

¹⁸⁹ Available at: <https://www.scobserver.in/court-case/electoral-bonds>

¹⁹⁰ Available at: <https://indiankanoon.org/doc/199048478/>

¹⁹¹ Available at: <https://indiankanoon.org/doc/66796998/>

were concerns about whether the right to approach the court for legal redressal was being compromised.¹⁹²

All of this raises the question of whether the NHRC is fulfilling its mandate as per the statute as well as the Paris Principles.

9. Conclusion and Appeal:

As in 2017 following the last accreditation, we express our dissatisfaction and disbelief at the NHRC occupying 'A' status. At this juncture, it is worth recalling all that has changed, and also all that remains the same, in the last five years. Deeply problematic appointments have been made to the top leadership of the NHRC, in total disregard of the 2006, 2011, 2016 and 2017 recommendations of the SCA and which have the effect of severely undermining the independence, pluralism, effectiveness, transparency and credibility of the NHRC in India the NHRC invariably holds the highest position among the existing nine National and over 160 State Human Rights Institutions. None of the other repeated recommendations by the SCA are even on the NHRC's radar for adoption. Recommendations from other international actors and flowing from comprehensive assessments of the NHRC's capacity and performance have been cast aside as well.

The supposed sea-change through the proposed amendments for fundamental reform of the NHRC, the basis on which the SCA granted a status of compliance with the Paris Principles in 2017 after deferring the accreditation, is revealed as a clear and definite false promise. The 2019 amendments to the PHRA are far removed from compliance with the Paris Principles, in fact, they take the NHRC further into the embrace of government control which is strengthening daily. In fact, we express our deep concern that the last accreditation process was used as a smokescreen to bring in such amendments.

False commitments have been made in the past five years or so. Even under the pretext of complying with the recommendations of SCA, the amendments made to the Protection of Human Rights Act, 2019 were in fact clawback clauses that strike the root of independence and dilute the effectiveness of NHRC. We, therefore, call upon

¹⁹² Available at: <https://cjp.org.in/chilling-message-concerned-citizens-say-sc-must-clarify-it-did-not-intend-setalvads-arrest/>

the SCA and GANHRI to see through this farce and note the non-compliance with the Paris Principles by NHRCI. In addition, there is a brazen disregard for the repeated recommendations made by the SCA over the past four cycles. This is casting a shadow on the effectiveness of the accreditation process in the minds of civil society in India and human rights community across the world.

We, the undersigned, therefore through this submission wish that the Indian NHRC is provided with suitable recommendations in order that the essential requirements of the Paris Principles contained in the General Observations which have been repeatedly reiterated from 2006 to 2017 are accomplished before the accreditation itself is undertaken. The Indian NHRC is, therefore, not in a position to be considered for its accreditation in March 2023 and its application for accreditation, if presented, only requires to be deferred until essential requirements of the Paris Principles are fully implemented. The principles that have so far been guiding the SCA of GANHRI in matters relating to other NHRCs across the globe whose applications have been deferred in the past have to be equally adhered to in the case of the NHRCI. The SCA is urged to take an appropriate decision with regard to the accreditation of NHRCI.

Annexure 1: Endorsees List

Organization

| S.No. | Organization | Representative | Designation |
|-------|--------------------------------------------------------------------------------------|------------------------------|------------------------------------|
| 1. | Ambedkar Lohia Vichar Manch, Odisha | Sangram Mallik | President |
| 2. | Antislavery India (Inspiring people to lead a dignified life) | Umakanta Sahoo | Researcher |
| 3. | ARASIYAL ADHIGARA AMAIPPU, Tamil Nadu | Savior Selva Suresh Dr. A | Forensic Medicine Expert |
| 4. | Arunachal Citizen's Right, Arunachal Pradesh | Bamang Tago | Convener |
| 5. | ASEEM, Hyderabad | Masood S. Q. | President |
| 6. | ASHA-Kisan Swaraj, National Alliance of People's Movements and Human Rights Forum | Uma Shankari | Farmer, Researcher, Activist |
| 7. | Asian Bridge India (ABI), Varanasi, Uttar Pradesh | Mohammad Moosa Azmi | President |
| 8. | Banglar Manabadhikar Suraksha Mancha (MASUM) | Kirity Roy | Founder & Secretary |
| 9. | Borok People's Human Rights Organization | Anthony Debbarma | Secretary General |
| 10. | Bridging for Sustainable Development (BSD) | Kshetrimayum Onil | <i>Lead Coordinator</i> |
| 11. | CARE (Centre for Amenities, Rehabilitation and Education), Bangalore | Manohar Ranganathan | Executive Director |
| 12. | Centre for Financial Accountability, New Delhi. | Joe Athialy | Executive Director |
| 13. | Centre for Health and Mental Health School of Social Work. TISS, Mumbai, Maharashtra | Brinelle D'souza | Chairperson |
| 14. | Centre for Research and Advocacy Manipur (CRAM) | Jiten Yumnam | |
| 15. | Centre for Study of Society and Secularism (CSSS), Mumbai | Irfan Engineer | |
| 16. | Centre for the Sustainable use of Natural and Social Resources (CSNR), Odisha | Dhirendra Panda | Secretary |
| 17. | Citizen Against Hate, Delhi | Sajjad Hassan | President |
| 18. | Coalition for Environmental Justice in India | Leo Saldanha | |
| 19. | Coastal Action Network (CAN), Nagapattinam, Tamil Nadu | Gandimathi A | General Secretary |
| 20. | Constitutional Conduct Group | DEVASAHAYAM MG | Member |

