



Independent People's Tribunal on the Functioning of the National Human Rights Commission of India

Dates: December 14th, 15th & 16th, 2013
Venue: Jawaharlal Nehru University,
School of Social Sciences-1 Auditorium
Time: 9AM - 6PM

An Independent Peoples' Tribunal was jointly organised Human Rights Law Network, All India Network of NGOs and Individuals working with National / State Human Rights Institutions [AiNNI], Human Rights Alert, Vanvasi Chetna Ashram, Paryavaran Suraksha Samiti, South India Cell for Human Rights Education and Monitoring, Banglar Manabadhikar Suraksha Mancha, People's Vigilance Committee on Human Rights, Human Rights Advocacy and Research Foundation and Asian NGO *Network* on National Human Rights Institutions (ANNI) on the functioning of the National Human Rights Commission (NHRC) on December 14, 15 & 16, 2013 in New Delhi.

This was being organised on the occasion of the 20 years of Paris Principles [1993], 20 years of the Protection of Human Rights Act [1993] and 20 years of the Vienna Conference [1993]. The jury was chaired by Justice (Retd.) Hosbet Suresh, [Former Judge of the Mumbai High Court] and comprised Justice (Retd.) Surendra Bhargav, [Former Chief Justice of Sikkim High Court], Justice (Retd.) W A Shishak, [Former Chief Justice of Chhattisgarh High Court], Justice (Retd.) K Sukumaran, [Former Judge of the Mumbai and Kerala High Court], Mr. Yambem Laba, [Former Member of Manipur SHRC], Prof. Babu Mathews, [Professor, National Law University, New Delhi], Prof. Kamal Chenoy, [Professor, Jawaharlal Nehru University, New Delhi], Prof. Anuradha Chenoy, [Professor, Jawaharlal Nehru University, New Delhi], Prof. VimalThorat, [Professor and Social Activist].

The first day comprised of three sessions. The first session was on 'NHRC's compliance to UN standards'; the second session on 'Police encounter, custodial torture, custodial death and the response of the NHRC'; and the third session on

'Killings and torture by armed forces and the response of the NHRC'. The second day comprised of five sessions. The first session was on 'Attack on human rights defenders and response of NHRC; the second session on 'Communalism and Response of NHRC, the third session was on 'Violation of Women's Rights and Responses of NHRC, the fourth session was on 'Dalit issues and the Response of NHRC'; and the fifth session was on 'Tribal Rights and the Response of NHRC'. The third day again comprised of four sessions. The first session was on 'Environment, housing and displacement and the response of NHRC; the second session on 'Health rights and response of NHRC; the third session on 'Child rights and the response of NHRC'; and the fourth session 'Disability and the response of NHRC'. We patiently listened in each session to a series of expert testimonies followed by depositions from victims of different violations who had approached the NHRC at different points of time.



In the first session on 'NHRC's compliance to UN International standards' Adv. Prashant Bhushan addressed on 'Relevance of corruption charges within NHRC, Adv. Colin Gonsalves on the Independence of NHRC and the NHRC; Ms. Maja Daruwala on Core Groups in NHRC; Dr. Mohini Giri on the role of deemed members in the NHRC; Prof. YSR Murthy on staffing, accessibility and infrastructure of the NHRC; Prof. K. Murali on District Human Rights Courts; Mr. Suhas Chakma on complaints handling mechanism of the NHRC; Mr. Henri Tiphagne on the appointment and selection process in the NHRC. The most pressing issues of our times; i.e. Right to Food, Sexual Orientation and Gender Identity, and Death Penalty were spoken by Mr. Harsh Mander, Adv. Arvind Narain and Adv. Colin Gonsalves.

In the second session on 'Police Encounter, Custodial torture, custodial death and the response of NHRC' Mr. Lenin Raghuvanshi addressed the session on Police abuse and torture in Uttar Pradesh, Ms. Sudha Bhardwaj spoke on the overall situation of Armed killings and torture in Chattishgarh, Adv. Navkiran Singh spoke on the Punjab Cremation Case and Mr. Babloo Loitongbam addressed the session on Armed Forces Special Powers Act and the situation of Manipur. Mr. Kirity Roy addressed the session on BSF killings and torture in West Bengal while Ms. Parveena Aihangar spoke about the very significant issue of disappearances in Kashmir. A host of victims who had approached the NHRC with individual complaints

testified what were the developments in those cases.

The second day comprised of five sessions: The first session was on the pressing issue of the 'Attack of human rights defenders and response of NHRC, the right to association, expression and assembly'. The second session was 'Communalism and the intervention by NHRC'. The third session was on 'Violation of women's rights and the response of NHRC'; the fourth session was on 'Dalit issues and the response of NHRC' and the final session was on 'Tribal Rights and the Response of the NHRC'. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

In the first session on 'Attack on Human Rights Defenders', Mr.Venkatesh Nayak spoke on the attack on RTI activists. Ms.Shamim Modi spoke on the torture and false cases against human rights defenders citing her own case as well. Dr.B.V Sitaram spoke on the police torture and registration of false cases against defenders, citing his own case to corroborate the issue. Mr.Anil Chowdhury addressed the section on the attack on NGOs. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.



In the second session on 'Communalism and the intervention by NHRC', Mr. Gagan Sethi spoke on the effective role of NHRC in its intervention in the Gujarat riots 2002 case, under the chairmanship of Justice Verma. Mr. John Dayal spoke on the Kandhamal riots 2007-2008 and the lack of attention or action by the NHRC. Mr. P.B D'sa spoke about the Mangalore Violence of 2008 and the conspicuous absence of the NHRC in intervening in the issue. Mr.AfrozeAlam elaborated the Batla House Encounter case and how the NHRC simply endorsed the report of the Additional Commissioner of Police, instead of conducting its own enquiry and taking an independent stand on this very suspicious case which clearly had a conflict of interest for the Delhi police. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

The third session on Violation of Women's Rights and the Response of NHRC was addressed by Ms. Annie Raja. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

The fourth session on dalit issues and the response of NHRC, the section on 'Access to basic rights and justice' was addressed by SDJM Prasad. Mr. Bezwada Wilson spoke on the practice of untouchability, Mr. P.L. Mimroth spoke about the atrocities against Dalits. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

In the fourth session on 'Tribal rights and the response of NHRC', the section on False cases against tribals in Central India was addressed by Mr. Himanshu Kumar; the section on Mining issues and Forest rights was addressed by Mr. Sreedhar. Ms. Ningreichon Tungshang spoke about the tribal issues in North-east India. Mr. Mayank Sinha spoke on Nomadic and De-notified tribes in India. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

The third day comprised of four sessions. The first session was on 'Environment, Housing and Displacement and the response of the NHRC'. The second session was on 'Health Rights and the response of the NHRC'. The third session was on 'Child Rights and the response of NHRC' and the final session was on 'Disability and the response of the NHRC'. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

In the first session, on 'Environment, Housing and Displacement and the response of NHRC', Ms. Medha Patkar spoke on the overall situation of housing and displacement in India and the role played by the NHRC. Ms. Shivani Chaudhry spoke on 'Land grab and displacement'. Mr. Simpreet Singh spoke on Urban Housing and Displacement. Mr. Rohit Prajapati spoke on development and environmental destruction. Mr. Mahesh Pandya spoke on the environmental destruction specific to Gujarat. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

In the second session on Health Rights and the response of NHRC, Mr. Binayak Sen spoke on healthcare as a right and access for the rural poor and the response of NHRC. Satya Sagar spoke on Public Health and the role of NHRC. Anand Rai spoke on Clinical Trial cases and the response of NHRC. Ms. Jashodhara Dasgupta spoke on Maternal health. A host of victims who had approached the NHRC with individual

complaints testified what were the developments in those cases.

In the third session on Child rights and the role of NHRC, Ms. Bharti Ali spoke on Trafficking, forced labour and sex work and Adv. Anant Kumar Asthana spoke on Protecting Child rights; an evaluation of NCPCR and NHRC. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.



In the final session on Disability and response of NHRC, Mr.SantoshRungta spoke on the overall situation of disability vis a vis NHRC and Mr. Anil Aneja spoke on Physical disability and their rights. A host of victims who had approached the NHRC with individual complaints testified what were the developments in those cases.

The jury plans this only as its interim observations with a few recommendations. It proposes to finalise its report and then send the final report to the NHRC for its views and comments which will also be incorporated into the final report of the IPT for the sake of objectivity.

General positive observations:

- There have been excellent people who have headed the NHRC in the past 20 years in different capacities – as Chairs, as Members, as Secretary General, as DG [Investigation] as staff as Special Rapporteurs, as Directors , as staff in the registry, in the complaints handling wing, in the investigation wing etc .Much of what the NHRC has achieved are attributable to such persons and their initiatives which the jury would like to respect, honor and cite right at the beginning of these interim observations. It is because of the contribution of these committed people in the NHRC that the trust of the civil society is still kept alive. It is their hard work of many years ,on many an occasions in loneliness, which forms the basis of this IPT and the following observations and recommendations We clearly understand the State and the Parliament have a larger role to play.
- Mention has been made in the number of depositions made before us to some excellent efforts made in thepast 20 years – some of them to indicate examples were references to:

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- The NHRC's position on TADA that it came out with and also followed it up effectively with the Parliamentarians of this country. This eventually led to TADA not being extended in Parliament. Later a similar stand was also taken on POTA.
- Several guidelines on custodial deaths, encounter killings etc and procedural guidelines that the NHRC has come out with.
- The N.C. Saxena report on the SC ST POA – no action thereafter on the same by the NHRC except the recent 'public hearings' in the past 2 years.
- The stand taken by the NHRC in the World Conference Against Racism in Durban that the issue of caste discrimination had to be discussed in this conference contrary to the Government of India's position on this issue.
- The NHRC's role internationally in the stage by stage drafting of the UN Convention Rights of Persons with Disabilities.
- NHRC's creative engagement in the Gujarat crisis in the initial years after 2002, in the Gujarat High Court, in the SC, with the constitution of a Monitoring Committee etc which alone was responsible later for the constitution of the SIT and many of the successes that these cases have ended up in. However, the follow up was also missing after 2006 - 2007.
- A progressive NHRC recommendations on relief and rehabilitation of displaced persons of 22nd August 2008 which the Ministry had never undertaken .but yet no follow up on this unique work of the NHRC.
- The UPR II report of the NHRC in the year 2012 where they were critical of the Government policies of different human rights – one of the finest reports of the NHRC in the past 20 years;



- The NHRC efforts at working toward the development of a tool in union with other NHRIs in this country to monitor to UPR II recommendations accepted by the Government in the HRC.
- Silicosis related recommendations which no other Ministry of the Government has carried out and effective complaints being handled on this issue.



- The NHRC's 6 regional conferences on the right to health conducted along with the Jan Swasthya Abhiyan and a concluding national conferences with excellent recommendations, including a new law on the right to health. However, many of the recommendations are yet to be followed.

Relevance of corruption charges within NHRC:

Observation:

- We were shockingly informed that for the past 3 years there has been a strong pursuit being undertaken against the charges of corruption against the present Chairperson of the NHRC with no success at all before the Supreme Court and during this period the Chairperson continues in office.

Appointment and selection process of staff and Members :

Observations:

- 1) In this age of Right to Information, neither the website of the NHRC, or the MHA the nodal Ministry to which the NHRC reports, nor the Prime Minister's Office who is the Chair of the Committee recommending appointments have made any pro-active disclosure mandated under the RTI Act of 2005 relating to the minutes of each of their committees, their agenda, the names of the candidates considered, the CVs of the candidates considered and the names of the final selection made.
- 2) Excepting Justice Fatima Beevi (3/11/1993 - 24/11/1997) and Justice Sujatha Manohar (21/02/2000 - 27/08/2004) no other women member has had the opportunity of adorning this commission for the past almost 10 years.
- 3) In the last 20 years, the 2 slots for persons with knowledge or practical experience in human rights has always been filled up by either former I.P.S or

former I.F.S or former Secretary of the Rajya Sabha. Not a single representative from the academia or the media or the legal/ medical profession or from the vibrant Indian civil society have ever found a place in the Commission.

- 4) The Average age of our members has by virtue of the PHRA and the appointments made, always been above 60 years. The sole exception being a present serving police officer of the I.P.S cadre formally Director N.I.A who has been included as a member of the NHRC.
- 5) We were also informed that among those appointed from the category of former bureaucrats were also excellent Members like Mr. Veerendra Dayal and presently Mr. Satyabrata Pal who were / are both extremely sincere, sensitive and diligent in the work that they undertook in the Commission.

The appointment of the first former police officer, Mr. P.C. Sharma IPS as a member of the NHRC in his first term, also upheld by a Division Bench of the Hon'ble Supreme Court, paved the way for him getting a second term later during the UPA [I] Government. This has now also paved the way for many SHRCs in the country appointing former DGPs as Members of the SHRCs in the different states. [Since most of the complaints filed in the NHRC and the SHRCs are against the police, such appointments of former police officers do not bring in much confidence among the public.]

- 6) The appointment committee has no rules of procedure that it has developed. It is a 'secretive process' and as years have progressed, in the last 8 years, only the ruling party's nominees in the Committee seem to be attending the meetings of the Committee, while the members representing the Opposition are known for their absence. Madam Sonia Gandhi as an Opposition leader of the Lok Sabha during the NDA regime was also known to be absent for the committee meetings. Mr. L.K. Advani as leader of the Opposition in the Lok Sabha during UPA I, was also known to be similarly absent. Madam Sushma Swaraj and Mr. Arun Jaitley as members of the present Committee were also absent recently when, Mr. P.C Sinha I.P.S and Mr. Justice Cyriac Joseph were recently recommended.
- 7) The Commission's performance has in the past years depended a lot on the quality of not only the Chairperson of the Commission but equally of its Members. In the past ten years, the quality of retired Judges available for

such public offices has also greatly declined with most of them, busy with their lucrative engagements in arbitrations with 'sitting, standing, reading, writing fees' etc.