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|-----|-----------------------------------------------------------------------|-------------------------|--------------------|
| 21. | Countercurrents, Kerala | Binu Mathew | Editor |
| 22. | Dalit Association for Social and Human Rights Awareness, Patna, Bihar | Uday Kumar | Executive Director |
| 23. | Dalit Human Rights Defenders Network (DHRDNet), | Manjula Pradeep | |
| 24. | December 3 Movement, Chennai, Tamil Nadu | Prof Deepak Nathan | State President |
| 25. | Distinguished Fellow Centre for Equity Studies | Avinash | |
| 26. | Food Sovereignty Alliance, Hyderabad | Sagari R Ramdas | Popular Educator |
| 27. | Forum Secularism and Democracy, Tamil Nadu | Britto MA | Convener |
| 28. | Ghar Bachao Ghar Banao Andolan, Maharastra | Bilal Khan | President |
| 29. | Goti Mukti Andolan | Baghambar Patanaik | |
| 30. | Growth Watch, Karnataka | Vidya Dinker | Chief Executive |
| 31. | Human Rights Alert-Manipur | Babloo Loitongbam | |
| 32. | Human Rights and Peace, Karnataka | Cedric Prakash Fr.SJ | Activist/ Writer |
| 33. | Human Rights Forum Telangana & A.P.States | S.Jeevan Kumar | |
| 34. | Indian Labour Union, Karnataka | N. Raja | President |
| 35. | Indian Social Action Forum (INSAF), Delhi | William Stanley | President |
| 36. | Indian Social Institute (ISI), Bengaluru, Karnataka | Joseph Xavier SJ Dr. | Director |
| 37. | Indigenous Peoples Forum, Odisha | Theophil Gamango | Convener |
| 38. | Justice Shiva Raj Patil Foundation, Tamil Nadu | Selvagomathi | Managing Trustee |
| 39. | Lohiya Academy, Bhubaneswar, Odisha | Prafulla Samantara | Director |
| 40. | Manav Vikas Avam Adhikar kendra Sansthan, Ajmer, Rajasathan | Ramesh Bansal | Secretary |
| 41. | Manithaneya Makkal Katchi (MMK), Chennai, TamilNadu | Jawahirullah Prof | President |
| 42. | National Adivasi Alliance | Vijayasingh RonaldDavid | National Convener |
| 43. | National Alliance of People's Movements (NAPM), Delhi | Meera Sanghamitra | Member |