- 8) There are presently standards in relation to the appointment and selection procedures to be followed that are internationally mandated in the ICC General Observations of May 2013. The contents are divided into 2 parts, the first being the essential requirements of the Paris Principles and part two being practices that directly promote Paris Principles' compliance. In the essential requirements, point 1.7 deals with ensuring pluralism of NHRIs, 1.8 on Selection and Appointment of the decision making body of NHRIs, and 1.9 on Government representatives on NHRIs.
- 9) The Paris Principles require NHRIs to be independent from government, in its structure, composition and method of operation of the NHRC. This independence in composition of NHRI seeks to avoid any possible interference in the NHRI's assessment of the human rights situation in the country and the determination of its strategic priorities. Paris Principle further indicates the need for a diverse decision making body. And the word 'pluralism' refers to broader representation of national society in the context of gender, ethnicity or minority status.
- 10) The process of appointment does not include [i] publicising of the vacancies; [ii] does not maximize the candidates for positions from the groups that they are to represent; [iii] no broad consultation of the appointment committee in the application, screening, selection and appointment process; [iv] no pre-determined objective and publicly known criteria for appointment;
- 11) In addition we learnt that when the NHRC approached the ICC / SCA for its accreditation in May 2011 and obtained an 'A' grade status they were provided with 5 suggestions / recommendations, and one of the recommendations observed that the provisions of the PHRA dealing with the composition of the Commission are unduly narrow and restrict the diversity and plurality of the board requiring only a former Chief Justice of the Supreme Court as the Chairperson; similarly, the requirement that the majority of members are recruited from the senior judiciary further restricted 'diversity and plurality'.

12) We have learnt the inadequacy in terms of numbers of staff relating to different divisions in the NHRC. Only about 390 staff members in a country of the size of India and the number of issues being faced by the country is totally inadequate to be able to deliver.

13) We have also observed that contrary to the Paris Principles and the General Observations 2013 that all senior positions of the NHRC are secondees such as the Secretary General, the Director General [Investigation] the Joint Secretary of the NHRC, the

14) Registrar [Law], the Joint Secretary [P&A], the Joint Secretary [P & R] etc. More than 25 % of their staff in other positions are also either secondees or people who have served in other positions in the government



or judiciary - leaving this commission to be 'sarakari' not only in its composition but also in its culture and functioning – the main irritant that was complained off by victims after victims and experts who deposed before us in the past three days.

15) The NHRC has been appointing its own Special Rapporteurs. We have been told about veteran experts and people of extreme credibility who had served in such positions – people like Mr. Chamanlal IPS, Mr. K.R. Venugopal IAS etc. This was a very good effort of the NHRC. However, of late the search for such persons to be appointed as SRs has stopped and instead it is seen that most of the NHRC Special Rapporteurs are also only IAS or IPS officers and more recently former General Secretaries / Director General of Investigation / Joint Secretary of the NHRC. Hence in addition to senior staff who are secondees, the space for experts in different fields are also limited only to former IAS /IPS or former senior staff – perpetrating the sarkari I culture further.

16) There have been in the past, very senior people in service who were invited to act as Advisers to the NHRC – people like Mr. Saxena and Prof. Mool Chand Sharma who later was also the Deputy Chair of the UGC. This practice has completely stopped now.

DeemedMembers :

Observations:

- This provision of the PHRA, 1993, providing for 'deemed members' is unique in the world and no other NHRI across the globe today is in this vantage position of benefitting from the expertise, experience and institutional history and learning of 4 thematic NHRIs that were in existence prior to the establishment of the NHRC.
- That between January 1998 to April 2008 that the meetings of the full Commission including the 'deemed members' has during this ten year period taken place on 26 occasions only. 5 in 1998, 4 in 1999, once in 2000, 4 in 2001, 4 in 2002, twice in 2003, once in 2004, twice in 2005 and one each in 2006, 2007 and 2008.
- The 'deemed members' of the NHRC have never had an opportunity to attend a business meeting of the ICC, or of the the UN Human Rights Commission/ UN HRC meetings or any of the ICC international conferences organized by the ICC, or any of the 18 annual conferences of the APF or benefit from any of the capacity building programmes conducted by the APF for its constituent members and its staff. Therefore it was clear to us that the 'deemed members' have been treated as 'second class ornamental deemed members' of the NHRC.
- Even in the World Conference against Racism in Durban in 2001, the NHRC did not think it fitto invite at least the Chairperson for National Commission for Schedule Castes/ STs [one of its deemed members] to join its delegation where the issue of caste discrimination was being debated.
- When the NHRC was granted its 'A'grade during its most recent accreditation by the ICC in May 2011, the Sub Committee on the Accreditation of the ICC has made recommendations, one of which, specifically related to composition and pluralism. But in the past 2.5 years since this recommendation has been made, there was nothing in the public domain to indicate that this has been brought to the attention of the Government.

National Core Groups of the NHRC:

Observations:

- The constitution of core groups is not specifically mandated by the PHRA and has been something that the NHRC has carried out in pursuit of its function under Sec 12[i]. Core groups have been formed on NGOs, on bonded labour, on health, on disability, on mental health, on protection and welfare of elderly persons, on right to food and on lawyers.
- We appreciate the idea of the NHRC's engagement with such core groups. However we see clearly that much needs to be done to regularise their composition, detailed meetings procedures, periodicity of meetings to be increased, their mandates etc.

Attack on human rights defenders (HRDs) and response of the NHRC: [Right to association, assembly and expression]

The jury had occasion to be told repeatedly of the increasing number of HRDs across the country who were under attack with the registering of false cases forcing them to spend more than 30 % of their time in travelling to courts and preparing for defending their cases. This was becoming an area of real great concern. During the 13th regular session of the UN Human Rights Council (HRC) NHRIs were seen as 'public protectors of HRDs' and states were encouraged to reinforce the capacity and mandate of NHRIs to allow them to fulfill their role as Human Rights Defenders (HRDs) effectively.

We were also told that though the UN Declaration on Human Rights Defenders was passed in the year 1998, it was from May 2010 that the NHRC appointed its Focal Point on HRDs in the stature of a person of the rank of a Joint Secretary.

- The focal point has over the past 3 years become extremely personally sensitive to the issues of HRDs and has also been travelling the length and breadth of this country.
- The focal point has also been available on his mobile even at nights for HRDs to be able to communicate with him when HRDs were in distress or under arrest.
- The NHRC has a dedicated a part of its website for highlighting cases of HRDs and what actions have been initiated.

We were informed for example that about 250 individuals have been allegedly

attacked, harassed (physically or mentally), their property and belongings allegedly damaged and some even allegedly murdered for seeking information under the RTI Act. We were further told that more than 214 cases of assault of varying degrees and mental and physical harassment have been reported through the media over the last 8 years. At least 18 of these victims were women.

Observations:

- The NHRC does not maintain a separate database of complaints about attacks on RTI activists. The updated list of HRD Cases uploaded on their website mentions at least 5 instances where the NHRC has taken cognizance of the complaints of attacks on RTI users and activists.
- A perusal of this web site and cases narrated reveals that in most cases the normal complaints handling process is followed with no fast tracking of the cases at all causing great hardship to the HRDs.
- On matters where HRDs serving on the NHRC's own Core Group for NGOs were attacked, the process has been 'as equal' as it is for any other complaint approaching the NHRC!!! The sensitivity on the issue is lost and in most such cases whether it related to a criminal case registered against HRDs for organizing a 'Public Hearing' or an HRD's office being raided after a 'Public Hearing' [all relate prior to the appointment of a focal point for HRDs] no meaningful intervention were made by the NHRC and the usual practice of relying upon the versions of the police received by the Commission as what was observed.
- In the handling of complaints from HRDs there was definitely a lack of creativity observed. For example, in almost all cases where HRDs complained of attacks from known or unknown persons, the police versions usually commonly stated that the accused had been arrested and protection offered to the HRDs. Upon receipt of this response, the NHRC usually closed the case. It is seen that these were actions initiated independently by the local police. We were finding it difficult to find out what added value was there on the part of the NHRC to protect the HRDs in these cases?
- Civil society organization were increasingly under attack in the recent few years - with some state governments even withdrawing their registrations. We were told of the provisions of the FCRA that needed to be urgently attended to and that an early warning of the same had been provided by

none other than the UN SR on HRDs during her country visit to India in January 2011 and also in her report presented to the 19th Session of the HRC. No intervention of *asuo motto* nature has been observed from the NHRC in this regard leaving some CSOs including the main organizers of this IPT, namely the HRLN to have lost its FCRA registration for a long time. web site. The right to association of HRDs includes the right to solicit, receive and utilise resources according to the UN Declaration on HRDs 1998.

Complaints handling mechanism of the NHRC:

Observations:

- In spite of all the limitations the PHRA suffers from, it is still pertinent to state that the NHRC has been accorded significant statutory powers under the Protection of Human Rights Act, 1993 [the Act]. These powers may be exercised in cases of grave human rights violations, which the NHRC may take cognizance of either *suomoto* or on the basis of complaints made to the Commission. Specifically, the following powers and functions are of significance to even mention :

Section 12(a) of the Act gives the Commission the power to inquire, *suomotu*, or on petitions, presented to it by victims, or any persons on their behalf, or on a direction or order of any court, into (i) violations of human rights or abetment thereof, or (ii) negligence in the prevention of such violation, by a public servant.