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| 44. | National Campaign for People's Right to Information(NCPRI) | Anjali Bhardwaj | Co-Convenor |
| 45. | National Coalition for Strengthening SCs & STs (PoA)Act, Delhi | Rahul Singh | |
| 46. | National Dalit Movement for Justice, (NDMJ) Delhi | Rahul Singh | |
| 47. | National Federation of Dalit Women, Karnataka | Prema Shantha Kumari | Convener |
| 48. | National Hawker Federation, West Bengal | Sakthiman Ghosh | General Secretary |
| 49. | National Platform for the Rights of the Disabled(NPRD), New Delhi | Muralidharan | General Secretary |
| 50. | National Solidarity Forum (NSF), New Delhi | Ram Puniyani | President |
| 51. | National Union of Fishermen, Tamil Nadu | Anton Gomex G | President |
| 52. | North Eastern Social Research Centre | Walter Fernandes Dr | Director |
| 53. | Patrakar Surksha Kanoon Sanyukt Surksha Samiti,Chhattisgarh | Kamal Shukla | Editor |
| 54. | People-First | Devasahayam MG | Chairman |
| 55. | People's Commission on Shrinking and DemocraticSpace (PCSDS) | Ramesh Kumar Sharma | |
| 56. | People's Union for Civil Liberties (PUCL), Delhi | Suresh Dr.V | National General Secretary |
| 57. | Puthiya Arisiyan, Tamil Nadu | Raju Krishnaswamy | |
| 58. | Quill Foundation | Madhur Bharatiya | Advocate & Independent Researcher |
| 59. | RIGHTS, Kerala | Ajay | Executive Director |
| 60. | Salesian Representative to UN ECOSOC | Thomas Pallithanam | |
| 61. | Samast Machimar Sangthan (SMS) Gujarat | Usmangani Sherasiya | Convener |
| 62. | Social Awareness Society for Youths (SASY) | Ramesh Nathan Dr.V.A | Executive Director |
| 63. | Society for Community Organisation Trust (SOCO),Tamil Nadu | Mahaboob Batcha | Managing Trustee |

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|-----|--------------------------------------------------------------------|---------------------|--------------------|
| 64. | Sunray Harvesters | Aruna Rodrigues | Founder |
| 65. | Swaraj India (SI), Delhi | Christina Samy | National President |
| 66. | Tamish Desa Naduvam, Erode, Tamil Nadu | Gana Kurinji | President |
| 67. | Tamizh Desiya Viduthalai Iyakkam, Chennai, TamilNadu | Thiagu | |
| 68. | Wada Na Todo Abhiyan, Delhi | Annie Namala | Convener |
| 69. | Women's Collective, Chennai, Tamil Nadu | Sheelu Francis | |
| 70. | Women's Voice, Kerala | Ruth Manorama Dr | General Secretary |
| 71. | Working Group on Human Rights in India and the UN(WGHR), New Delhi | Enakshi Ganguly | |
| 72. | Youth for Human Rights Documentation (YHRD) | Mangla Verma | |

Individuals

| S.No. | Name | Designation |
|--------------|--------------------|--------------------------------------------------------------------------|
| 1. | Aasha Ramesh | Women's Rights Activist / Researcher, Bangalore |
| 2. | Abhishek Kumar Das | Activist, Odisha |
| 3. | Aditi Mehta | Indian Administrative Service, Delhi |
| 4. | Ajaj Singh | Human Rights Activist, Odisha |
| 5. | Ajeet Mahle | Human Rights Activist-HRDA, Mumbai |
| 6. | Ajo | Person With Disabilities Activist, Odisha |
| 7. | Akhand | Human Rights Activist, Odisha |
| 8. | Akhand | Activist, Odisha |
| 9. | Akila RS | Advocate, Chennai |
| 10. | Aloka Kujur | Human Rights Activist-HRDA, Jharkhand |
| 11. | Amar Jesani Dr | Independent Researcher and Teacher (Bioethics, Public Health) Mumbai |
| 12. | Amita Joseph | Advocate, New Delhi |
| 13. | Anie Rose | De-Notified Tribes Rights Activist |
| 14. | Anil Kumar | Human Rights Defender, Uttarakhand |
| 15. | Anil Pradhan | Education Activist, Odisha |
| 16. | Annie Namala | Social Activist and Researcher, Delhi |
| 17. | Apoorvanand | Academic and Writer, Delhi |
| 18. | Aruna Rodrigues | Environmental Activist |
| 19. | Aseer | Human Rights Activist-HRDA, Chennai |
| 20. | Ashish Kothari | Lead Researcher, Delhi |
| 21. | Babu Mathew Prof | Professor, National Law School of India University, Bengaluru, Karnataka |
| 22. | Balamurugan Dr.P | Independent Development Consultant, Chennai |
| 23. | Bela Bhatia | Human Rights Lawyer, Bastar, Chhattisgarh |
| 24. | Biduraj Soren | Social Activist, Odisha |
| 25. | Bighneswar Sahu | Journalist, Odisha |
| 26. | Bijay Pattnaik Adv | Advocate, Odisha |
| 27. | Chaahat Jain | Human Rights Activist-HRDA, Jharkhand |
| 28. | Chandranath Dani | Human Rights Activist-HRDA, Odisha |
| 29. | Debasis Punjui, | Advocate, Odisha |
| 30. | Devika | Advocate, Chennai |
| 31. | Divya Parichha | Legal Expert, Odisha |