Section 12 (b) of the Act also gives the Commission the power to intervene in any proceeding involving any allegation of violation of human rights pending before a Court, with the approval of such Courts.

Section 13 and Section 14 of the Act gives the Commission broad powers of a civil court trying a suit under the Civil Procedure Code, 1908 to inquire into complaints and to conduct any investigation for the inquiry.

Section 18 (a) stipulates that the Commission may make a recommendations to the concerned government or authority to a) initiate proceedings for prosecution or

suitable action, b) make payment of compensation or damages to the victim or complainant, or c) take any action that it deems fit.

Section 18 (b) gives the Commission an important power to approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.

- The NHRC suffers from the load of complaints that it faces. Its case loads have grown from 496 complaints in 1993-94 to 1,07,655 fresh cases in the financial year 2012-13, with action having been completed in nearly 99,756 cases. The phenomenal increase in the number of complaints is indicative of the growing awareness of their rights among the people as also their growing expectations from the public. The institution however suffers from a serious deficit of Members and staff – in the complaints handling division, in the investigation division to effectively, speedily handle the pending complaints.
- The definition of human rights under Section 2 of the PHRA 1993 were not completely acceptable to very senior activists who deposed before us. They felt that the definition were within laws and conventions while in reality HR were **above legal rights and cannot be only limited to laws.**
- It is this staff deficit that has earned it criticisms from civil society , many of whom testified why they had now even taken recourse to other institutions and sometimes to the judiciary after many years of wait since the NHRC did not deliver in their cases for many years.
- We were appalled to learn that inspite of this staff deficit that it suffers from, the NHRC has gone on record that it is able to handle ‘dispose of 60- 80 complaints a day as single benches working up to 96,000 complaint a year and hence do not suffer from such a want of staff!!!
- That the NHRC after 20 years is still treating investigation of human rights violations only through its age long known crime investigation techniques rather than develop its own human rights investigation techniques with qualified human rights investigators as opposed to police personnel alone.
- That complaints arenow after the 2005 amendment of the PHRA are also being transferred to ill equipped SHRCs in the country and beither is the NHRC accountable to the complainants who formally approached them for justice nor is the SHRC bound to at least periodically inform the NHRC of the progress made in these cases.

- There is a great justice blindness of dalits
- When the NHRC recommends after hearing complaints it is seen that they resort only to cash compensation but never recommendations for alternative livelihood; for paying compensation for evictions; for displacements and such other possibilities. There is nothing that prevents the NHRC from issuing such creative recommendations.
- We observed that Sec 36 of the PHRA is used to dismiss complaints when similar complaints have been registered before other Commissions. However there were many instances during this IPT to show that the state governments cleverly constitute such independent Commissions under the Commissions of enquiry Act.
- The jury to shocked to find that in many cases of extrajudicial executions the magisterial inquires conducted on the behest of the NHRC has only consolidated claim of the perpetrators; but when a more thorough judicial process is initiated though the High Court and the District Courts the finding of the magisterial inquiries were overturned and the victims turn out to be innocent people killed in “fake-encounters”.
- In all cases that we had the privilege of hearing patiently these two days that reacted to different thematic concerns highlighted earlier, victims came forward to only tell us that they had not heard from the NHRC in regard to their cases – or that they had waited for years with no satisfactory response and hence were forced to take recourse to the Supreme Court [Manipur and BSF cases] , or after along wait and interim orders, the NHRC finally ‘closed’ their complaints with no intimation to the victims or the complainants. [STF cases]



Women, dalits, Tribals, children, persons with disabilities and the sexual minorities:

The panel had the benefit of many expert testimonies on the above themes.

Observations:

- We were also informed in the thematic session on dalits that in a study of 224 cases before the NHRC within a three year period relating to Dalit atrocities,

they did not even respond in 36 cases, transferred 27 cases to the SHRCs and they stated in that 50% of the cases did not fall within their mandate. Out of 50 % case where directions were issued to the concerned officials in 39 cases the concerned officials , the NHRC has not monitored responses from the officials with no action on the officials. Even in those where responses were received, the NHRC got response only in 9 cases. They finally closed all the cases.