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| 32. | Divya Parichha Adv | Advocate, Odisha |
| 33. | Emmanuel David | Human Rights Activist-HRDA, Karnataka |
| 34. | Geeta Ramaseshan | Advocate, Chennai |
| 35. | Goldy M George | Dalit Activist, Chhattisgarh |
| 36. | Gupteswar Panigrahi, | Advocate, Odisha |
| 37. | Haragopal G | Professor, Hyderabad |
| 38. | Harish Vasudevan | Environmental Activist, Kerala |
| 39. | Hemanta (TOI) | Journalist, Odisha |
| 40. | Jeyaraman N | Digital Security Activist, Tamil Nadu |
| 41. | Kalyani Menon Sen | Independent Researcher, Coimbatore, India |
| 42. | Kamal Shukla | Human Rights Activist-HRDA, Chhattisgarh |
| 43. | Khirod Rout | Advocate, Odisha |
| 44. | Krishnakant Chauhan | Human Rights Activist-HRDA, Gujarat |
| 45. | Kumar Shailabh | Working Group on Human Rights in India and the UN (WGHR), NewDelhi |
| 46. | Lara Jesani | Advocate, Maharashtra |
| 47. | Leela Dhar | Human Rights Activist-HRDA, Himachal Pradesh |
| 48. | Manoj Adv | Advocate, Odisha |
| 49. | Markose Br | Activist, Odisha |
| 50. | Meha Khanduri | Human Rights Defender-Alert, Delhi |
| 51. | Mithila Manohar Raut | Activist, Maharashtra |
| 52. | Mohammad Arif | Social Activist, Varanasi |
| 53. | Mohan S | Lead Researcher, Tamil Nadu |
| 54. | Mohan T | Advocate, Chennai |
| 55. | Murthy Dr.YSR | Former Director -Researcher- NHRCI |
| 56. | Nandini Sundar | Professor, Department of Sociology Delhi School of Economics University of Delhi, |
| 57. | Narendra Ch. | Senior Journalist & Human Rights Activist, Hyderabad. |
| 58. | Nicholas Barla | Tribal Coordination Front India, Delhi |
| 59. | Pamela Philipose | Ombudsperson, The Wire.in, Delhi |
| 60. | Paul Newman K | Principal, St. Joseph's College (Autonomous) Bengaluru |
| 61. | Pratima Das | Activist, Odisha |
| 62. | Priyanka Samy | Independent Researcher |
| 63. | Ramesh Bansal | Human Rights Activist-HRDA, Rajasthan |
| 64. | Rasmi Ranjan Jena | Activist, Odisha |
| 65. | Ravindra Singh | Human Rights Defender-Alert, Uttar Pradesh |
| 66. | Ravish | Human Rights Defender-Alert, Uttar Pradesh |

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| 67. | Rini Elizabeth Babu | Research Assistant, Tamil Nadu |
| 68. | Rohit Prajapati | Environment Activist, Gujarat |
| 69. | Saji Thomas | Human Rights Activist, Kerala |
| 70. | Sanjay Upadhyay | Consultant, Delhi |
| 71. | Santhanam Arockiasamy | Social Activist, Tamil Nadu |
| 72. | SASI K.P | Film Maker, Writer, Cartoonist and Activist, Karnataka |
| 73. | Sathya | Consultant, Tamil Nadu |
| 74. | Subhaschandra SinghN | Advocate, Manipur |
| 75. | Sujit Nikalje Adv | Independent Practitioner, Maharashtra |
| 76. | Sushant | Person with Disability Activist, Odisha |
| 77. | Swati Mishra | Activist, Odisha |
| 78. | Tara Murali | Activist, Chennai |
| 79. | Vasanthi Devi V | Former Chairperson, Tamil Nadu State Commission for Women, Chennai |
| 80. | Venkat Raman SK | Advocate, Tamil Nadu |
| 81. | Venkatesh Nayak | Eminent Activist, Karnataka |
| 82. | Vikas Yadav | Human Rights Activist-HRDA, Delhi |
| 83. | VIRGINIUS XAXA Prof | Former Professor, Delhi University |
| 84. | William Nicholas Gomes | Human Rights Activist and Freelance Journalist |