- It was categorically stated before us by nationally reknowned Dalit activists that like in the judiciary, the police and other agencies even the NHRC has a caste bias and they have a name sake ' dalit cell' constituted after the Durban Conference which is defunct.
- The session on these categories indicated how ineffective the Commission had been to the sensitivities of these categories. These categories were low on the priority of the NHRC's work which were indicated by many of the deponents.
- There is a 'justice blindness' within the NHRC on issues like women, dalits, persons with disabilities and sexual minorities.
- NHRC does not take seriously women's issues and does not engage in discussion on women resulting in no landmark intervention on women from NHRC.
- When women's groups have complained to the NHRC about how women have been treated in camps after communal riots, or how women have been afflicted with sexual violence, we were told that there has been no response from NHRC.
- Even today the NHRC has on its web site the following 'The Commission has been advocating the need for a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights of Persons with Disabilities.' This is clear that this was pre 2006, prior to the UNCPRD 2006 !! This is how far the issue of disability is to the NHRC.
- We were shocked to hear from tribal activists that even after the NHRC team of policemen had visited Chattishgargh pursuant to an order of the Supreme



Court victims who deposed were beaten by the police when they were returning. When this was brought to the attention of the NHRC team they were told that they had come only to record their statements and this did not fall within their purview. !!! Tribal advocates were also beaten. The case of SoniSori with pungent observations from a Member of the Commission that 'she had put stones in her own private parts' were extremely shocking to us and indicated the insensitivity of the Commission or some members to the issues of victims who approach the Commission.

Death Penalty:

Observations:

- Death penalty is definitely an issue falling within the ambit of both the protection and promotion of human rights. But in its 20 year long deliberations, we were told that excepting for some internal research work undertaken by the NHRC, there has been no public stance by the NHRC of its own position on death penalty. The only exception being a statement attributed to the present Chairperson, wherein, he had favored the continuance of death penalty and the second such opinion, being an article titled 'Why Capital Punishment must go' by Mr. Satyabrata Pal, very recently on 3rd October 2013. These again, were his personal views.
- The NHRC has failed to implement the APF's ACJ (Advisory Committee of Jurists) Reference on the death penalty made in December 2000 which in relation to India encouraged it to move towards ratification of the second optional protocol to the ICCPR and CAT.
- Before Justice J.S Verma Committee, in an opportunity provided to the NHRC to delve on this subject, the NHRC had only stated 'Death penalty in every rape case as a punishment is not desirable'.
- The NHRC has not intervened in the Supreme Court in the past 20 years in any of the cases dealing with death penalty.
- The NHRC be called upon not to waste a minute longer and undertake an urgent intervention, placing before the Supreme Court, the ACJ references



and the worldwide jurisprudence available against death penalty. The fact that twenty years have gone without a position on death penalty, should not be an indicator of the lack of independence that this respectable institution claims it possesses but refuses to use on the issue.

Some urgent pertinent recommendations:

- The PHRA 1993 needs an urgent , immediate, overhauling ,after 20 years of working with the same – the amendments are urgently required in the fields of the definition of human rights, the composition, selection and appointment of the Chair and Members/ Deemed Members, its functions, procedures in complaints handling, powers of the commission, steps after enquiry etc.
- The Paris Principles 1993 and ICC General Observations of May 2013 need to be strictly adhered to in any effort at law making that is made. That in the appointment of members – there is need for increasing the number of members and ‘Deemed Members’ - the principle of diversity and pluralism being adhered to in each of them. The Chairpersons of the NCPCR, the CIC, the Central Commissioner for PWDs and the NC on SafaiKarmacharis. That the system of ‘deemed members’ is also extended to all the SHRCs and until then that the NHRC requests the SHRC to experiment on the same until the law is amended. That there is a total ban on a current or former members of the police, security agencies and the military serving in the National Human Rights Commission or the State Human Rights Commissions as Members. That they should also not be solely involved in any part of investigations into allegations of human rights violations by State actors, as they may have political and ideological allegiances to the accused implicated in the case and may have the capacity to influence the outcome.
- The NHRC needs almost several times more qualified and professional staff recruited in a process where people of the right expertise from any sections of society – not necessarily from the Government – for several of its established divisions.
- The NHRC needs to ensure that members of the its core groups need to be considered as advisory bodies to the NHRC in their respective fields of competence the basic change that needs to be carried out is that the members of the core groups are treated as equals with knowledge and practical experience in their respective fields of competence. The resolutions of the meetings of these core groups need to be formally considered in the Full Commissions of the NHRC so that they influence its directions. New areas of engagement also call for specialized core groups being formed for

example in areas like urban development, housing, land and displacement etc.

- That the representatives of the CSOs on the NHRC NGO Core Group are not appointed by the NHRC but by different sectors of the HRDs themselves for the sake of legitimacy and identity. This alone will restore the dignity of HRDs within the NHRC and without which they will be seen as representatives of the NHRC rather than of the community of HRDs that they are to represent.
- That in the field of human rights defenders the NHRC ensures that the highest authorities at the central and state levels should publicly acknowledge the importance and legitimacy of the work of human rights defenders, i.e. anyone who, "individually and in association with others, ... promote[s] and ... strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels" (art. 1 of the Declaration on Human Rights Defenders).
- The NHRC needs urgently to develop a comprehensive, adequately resourced 'HRD Protection Program' for HRDs and witnesses. This program should be funded by the State, but not be closely controlled by the State apparatus or associated with State agencies, such as the police, security agencies and the military. It should be cost-free, simple and fast, and immediate protection should be granted while the risk situation of the HRD is being assessed.
- The NHRC needs to propose to the Government urgently a law on the protection of human rights defenders, with an emphasis on defenders facing greater risks, developed in full and meaningful consultation with civil society.
- The NHRC should urgently intervene on the issue of the FCRA 2020 and its Rules of 2011 and monitor the denial of registration, cancellations and frequent suspensions that several CSOs have suffered from the MHA. The right of HRDs includes the right to freedom of assembly, expression and association and this includes the right to solicit, receive and utilize resources.
- That the NHRC urgently influence all the existing 23 SHRCs in the country to also appoint a focal point on HRDs to monitor such cases and bring them to the immediate attention of the NHRC for its effective combined action.
- The supportive role of the Commissions for HRDs should be strengthened by personally meeting HRDs in difficult circumstances and thus visibly placing the NHRC on the side of the HRDs of this country; undertaking trial observations of cases of HRDs; publicly denouncing violations against HRDs and impunity.

- The NHRC's Focal Point on HRDs should be a Full time Member of the NHRC given the hierarchical nature of the NHRC.
- A fast-track procedure needs to be developed for handling complaints of HRDs within the NHRC.
- The NHRC in its complaints handling function needs not only to focus on handling individual complaints and ordering for compensations but ultimately using these complaints before it to in effect effectively defending the rights of people by taking them to their logical end.
- The PHRA has to and till then the NHRC has to determine a time period within which its complaints are handled and the progress of each of the cases with day to day orders made available as in the case of the High Courts and the Supreme Court in their web sites.
- The NHRC needs to ensure that it pays immediate heed to pro-active disclosure expected of it by the RTI Act. In addition that it places in its web site all the responses that it has provided to different applicants so that it serves the public.
- The Chairperson of the NHRC should address a letter to all the Members of both houses of Parliament, following the NHRC precedent in the case of TADA in 1995, urging them ensure that this colonial era wartime legislation, which has endured in our statute books for more than 55 years, should be scraped immediately. It is sad record of the NHRC's performance that the Petitioners had to finally take recourse to the Supreme Court while all the time the NHRC's complaint's handling mechanism could have assisted the Petitioners much in the same manner that the SC had carried out appointing an enquiry Commission headed by Justice Santosh Hegde which has eventually brought a halt to the killing spree of the security forces in the State.
- The NHRC should be called upon not to waste a minute longer and undertake an urgent intervention, placing before the Supreme Court, the ACJ references and the worldwide jurisprudence available against death penalty. The fact that twenty years have gone without a position on death penalty, should not be an indicator of the lack of independence that this respectable institution claims it possesses but refuses to use on the issue.
- While we appreciate the stand of the NHRC on the recent SC judgement on Section 377, the commission should take a proactive role. However, we are of the opinion that the NHRC should have intervened in the SC earlier and now it gives them an opportunity to present SOGI Rights in the SC.
- The NHRC needs to attach greater importance to the issues of women, dalits, tribals, persons with disabilities as well as sexual minorities and in its programs and complaints handling program affecting these communities by

ensuring that they do not henceforth only order compensation to victims, but read their mandate along with the different specialized legislations that govern these sections or else make recommendations for the development of new rights of our peoples and or new rights.

- The NHRC has to have supervisory powers over the SHRCs in the country and that it evolves a procedure for the effective functioning of the District Human Rights Court envisioned under Sec 30 of the PHRA so that they function as courts envisioned under Art 32(3) of the Constitution to which the NHRC as well as SHRCs would be able to refer cases that they have investigated and found human rights violations to have occurred.
- The NHRC has to publicly speak—not converting all issues into complaints - on different human rights issues because they are a ‘state funded human rights defenders’ they need to make declarations based on human rights.

Sd/-

Justice (Retd.) Hosbet Suresh
Former Judge of the Mumbai High Court

Sd/-

Justice (Retd.) Surendra Bhargav
Former Chief Justice of Sikkim High Court

Sd/-

Justice (Retd.) W A Shishak
Former Chief Justice of Chhattisgarh High Court

Sd/-

Justice (Retd.) K Sukumaran
Former judge of the Mumbai and Kerala High Court

Sd/-

Prof. Vimal Thorat
Professor and Social Activist

Sd/-

Mr. Yambem Laba
Former Member of Manipur SHRC

Sd/-

Prof. Babu Mathew
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National Law University, New Delhi

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